



**Republic v Executive Committee Member (CECM) Finance, County
Government of Nakuru & 3 others; Langi (Exparte Applicant) (Judicial Review
E009 of 2024) [2025] KEELRC 573 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 573 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
JUDICIAL REVIEW E009 OF 2024
AN MWAURE, J
FEBRUARY 26, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**THE EXECUTIVE COMMITTEE MEMBER (CECM) FINANCE, COUNTY
GOVERNMENT OF NAKURU 1ST RESPONDENT**

**THE CHIEF OFFICER FINANCE COUNTY GOVERNMENT OF
NAKURU 2ND RESPONDENT**

**THE COUNTY SECRETARY COUNTY GOVERNMENT OF
NAKURU 3RD RESPONDENT**

COUNTY GOVERNMENT OF NAKURU 4TH RESPONDENT

AND

MOSES OUMA LANGI EXPARTE APPLICANT

RULING

Introduction

1. The ex-parte Applicant filed a Notice of Motion dated 24th September 2024 seeking the following orders that:
 1. This Honourable court be pleased to issue an order of Mandamus compelling, commanding and/or directing the Respondents herein jointly and/or severally to pay the ex-parte Applicant herein MOSES OUMA LANGI a sum of Kshs.2,335,838.09/= together with interest thereon at 14% per annum from 15th May 2024 until payment in full in satisfaction of the Judgment,



Decree and/or Order against Government in Employment and Labour Relation Court at Nakuru Miscellaneous Application No. E038 of 2022 Moses Ouma Langi V County Government of Nakuru plus costs of the application for leave and any other subsequent proceedings herein.

2. Costs of these application/proceedings be borne by the Respondent herein jointly and/or severally.

Ex-parte applicant's case

2. The application is supported by the affidavit of the ex-parte applicant, Moses Ouma Langi.
3. The ex-parte Applicant avers that he had instituted a suit in Nakuru ELRC Miscellaneous Application No. E038 of 2022 Moses Ouma Langi V County Government of Nakuru claiming damages as a result of a work injury.
4. The ex-parte Applicant avers that judgment was entered in his favour and the Respondents have failed to compensate him despite being served with the Certificate of Order.
5. The ex-parte Applicant avers that he proceeded to institute these proceedings and annexed the order granting leave together with an affidavit of service and demand notice.
6. The ex-parte Applicant avers that he cannot enjoy the fruits of his judgment due to roadblocks preventing him because of the inaction of public officers despite demand, and the purpose of an order of mandamus is to remedy the defects of justice.
7. The ex-parte Applicant prays that this Honourable Court grants him the order of mandamus for the Respondents to pay him.

Respondents' replying affidavit

8. In opposition to the application, the Respondent filed a replying affidavit dated 28th October 2024.
9. The Respondents aver that they are not refusing to settle the decretal amount but will settle it once there is availability of funds.
10. The Respondents aver that the County Governments are unable to meet their financial obligations pending the commencement of the Division of Revenue (Amendment) Bill 2024.
11. The Respondents aver that they have factored the ex-parte applicant's decretal sum in the 4th Respondent's budget for the financial year 2024/2025, and the same shall be settled once monies have been released by the National Treasury.
12. The Respondents aver that they are willing to comply by settling the decretal amount before the end of the financial year.
13. Parties were directed to put in written submissions, but the Respondents did not file any submissions.

Ex-parte Applicant's submissions

14. The ex-parte Applicant submitted that execution against the County Government cannot be done by way of attachment of its properties. Section 21(4) of the [Government Proceedings Act](#) provides as follows:

“Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs



as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.”

15. The ex-parte Applicant submitted that he had no option but to file these proceedings to realize the fruits of his judgment, and he had the right to seek an order of mandamus by way of Judicial proceedings. The ex-parte Applicant relied on the case of Republic V County Government of Kitui Ex-parte Fairplain Systems Limited [2022] eKLR in support of that proposition.
16. The ex-parte Applicant argued that despite the Respondents being served with a certificate of costs and a demand for compliance, it failed to pay the decretal sum. The Respondents’ failure to pay led the ex-parte Applicant to seek an order of mandamus, as the only pre-condition for granting the orders sought was the issuance of a certificate of order against the Government. The ex-parte Applicant relied on the case of Seventeenth Enterprises Limited V Cabinet Secretary for Ministry of Interior and Coordinate of National Government & 2 others [2015] eKLR in support of that proposition.
17. The ex-parte Applicant relied on the case of Republic V Principal Secretary & Another Ex-parte Herman Marine Nderi [2014] eKLR where the court held as follows:

“An order of mandamus is issued to a public body directing the performance of a statutory duty where it has failed to do so. The Respondent has a duty to pay a claim once a Certificate of Order has been issued by the Court-see Section 21 of the *Government Proceedings Act*, Cap 40. The Respondent has been asked to pay the decretal amount but has refused to comply and no reason has been given as to why there has been no compliance. This is a case that calls for the issuance of an order of mandamus. An order of mandamus is therefore issued directing the Respondent to pay the amount in the Certificate of Order together with interest accrued from the date of its issuance until payment in full. The Applicant will also have the costs of these proceedings.”
18. In Republic V Attorney General & Another Ex-parte Simon Wainaina Mwaura [2013] eKLR where the court held that The Applicant has shown that he wrote to the Attorney General requesting compliance with the court judgment, but the Respondents failed to comply. The Applicant also demonstrated that the 2nd Respondent, as the accounting officer of the relevant government department, has a duty under section 21 of the *Government Proceedings Act* to pay the amount specified in the certificate of order.
19. In conclusion, the ex-parte Applicant urges this Honourable Court to allow the application as prayed with costs.

Analysis and determination

20. The court has considered the application, the replying affidavit as well the submissions, the issue for determination is whether the application is merited.



21. In Kenya National Examination Council V Republic, Ex-Parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR the Court of Appeal stated as follows:

“The next issue we must deal with is this: What is the scope and efficacy of an Order of Mandamus? Once again we turn to Halsbury’s Law of England, 4th Edition Volume 1 at page 111 From Paragraph 89. That learned treatise says: -

“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

22. In this instant case, the ex-parte Applicant served the Respondents with the Certificate of Order, however, the Respondents have failed to communicate whether they will pay the decretal amount in Employment and Labour Relation Court at Nakuru Miscellaneous Application No. E038 of 2022 Moses Ouma Langi V County Government of Nakuru.
23. The Respondents in their replying affidavit stated that they have already factored in the ex-parte Applicant’s claims in the 4th Respondent’s budget for the financial year 2024/2025 but failed to show any proof that the decretal sum has been included in the said budget for the financial year. They are mum as to when the said amount will ever be settled. That is not good enough.
24. To recite the already cited case of Republic -Vs- The Attorney General & Another Ex-parte Applicant Simon Wainaina Mwaura (Supra) – Where the court observed that the applicant has written to the Attorney General requesting compliance to a court judgment. In such a case, Accounting Officer of the relevant Government Department must comply with Section 21 of the [Government Proceedings Act](#) to pay the amount specified in the certificate of Order.
25. In view of the foregoing, the court allows the application dated 24th September 2024.
26. The ex-parte Applicant will have costs of the application.
27. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 26TH DAY OF FEBRUARY, 2025.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of [the Constitution](#) which requires the Court to eschew undue technicalities in delivering justice, the



right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

