



Nthiga v County Government of Embu County & 2 others (Judicial Review Cause E003 of 2024) [2025] KEELRC 362 (KLR) (13 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 362 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
JUDICIAL REVIEW CAUSE E003 OF 2024
ON MAKAU, J
FEBRUARY 13, 2025**

BETWEEN

THOMAS MUGAMBI NTHIGA APPLICANT

AND

COUNTY GOVERNMENT OF EMBU COUNTY 1ST RESPONDENT

COUNTY PUBLIC SERVICE BOARD, EMBU COUNTY 2ND RESPONDENT

**THE COUNTY SECRETARY, COUNTY GOVERNMENT OF
EMBU 3RD RESPONDENT**

JUDGMENT

Introduction

1. This is a Judicial Review application commenced by a Notice of Motion dated 6th May 2024. It is brought under Order 53 Rule 3 of the Civil Procedure Rules, section 7 (1) (a), 10 (1) and 11 (1) (f) and (i) of the Fair Administrative Actions Act and seeks the following orders:
 - a. That the Honourable court be pleased to issue an order of Mandamus compelling the Respondents to pay a sum of Kshs.2,398,833.30 as ordered in Nyeri Elrc Petition No.15 OF 2017.
 - b. That the Honourable court be pleased to grant such relief as it may deem fit in the circumstances.
 - c. That costs of the application be provided for.
2. The motion was amended on 7th August 2024 and it was supported by the statements of fact and verifying Affidavit dated 23rd April 2024, which accompanied the application for leave to bring these



Judicial Review proceedings. There is also a supplementary affidavit sworn on 7th August 2024. The respondents were served with the motion but failed to enter appearance.

Facts of the case

3. The applicant sued the County Government of Embu and the County Public Service Board, Embu County in Nyeri ELRC Petition 15 of 2017 and on 24th February 2020, judgment was entered in his favour and against the said respondents in the sum of Kshs.2,180,803 plus costs and interest at court rates. Thereafter a certificate of order against the Government was issued on 12th February 2024 ordering the respondents to pay the applicant Kshs.2,393,883.30 being the decretal sum, costs and accrued interest.
4. The respondents never settled the above debt and since execution cannot proceed against the respondent, the applicant brought this application to obtain orders of mandamus to compel the cited officers of the respondents to pay the said judgment debt.

Submissions

5. It was submitted that the order of mandamus sought is directed at public officers who have failed to do their public duty of paying the judgment debt. It was further submitted that the failure to settle the judgment debt by the respondent is unlawful and illegal and it amounts to denying the applicant the fruit of his litigation.
6. It was further submitted that the respondents did not oppose the application and as such the order sought should be granted plus costs. For emphasis, reliance was placed on the case of Republic v Kenya National Examinations Council ex-parte Gathenji & Others, (1997) eKLR, and Erick O.Nyawere & 68 others v Principal Secretaries, Ministry of Interior and Coordination of National Government & another (2019) eKLR where the courts discussed the circumstances under which order of mandamus may be issued.

Determination

7. The only issues for determination are: -
 - a. Whether the order of mandamus should issue as prayed.
 - b. Whether costs should be granted.

Mandamus

8. Mandamus is a judicial review order issued against a public officer or a public body, compelling them to perform a public duty which is assigned to them by the law. The Court of Appeal, in Republic v Kenya National Examinations, supra thus: -

“...an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

9. The applicant contends that he obtained judgment against the respondents the County Government of Embu and the Public Service Board but the respondents, who are officers in the said Government and the Board failed to settle the judgment debt despite being served with a Certificate of Order against the Government. The above allegations have not been controverted by the respondents.



10. It follows that the decree and costs awarded by court in the said matter remains outstanding since February 2020. The officers of the County Government and the Board sued have a public duty to pay the decretal sum plus costs to the applicant. Consequently, I grant the order of mandamus sought directed at the public officers cited in the Amended Notice of Motion dated 7th August 2024, compelling them to settle the sum of Kshs.2,398,883.30 ordered in Nyeri ELRC Petition 15 of 2017. The applicant is also awarded costs plus interest at court rates from the date of filing this suit.

Disposition

11. I have found that the applicant has laid before the court a good basis upon which to grant the writ of mandamus against the respondents. Consequently, I enter judgment for the applicant as prayed in (a) and (c) of the Amended Notice of Motion.

DATED, SIGNED AND DELIVERED AT NYERI THIS 13TH DAY OF FEBRUARY, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

