



Bosire & 4 others v Superintendant, Rift Valley Provincial General Hospital Nakuru & another (Judicial Review E010 of 2024) [2025] KEELRC 765 (KLR) (14 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 765 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
JUDICIAL REVIEW E010 OF 2024**

AN MWAURE, J

MARCH 14, 2025

BETWEEN

LENAH MOYANGE BOSIRE & 4 OTHERS & 4 OTHERS & 4 OTHERS PETITIONER

AND

**SUPERINTENDANT, RIFT VALLEY PROVINCIAL GENERAL HOSPITAL
NAKURU 1ST RESPONDENT**

**SECRETARY COUNTY PUBLIC SERVICE BOARD NAKURU COUNTY
GOVERNMENT OF NAKURU 2ND RESPONDENT**

RULING

Introduction

1. Vide a Chamber Summons dated 3rd September 2024 filed under Certificate of Urgency, the Petitioners/Applicants are seeking for orders that:
 - i. Spent
 - ii. The Applicants Grace Khadudu Murono, Beatrice Murugi Miano, Nancy Wangare Kariuki, Nannice Nkatha Njagi, and Lenah Monyage Bosire, be granted leave to apply for an order of Mandamus directed to the Respondents.
 - iii. Upon filing of this application, it be certified urgent, and grant of leave to the Applicants to apply for an order of mandamus, the application for an order of Mandamus herewith filed together with this application be considered as duly filed.
 - iv. The costs of this application be provided for.



2. The application is brought under Order 53 Rule 1(2) of the Civil Procedure Rules and all other enabling provisions of the law.

Petitioners/Applicants' case

3. The Petitioners/Applicants aver that they are seeking an order of Mandamus, which can only be applied with leave of court.
4. The Petitioners/Applicants aver that since 29th November 2023, when judgment was entered in their favour against the Respondents for a sum of Kshs.295,463/=, which is broken down as follows:
 - a. Grace Khadudu Muroso - Kshs.55,365 in Cause No. 89 of 2019
 - b. Beatrice Murugi Miano - Kshs.59,656 in Cause No. 90 of 2019
 - c. Nancy Wangare Kariuki - Kshs.55,200 in Cause No. 91 of 2019
 - d. Nannice Nkatha Njagi - Kshs.55,386 in Cause No. 93 of 2019
 - e. Lenah Monyage Bosire - Kshs.69,835 in Cause No. 92 of 2019
5. The Petitioners/Applicants aver that despite several reminders and attempts to procure the decretal sum, the Respondents had blatantly ignored and/or refused to pay them the decretal sums.
6. The Petitioners/Applicants aver that the Respondents can only be compelled to settle the amount through an order of Mandamus.

Respondents' Grounds of opposition

7. In opposition to the application, the Respondents, represented by the County Attorney, filed grounds of opposition dated 18th February 2025 on the following grounds that:
 1. The application is bad in law, incompetent, and an abuse of the court process.
 2. The application offends the provisions of section 9(2) the Law Reform Act Chapter 26 Laws of Kenya.
 3. The application offends the provisions of Order 53 Rule 2 of the Civil Procedure Rules, 2010
 4. The application offends the provisions of rule 7(2) of the Employment and Labour Relations Court (Procedure) Rules 2016.
8. Parties were directed to file their respective submissions.

Petitioners'/Applicants' Submissions

9. The Petitioners/Applicants submitted that the Respondents were served with the judgments, decree and certificate of order against the Government in accordance with Order 29 Rule 3 of the Civil Procedure Rules through the Respondents' advocates and have failed to respond, resulting in filing this application before this Honourable Court.
10. The Black's Law dictionary defines an abuse of court process as "everything which is contrary to good order established by usage that complete departure from reasonable use. An abuse is done when one makes an excessive or improper use of a thing or to employ such a thing in a manner contrary to natural legal rules for its use."



