



**Kenya Union of Clinical Officers & 76 others v County Secretary,
County Government of Vihiga & another (Miscellaneous Application
E001 of 2024) [2025] KEELRC 1121 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1121 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

MISCELLANEOUS APPLICATION E001 OF 2024

DN NDERITU, J

APRIL 3, 2025

BETWEEN

KENYA UNION OF CLINICAL OFFICERS 1ST APPLICANT
WALTER ADOLI KISUMBA 2ND APPLICANT
JUMBA HOSBORN KISATO 3RD APPLICANT
JAPHETH MUTSAMI MUKABWA 4TH APPLICANT
RONO KIPKOECH 5TH APPLICANT
JACKLYNE VUGUTSA 6TH APPLICANT
SIZCO JEBITOK 7TH APPLICANT
ELMA MUKHANJI 8TH APPLICANT
ANNALINE JEBICHY 9TH APPLICANT
EVERLYNE ATIENO OLOO 10TH APPLICANT
VONYOLI IBRAHIM 11TH APPLICANT
LIVINGSTONE OGOLA 12TH APPLICANT
VITALIS KASIBA 13TH APPLICANT
NIVAH MUHATIA 14TH APPLICANT
GEORGIADIS WAFULA MUKHWANA 15TH APPLICANT
CHRISTOPHER TUNYA 16TH APPLICANT
EZRA ERIC OMONDI 17TH APPLICANT
CAROLINE NYANDIGA 18TH APPLICANT



TIEMA ANDESOP EPETUAH	19 TH APPLICANT
GEORGE OKOTH	20 TH APPLICANT
THOMAS ANYONA	21 ST APPLICANT
AMODING ESTHER	22 ND APPLICANT
RONO BERNARD	23 RD APPLICANT
KEVIN JUMBA	24 TH APPLICANT
EMMANUEL OKOTO	25 TH APPLICANT
LILIAN MOMANYI	26 TH APPLICANT
NANCY AKINYI ODIPO	27 TH APPLICANT
HELLEN KADENYI MUNDE	28 TH APPLICANT
CAROLINE OSIDE	29 TH APPLICANT
MAILAH SIMWA	30 TH APPLICANT
CALVIN JONES ATINGO	31 ST APPLICANT
KAREN OLESI	32 ND APPLICANT
BRENDA KAVELE LUNGAHO	33 RD APPLICANT
WILLIAM OKUR ODINDO	34 TH APPLICANT
BROLIN KEVIN OMONDI	35 TH APPLICANT
CYRUS AMENA	36 TH APPLICANT
DENNIS RIZIKI AKOYO	37 TH APPLICANT
SAUL ESIPIRA	38 TH APPLICANT
OTISO KWAMBOKA	39 TH APPLICANT
JOHN MAHIVA SAVALA	40 TH APPLICANT
BILL CAXTON ENDOVO	41 ST APPLICANT
BENARD KUNGU KARIUKI	42 ND APPLICANT
JAIRUS BAHATI OTANGA	43 RD APPLICANT
ODHIAMBO ABDALA YUSUF	44 TH APPLICANT
WYCLIFFE ASENJI OTANO	45 TH APPLICANT
NICHOLAS KARANI ESEVWE	46 TH APPLICANT
CHRISTINE ANYANGO ODHIAMBO	47 TH APPLICANT
NANCY KADENGE AMADI	48 TH APPLICANT
NGUSALE BONFACE	49 TH APPLICANT
NICHOLAO TENGA	50 TH APPLICANT



