



Kwamboka & another v Nakuru County Government & 2 others (Judicial Review E006 of 2024) [2025] KEELRC 1630 (KLR) (30 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1630 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
JUDICIAL REVIEW E006 OF 2024
AN MWAURE, J
MAY 30, 2025**

BETWEEN

JACQUELINE SIEKE KWAMBOKA 1ST APPLICANT

JOB NYANGAU KENYANYA 2ND APPLICANT

AND

NAKURU COUNTY GOVERNMENT 1ST RESPONDENT

THE GOVERNOR NAKURU COUNTY GOVERNMENT 2ND RESPONDENT

NAKURU COUNTY PUBLIC SERVICE BOARD 3RD RESPONDENT

RULING

Introduction

1. The Applicants herein filed a Notice of Motion dated 25th March 2024 and filed in court on 12th July 2024, seeking the following orders that:
 1. The Honourable Court be pleased to issue an order of Mandamus compelling the County Executive Officer in charge of Finance at the County Government of Nakuru and the County Government of Nakuru to settle the decretal sum of Kshs. 718,594.06/= that was awarded to the ex-parte Applicants vide the Certificate of order issued on 21st September, 2023 in Nakuru Employment and Labour Relations Court Cause No. 140 of 2018.
 2. The Respondent is to bear the costs of these proceedings.
2. The application is expressed to be brought under Order 53 Rules 3 (1) and (3) of the Civil Procedure Rules 2010, sections 8 and 9 of the [Law Reform Act](#) Cap 26 and all other enabling provisions of law.



Applicants' case

3. The Notice of Motion is based on the grounds set out in the statutory statement and verifying affidavit filed herein on 25th March 2024. The Applicants aver that they instituted a suit against the Respondents vide a memorandum of claim in Nakuru Employment and Labour Relations Court cause No. 140 of 2018 dated 10th May 2018.
4. The Applicants aver that the Respondent entered appearance and filed a response to the memorandum of claim on 11th October 2018.
5. The Applicants aver that they were seeking an order for compensation for unfair termination, payment of salaries retained by the Respondents, costs of the suit and interest until payment in full.
6. The Applicants aver that the suit was determined vide a judgment delivered on 13th October 2022, awarding them one month's salary in lieu of notice of Kshs.17,331, 12 months' compensation for unfair and unlawful termination of Kshs.207,972/=, November salary amounting to Kshs. 17,331/= together with the costs and interest of the suit at court rates from the date of judgment.
7. The Applicants aver that the costs of the suit were taxed at Kshs.171,050/= on 25th April 2023, and a certificate of costs was issued on 31st May 2023.
8. The Applicants aver that the certificate of order against the Respondents was issued on 21st September 2023 and served upon the Respondents' County Secretary on 26th September 2023.
9. The Applicants aver that despite the Respondents being served, they have failed to satisfy the order without giving valid reasons whatsoever, causing irreparable loss and damages.
10. The Applicants urge this Honourable Court to grant the orders sought for an order of Mandamus compelling the Respondents to settle the costs of the claim on a priority basis.

Respondent's grounds of opposition

11. In opposition to the application, the Respondents, through the firm of Mirugi Karuiki & Co. Advocates, filed grounds of opposition dated 22nd October 2024 on the following grounds that:
 1. The application is fatally bad and/or incurably defective and grossly incompetent and should not be entertained by this Honourable Court. The same ought to be struck out forthwith.
 2. The application is incompetent, bad in law and devoid of any merits null and void ab initio.
 3. The application herein is frivolous, vexatious, hopeless and merely intended to propagate a nullity and hence the same is untenable in law.
 4. The application is bad in law as the same is ambiguous at which party is responsible for paying the decretal sum.
 5. The application is statute-barred as leave to file the motion was sought more than six (6) months after the judgment and decree were issued contrary to provisions of section 9(2) of the [Law Reform Act](#).
 6. The Applicants herein have failed and/or neglected to give reasonable explanation where there was an inordinate delay in bringing the instant application for an order of Mandamus.
12. The Respondents urged this Honourable Court to dismiss the application dated 25th March 2024 with costs.



13. This Honourable Court directed the parties to file their respective submissions.

Applicants' submissions

14. The Applicants relied on section 9(2) of the [Law Reform Act](#) provides as follows:

“Subject to the provisions of subsection (3), rules made under subsection (1) may prescribe that applications for an order of mandamus, prohibition or certiorari shall, in specified proceedings, be made within six months, or such shorter period as may be prescribed, after the act or omission to which the application for leave relates.”