11. The Petitioners/Applicants submitted that since the Respondents were properly served with the Certificate of Order against the Government and they refused to pay that is an abuse of the court process. The Petitioners/Applicants relied on the case of Grand Creeks LLC and another V Nathen Mason (2015) eKLR where the court held that Order 22 Rule 18(1) requires serving a Notice to Show Cause to the debtor, while Order 22 Rule 31 allows the court to issue a notice instead of an arrest warrant. Failure to comply with the notice leads to the issuance of an arrest warrant, but actual committal to prison is subject to further legal safeguards under Order 22 Rules 33 and 34 to ensure due process. Courts have confirmed that such procedures are constitutional if all safeguards are followed, as established in several cases like National Bank of Kenya V Serem and Jayne Wangui Gachoka V Kenya Commercial Bank Ltd, ensuring that enforcement respects both the decree-holder's rights and the debtor's constitutional protections.
12. In Solomon Muriithi Gitondu and Another V Jared Meingi Mburu [2017] eKLR, the court cited the case of Braeburn Limited V Gachoke and Others [2007] eKLR and the court held that a person cannot be committed to civil jail solely for an inability to pay a debt. However, if a debtor is found to be dishonest or fraudulent, they may face arrest and committal as punishment.
13. The Petitioners/Applicants urge this Honourable Court to allow the application as prayed.

Determination

14. The court has considered the application, the grounds of opposition, and the submissions by the Petitioners/Applicants; the issue for determination is whether the application is merited.
15. In Republic v County Council of Kwale & another; Kondo & 57 Others (Exparte) [1998] KEHC 2 (KLR), the court stated as follows:

“The purpose of the application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further consideration. As was pointed out by Lord Diplock in Republic -vs- Inland Revenue Commissioners ex p National Federation of Self Employed and Small Businesses Ltd [1982] AC 617, the requirement that leave must be obtained before making an application for judicial review is designed to: “Prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived.”

Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the courts discretion, but as always, is has to be exercised judicially. Has the applicant satisfied these principles.”

16. In this instant application, the Petitioners/Applicants are seeking leave of court to commence mandamus proceedings against the Respondent to pay up the decretal sums arising from Nakuru cause Nos. 89, 90, 91, 92 and 93 of 2019. The Respondents have been sent several letters urging them to pay the decretal sums and have not settled the same.



A Certificate of order was issued dated 7th March, 2024 for Claimant Grace K. Murono and for Lenah M. Bosire (2nd March 2024).

The certificate of Grace Wangari is also annexed hereto and Nancy Nkatha. Also certificate for Nancy Kariuki is availed.

17. The Claimants have complied with Order 29 Rule 3 of the Civil Procedure Rules.

The Respondents have not appealed the Judgment of the court or applied for the same to be reviewed. The only thing they must do therefore is to settle the decretal amounts.

18. The Grounds of opposition filed by The Hon. County Attorney do not establish how the Applicants are guilty of abuse of the court process. They claim the application offends Section 9(2) of the Law Reform Act and Order 53 Rule 2 of the Civil Procedure Rules and Section 7(2) of the Employment and Labour Relations (Procedure) Rules. Order 53 Rule (2) provide that leave for Judicial Review must be filed 6 months within the proceedings.

The certificates herein were issued in March 2024 and this application was filed in September, 2024.

In any event justice is to be provided without undue regard to technicalities as provided in article 159(2) (d) of the Constitution.

Seeing the Respondents have not appealed this decree they must be made to settle it.

19. The court is persuaded the Applicants are deserving of the fruit of their judgment and so the order for leave to apply for an order for mandamus is granted to compel the Respondents to pay the decretal sum totalling Kshs.295,463=.

20. The application for mandamus is held as duly filed and the Respondent is ordered to pay the Applicant the decretal sum prayed hereto with interest at 14% per annum from today's date.

21. Costs of the application to be borne by the Respondents and paid to the Applicant.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 14TH DAY OF MARCH, 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