ANTONY ERIC OTIENO	51 ST APPLICANT
SEBBY EDDAH INYANGU	52 ND APPLICANT
LILIAN KADENYI	53 RD APPLICANT
CAROLINE KEMUNTO MOKAYA	54 TH APPLICANT
MILLICENT AOKO OBEIRO	55 TH APPLICANT
MARYANNE KAYASI	56 TH APPLICANT
LAURINE ANDEMO AMBUZI	57 TH APPLICANT
OTIENDE ELIZABETH ATIENO	58 TH APPLICANT
DOREEN KAMULA ANONO	59 TH APPLICANT
SUSAN NGADIMA AGON	60 TH APPLICANT
AKOLO BOAZ	61 ST APPLICANT
MARK KARANI TABU	62 ND APPLICANT
MUSAH SAKWA RONALD	63 RD APPLICANT
RHODA CHELOTI	64 TH APPLICANT
EVANS ODUORY	65 TH APPLICANT
KIPKORIR STEPHEN KIBWARENG'	66 TH APPLICANT
JACKSON CHAGWA	67 TH APPLICANT
ELVIS AMUNI ISIAHO	68 TH APPLICANT
KAYINZILI LINDI	69 TH APPLICANT
KIMUTAI GEORGE	70 TH APPLICANT
MILLYCENT OBINDI OSIDE	71 ST APPLICANT
RUTH GWARO	72 ND APPLICANT
BRENDA AMONDI	73 RD APPLICANT
OBINO TAI FRED	74 TH APPLICANT
SHITANDI PAULINE ESHISILA	75 TH APPLICANT
AKOYA RHINAH OKWOMI	76 TH APPLICANT
LYDIA NELIMA ANDALA	77 TH APPLICANT

AND

COUNTY SECRETARY, COUNTY GOVERNMENT OF VIHIGA ... 1ST
RESPONDENT

COUNTY GOVERNMENT OF VIHIGA 2ND RESPONDENT



RULING

I. Introduction

1. In a notice of motion (the application) dated 14th October, 2024 the applicants, through Kamau Kuria & Co Advocates, are seeking for the following orders –
 1. That an order of mandamus do issue compelling the respondents, to pay the Ex Parte Applicants an amount of Kshs. 128,653,594.752/- (Kshs. 106,611,120/- as withheld salary arrears and Kshs. 5,027,340/- as costs) plus interest at 12% per annum from 26th May, 2023, till payment in full.
 2. That the costs of the application be provided for.
2. The application is expressed to be brought under Articles 48 & 165 of *the Constitution*, Sections 8 & 9 of the *Law Reform Act*, Sections 7 & 11 of the Fair Administrative Actions Act, and Order 53 of the Civil Procedure Rules. It is supported with the statutory statement of facts dated 8th October, 2024 and the verifying affidavit of Hawkins Alingo sworn on even date with several annexures thereto.
3. In response to the application the respondents, represented by Tony Godia Advocate, filed a replying affidavit sworn by Ezekiel Ayiego sworn on 20th August, 2024.
4. Counsel for both parties addressed the court by way of written submissions. Mr. Munyori for the applicants filed written submissions dated 31st January, 2025 while Mr. Godia for the respondents filed submissions dated 24th February, 2025.

II. The Evidence

5. In the verifying affidavit it is deposed by Hawkins Alingo, the branch chairperson of the 1st applicant, that he has the authority to swear the same for and on behalf of all the applicants.
6. It is deposed that in Bungoma ELRC No. 32 of 2021 – Kenya Union of Clinical Officers & Others V County Government of Vihiga a judgment was rendered on 26th May, 2023 in the following terms –
 1. That it be and is hereby declared that the claimants save for the 1st claimant and those who had left were on the Respondent's pay roll and their contracts were never terminated.
 2. That it be and is hereby declared that the process of absorption of the claimants to permanent status was ongoing under a centralized process in Nairobi and was 90% complete.
 3. That it be and is hereby declared that the County Public Service Board is vested with the exclusive mandate to employ and remove employees of the County Public Offices under Section 59 of the *County Governments Act*, 2012.
 4. That it be and is hereby declared that the termination notices issued to the claimants by the County Secretary were null and void as they were issued without jurisdiction.
 5. That it be and is hereby declared that having served for over 6 months, the claimants are deemed to have had their terms converted to permanent and pensionable as per terms of appointments.
 6. That it be and is hereby declared that the verification process was justified.



