



**Republic v Chief Officer Finance County Government of Embu &
another; Nyagah (Exparte Applicant) (Judicial Review Application
E001 of 2025) [2025] KEELRC 813 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 813 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
JUDICIAL REVIEW APPLICATION E001 OF 2025
ON MAKAU, J
MARCH 13, 2025**

**IN THE MATTER OF: ENFORCEMENT OF JUDGMENT AND DECREE PASSED BY
THIS HONOURABLE COURT ON 9TH JUNE, 2023 IN THE ELRC, MERU; MERU ELRC
NO.44 OF 2019 JOHNSON MWANIKI NYAGAH V COUNTY GOVERNMENT OF EMBU**

BETWEEN

REPUBLIC APPLICANT

AND

**CHIEF OFFICER FINANCE COUNTY GOVERNMENT OF
EMBU 1ST RESPONDENT**

**COUNTY ATTORNEY COUNTY GOVERNMENT OF EMBU 2ND
RESPONDENT**

AND

JOHNSON MWANIKI NYAGAH EXPARTE APPLICANT

(Before Hon. Justice Onesmus N Makau on 13th March, 2025)

JUDGMENT

Introduction

1. By a Notice of Motion dated 5th February 2025, the applicant seeks the following orders:
 1. An order of mandamus be and is hereby issued compelling the Respondents herein to pay the ex-parte Applicant, within 30 days of the order, the sum of;



- a. Kshs.3,140,308.00 being the decretal amount owed to the Applicant as a result of the judgment issued on 9th June, 2023 in the ELRC At Meru; Elrc No.44 Of 2019; Johnson Mwaniki Nyagah V The County Government Of Embu;
 - b. Interest on the Kshs.3,140,308.00 above compounded at 12% from 9th June 2023 until payment in full; and
 - c. the taxed costs of suit in the sum of Kshs.297,350.00 plus interest till payment in full.
2. In default of prayer 1 above, the Respondents be committed to civil jail at Embu GK Prison for a period of not less than 3 months.
 3. That costs of the application be provided for.
2. The motion is supported by the statutory statement and the Verifying Affidavit that accompanied the application for leave dated 16th January 2025. The respondents were served with the motion but no response was filed to oppose the same.
 3. The facts of the case are that, the applicant, Johnson Mwaniki Nyagah was employed as Chief of staff by the County Government of Embu on 10th January 2018 and worked up to 4th December 2019 when his services were unlawfully terminated. He then sued the County Government of Embu and its Governor, Martin Nyaga Wambora in Meru ELRC No.44 of 2019 and obtained a judgment of Kshs.3,140,308 plus costs of Kshs.297,350. A decree and certificate of costs were issued (Exh. “JMN1” & JMN2” respectively). A certificate of order against the Government was also issued for a payment of the decreed sum of Kshs.3,140,308 and cost of Kshs.297,350 (Exhibit “JMN 3”)
 4. The respondents were served with the said Decree, certificate of costs and certificate of order against the government but they were never settled. The respondents have been described as the Accounting Officer and Legal Advisor of the County Government of Embu who are mandated to honour the decree against the government.
 5. The failure by the respondents to honour the decree was described as a breach of *the Constitution* vis -a- vis Article 47 and 48 of *the Constitution* which guarantees right to fair administrative action and right to access to justice. They have also been accused of unreasonableness considering the long delay of 2 years.
 6. In view of the above matters, the court was urged to find that the applicant has proved that the respondents’ actions are tainted with illegality, unreasonableness and irrationality contrary to *the Constitution*, and allow the motion as prayed.

Issues for determination

7. The only issue for determination is whether the applicant has laid before the court any basis for mandamus to be issued.
8. In the case of *Pastoli v Kabale District Local Government Council & others* (2008) 2 EA 300, the Court discussed the thresholds for judicial review of administrative decisions, thus:

“In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.

Illegality, is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without



jurisdiction or ultra vires or contrary to the provision of a law or its principles are instances of illegality.

Irrationality, is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.

Procedural impropriety, is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice to act or to act with procedural fairness towards one to be affected by the decision – it may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislature instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehidwi...Vs... Secretary of State for the Housing Department (1990) AC 876.”

9. In the instant case, the appellant has laid before this court evidence to prove that this court passed a decree followed by a certificate of costs but the respondents have failed to exercise their lawful mandate under the law to pay the debt on behalf of the County Government of Embu. The said default is both unfair and unreasonable.
10. It is trite law that normal execution under the Civil Procedure Rules cannot be undertaken against the government. In the circumstances, an order of mandamus against the accounting officer of the County Government and the legal advisor of the government is the ideal method of enforcing compliance with a decree against the government.
11. A County Government can only comply with a decree of the court through the relevant officers who have the legal mandate to make payments on behalf of the government and also those who have the mandate to advise the Government on compliance with court orders. I am satisfied that the Respondents have the mandate to ensure that the County Government of Embu pays the decree and costs certified by the court in respect of Meru ELRC No.44 of 2019 totalling to Kshs.3,437,658. Consequently, I find that the applicant has laid sufficient basis upon which this court can grant the orders of mandamus and hereby enter judgment as prayed in prayer 1 and 3 of the Notice of Motion dated 5th February, 2025.

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

ONESMUS N MAKAU

JUDGE