7. That the court declines to quash the purported invitation to attend the verification for qualifications and declares that the process is overtaken by events the court having held that the claimants after 6 months of service were deemed to be permanent employees.
 8. That an order do issue that the claim for permanent injunction be and is hereby declined.
 9. That an order do issue that the claim for damages for violation of constitutional rights be and is hereby declined.
 10. That it be and is hereby declared that the award of salary arrears with interests was adequate compensation.
 11. That it be and is hereby declared that the claimants having worked in the unpaid periods are entitled to their full salary as provided for under Section 19 of the Employment Act.
 12. That in view of discrepancies between oral testimonies of CW - 2 and CW - 3 of salary arrears, the parties shall reconcile within 21 days, outstanding salary arrears for the claimants and file in court consent payable salary arrears to each employee.
 13. That the claimants are entitled to reasonable costs to indemnify against the loss incurred by them in the claim based on illegal and now termination notices and arrears not paid.
 14. That the claimants are awarded interests from the dates of the judgment until payment in full.
7. A copy of the judgment impugned above is attached to the affidavit.
 8. It is further deposed that in a ruling of 30th November, 2023 the County Government of Vihiga was held to be indebted to the applicants in the tune of Kshs106,027,120/= excluding accruing interest till payment in full. A copy of the impugned ruling is annexed.
 9. It is deposed that costs were subsequently taxed at Kshs5,027,340/= on 28th August, 2024 and a certificate of costs issued on 3rd September, 2024. Documents in support of this deposition are annexed.
 10. It is deposed that subsequently the lawyers on record for the applicants demanded payment and settlement of the amount due and payable to no avail and a certificate of order against the County Government of Vihiga the respondent in the said cause was issued on 25th September, 2024 in the sum of Kshs128,653,594.752. It is deposed that the said certificate was served upon the respondents on even date. It is further deposed that the respondents in this application, for and on behalf of the County Government of Vihiga, have deliberately and adamantly failed, refused, and or neglected to settle the above amount that is now overdue, rendering the filing of this application absolutely necessary.
 11. It is further deposed that since execution proceedings cannot be lawfully taken against the national or a county government, it is thus paramount that the respondents be compelled to make the requisite payments as the accounting officers under the Government Proceedings Act.
 12. The foregoing contents are reiterated in the statutory statement of facts filed alongside the verifying affidavit.
 13. In the replying affidavit it is admitted that judgment was entered in favour of the applicants as stated in the statement of facts and the verifying affidavit, summarized above. However, it is deposed that the respondents were aggrieved by the said judgment and have applied for stay of execution and leave to appeal out of time in the Court of Appeal in Kisumu Civil Application No. E243 of 2024 that is purportedly pending ruling.



14. The court is urged not to hear and determine this application before the Court of Appeal pronounces itself in the above-mentioned application as doing so may render the said application nugatory.

III. Submissions By Counsel

15. In the written submissions, counsel for the applicants reiterated the facts as set out in the statement of facts and the verifying affidavit summarized above. Further, counsel cited the provisions of Section 21(1) & (3) of the *Government Proceedings Act* arguing that the applicants have complied with the provisions therein and are deserving of the orders sought in the application.
16. Citing the High Court in *Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security ex parte Fredrick Manoah Egunza* [2012] eKLR, it is submitted that in view of the deliberate and adamant refusal by the County Government of Vihiga to settle the amount due and payable the applicants have no option but to apply the law in enforcing the decree through this application. Further, counsel cited *Republic v Attorney General & Another ex parte James Alfred Koroso* [2013] eKLR. The two decisions cited above illuminate on the procedure applicable in enforcing money decrees against the national or county governments.
17. Counsel for the applicants cited other decisions including *Republic v County Secretary, County Government of Kirinyaga & Executive Committee Member for Finance* [2020] eKLR in demonstrating and confirming that the applicants have complied with the applicable law urging the court to grant the application as prayed. It is submitted that the respondents being the accounting officers of the county government owe a legal duty to the applicants to settle the decree and that the respondents have had enough time to act but they have failed, refused, and or neglected to act.
18. It is further submitted that by failing to act the respondents have contravened Article 10 of *the Constitution*. The court is referred to the decision in *Republic V Principal Secretary, Ministry of Defence ex parte George Kariuki Waithaka* (2018) eKLR in support of the arguments made in this regard. It is submitted that the respondents and the county government should not enjoy preferential treatment as to be allowed more than the due time to settle the decretal sum, interest, and costs. It is passionately and vehemently submitted that the respondents have had more than their due share of time to settle the matter but they have been indifferent and indolent.
19. On costs of the application, the court is urged to scrutinize the conduct of the respondents and find that it is their conduct that has necessitated the filing of the application and as such they should bear the costs of the same. The court is urged to be persuaded by the holding in *Republic v Communication Authority of Kenya & Another ex parte Lega Advice Centre aka Kituo Cha Sheria* [2015] eKLR. Further, the court is urged to consider and follow the reasoning of the Supreme Court in *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others* [2014] eKLR and find that the applicants should be awarded costs to recoup the expenses incurred in filing this application that has been occasioned by the (mis)conduct of the respondents.
20. Counsel for the respondents submitted that the subject matter hereof is the subject of an application before the Court of Appeal as alluded to elsewhere in this ruling. It is submitted and admitted that the facts as set out by the applicants are true and accurate. It is submitted that the application for stay of execution and leave to appeal out of time in the Court of Appeal is coming up for ruling on 9th May, 2025 and as such the court is urged to stay this instant ruling until after the Court of Appeal has rendered its ruling to avoid rendering the same nugatory.



IV. Issues For Determination

21. In my considered view there is only one main issue for determination in this application – Should the court allow the application as prayed and grant an order of mandamus compelling the respondents to settle the amounts due and payable to the applicants?
22. Upfront, the essential and relevant facts in this matter are not contested. That is to say that, the facts as stated by the applicants are admitted by the respondents in their totality. It is the applicants position that the respondents have deliberately and adamantly refused, failed, and or neglected to settle the decretal sum plus costs and interest as passed and ordered by the court in the impugned judgment.
23. Of course, the respondents are not contesting the fact that the judgment and the decree and costs were issued and ordered by a competent court as pleaded by the applicants. It is also not contested that the said monies are due and payable to the applicants as ordered.
24. The respondents’ argument is that there is an application that is pending a ruling in the Court of Appeal seeking for stay of execution and for leave for the County Government of Vihiga, the judgment-debtor, to appeal the impugned judgment and decree out of time. It is therefore a matter of fact that there is no order for stay of execution in force either from this court or from the Court of Appeal.
25. Although it is alleged in the submissions by counsel for the respondents that the application pending in the Court of Appeal is coming up for ruling on 9th May, 2025, there is no evidence in support of that position. However, even if the court was for a moment to assume that that was the position, my view is that that of itself is not a reason for arresting this ruling and, in any event, no application has been made to arrest this ruling pending the alleged ruling from the Court of Appeal.
26. The court has carefully and dutifully gone through the application, the evidence and materials placed before it by both sides, and the submissions by respective counsel. The court concurs with the sentiments expressed in Republic V Principal Secretary, Ministry of Defence Ex Parte George Kariuki Waithaka (2019) eKLR that once a judgment is passed and a decree drawn a decree-holder has a constitutional and legal right to execute the same even on the following day.
27. Likewise, the financial position of a judgment debtor may only be a mitigating factor in arguments on the terms and conditions of the settlement of the decree. It cannot be a defence and or a bar to insulate a judgment-debtor from being compelled to settle the decretal sum plus costs and interest.
28. The alleged ruling pending in the Court of Appeal for stay of execution and leave to appeal the judgment out of time is not of itself a reason for the respondent’s failure to settle the decree or offer adequate security for the due performance of the decree. In any event, if the Court of Appeal allows the said application for stay of execution, the same shall be binding on this court and the execution process shall be halted accordingly.
29. For now, evidently and clearly, the application as prayed is merited and hopefully this ruling shall bring this long-standing litigation to a logical conclusion. It is also hoped that the respondents shall see the logical and legal need and commonsense in bringing this litigation to an end.
30. The court has so far said enough in demonstrating that the application is merited.
31. On costs, it is evidently clear that these proceedings have been prompted and necessitated by the adamant failure and refusal by the respondents to settle the decree and or make reasonable proposals on how to settle the same. Costs follow the event and the applicants are accordingly awarded the costs of these proceedings.



V. Orders

32. The court makes the following orders –

- a. That an order of mandamus be and is hereby issued compelling the respondents to pay to the ex parte applicants a sum of Kshs128,653,594.752 (salary arrears plus costs) plus interest on the same at court rates from 26th May, 2023 till payment in full.
- b. That the respondents shall settle the amounts due and payable or make acceptable proposals to the applicants within 60 days of this ruling.

SUBPARA c.

Costs of the application to the applicants.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT BUNGOMA THIS 3RD DAY OF APRIL, 2025.

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DAVID NDERITU

JUDGE