15. The Applicants submitted that the application is not statute barred and relied on the case of Republic V Kenya Civil Aviation Authority & Another ex-parte Elite Earthmovers Limited [2017] KEHC 8305 (KLR) the court stated that the applicant sought only the order of mandamus, which is not subject to the six-month limitation period. The six-month restriction applies exclusively to certiorari, as it deals with quashing decisions already made. Prohibition is exempt because it prevents an action before it occurs or while it is ongoing. Similarly, mandamus is not time-barred since it enforces the performance of a public duty rather than overturning an existing decision.
16. The Applicants submitted that they fulfilled the necessary requirements for the court to grant an order of mandamus, ensuring the enforcement of its decree. They further contended that the Respondents have a public duty to comply with the decree, and if they fail to do so, the court has the authority to compel them to act accordingly. The Applicants relied on the case of Kenya National Examination Council V Republic Ex Parte Geoffrey Gathenji Njoroge & 9 Others [1997] KECA 58 (KLR), the Court of Appeal stated that an order of mandamus ensures that a person or entity fulfils a public duty mandated by law. It is issued when the responsible party has failed to act, causing harm to someone with a legal right to expect the duty to be performed. Essentially, it compels compliance with statutory obligations to prevent injustice.
17. In Republic v County Government of Nairobi & 2 Others Ex-Parte Kingpost Limited [2021] KEELC 1084 (KLR), the court cited the case of Republic V Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex-parte Fredrick Manaoh Egunza (2012) eKLR, the court held that to enforce a monetary decree against the Government, the successful litigant must obtain a certificate of costs from the court and serve it on the Attorney General. The court issues a certificate of order against the Government 21 days after judgment. Once served, section 21(3) of the [Government Proceedings Act](#) mandates the accounting officer to pay the specified amount, including any lawful interest.
18. The Applicants submitted that the [Limitation of Actions Act](#) grants them up to 12 years to enforce a judgment. They and their advocates repeatedly engaged with the 1st Respondent, seeking an amicable resolution. However, after unsuccessful attempts, they resorted to filing the current application. The ex-parte applicants now request the court to issue an order of mandamus, compelling compliance with the judgment, which remains unchallenged by the Respondents.
19. The Applicants acknowledged that the delay in filing their application was significant, but they attributed it to the Respondent's persistent actions aimed at obstructing the execution of the decree issued against them. This frustration ultimately necessitated the filing of the application. In Joseph Muriithi Nyaga V Embu County Government [2021] eKLR, the court held that the Respondent misinterpreted the law in raising the preliminary objection. Section 9(2) does not impose a six-month limit on filing an application for mandamus but allows procedural rules to set such limitations.



The applicable Civil Procedure Rules (CPR 2010) do not impose a time restriction on mandamus applications, only on certiorari.

20. In the Court of Appeal case *Mirigo & 550 Others V Minister for Lands & 4 others* [2014] KECA 881 (KLR), Martha Koome J.P, Mwilu and Odek J held as follows:

“On our part, we have examined the provision of Order 53 of the *Civil Procedure Act*, which is the juridical basis for an application for mandamus. Rule 2 of Order 53 provides a six-month limitation period for an order of certiorari. There is no limitation period to institute an action for mandamus.”

21. The Applicants submitted that the annexed copies of the Judgment, and certificate of order against the Respondents arising from Nakuru Employment and Labour Relations Court cause No. 140 of 2018, and have therefore complied with section 21(1) and (2) of the *Government Proceedings Act*.

22. The Applicants submitted that despite serving the decree and certificate of order upon the Respondents, they have failed or refused to pay the decretal sum along with the accrued interest. Since government property is protected from execution proceedings, the ex-parte applicant seeks an order of mandamus to compel the accounting officers of the 1st Respondent to settle the outstanding amount.

23. In *Republic V Attorney General & another Exparte James Alfred Koroso* [2013] KEHC 90 (KLR) it held that:

“In the present case, the ex-parte applicant has no other option of realizing the fruits of his judgment since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgment that has been awarded is realized. Unless something is done he will forever be left babysitting his barren decree.”

24. The Applicant urged that this Honourable Court find that the application is merited and grant the order of mandamus as prayed.

25. On the part of the Respondents, they did not file their respective submissions.

Analysis and determination

26. The court has meticulously gone through the application, the supporting affidavit, the annexures attached thereto, the Respondents’ grounds of opposition, and the submissions; the issue for determination is whether the application is merited.

27. In *Kenya National Examination Council V Republic Ex Parte Geoffrey Gathenji Njoroge & 9 Others* [1997] KECA 58 (KLR), the Court of Appeal set out the purpose of an order of mandamus 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.” At paragraph 90 headed “the mandate”, it is stated:

“The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”

28. In this instant application, the applicants are seeking an order of mandamus compelling the Respondents to settle the decretal sum of Kshs.718,594.06 emanating from the certificate of order issued on 21st September 2023 in Nakuru ELRC Cause No. 140 of 2018. On the other hand, the Respondents are arguing that the application is statute-barred as the application was not made within six (6) months in accordance with Section 9(2) of the Law Reforms Act.

29. Section 4(4) of the Limitation of Action Act provides as follows:

“An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.”

30. The judgment in this case was delivered by the Honourable court on 13th October 2022.

The Applicant followed the due process and on 26th October 2023 he was issued a Certificate of Order. The Applicants aver that they served the Respondents with the decree and the certificate of order on 26th September 2023 as evidenced by their exhibit ‘JSK 6’. They say since then they had been making demands for payment but the Respondents have refused or neglected to settle.

31. The court agrees with the Applicants that they filed this application within time and the same is not time barred as judgment was delivered in October 2022. Section 9(4) of Limitation of Act allow a period of 12 years within which to execute a judgment.

The court is further persuaded by the Court of Appeal decision *Mirigo & 550 Others V Minister for Lands & 4 others* [2014] KECA 881 (KLR), Martha Koome J.P, Mwilu and Odek J held as follows:

“On our part, we have examined the provision of Order 53 of the *Civil Procedure Act*, which is the juridical basis for an application for mandamus. Rule 2 of Order 53 provides a six-month limitation period for an order of certiorari. There is no limitation period to institute an action for Mandamus.”

32. The Applicants are lawfully exercising their rights by adhering to due process in securing the certificate of order issued on 21st September 2023 in accordance with Section 21 of the *Government Proceedings Act*. The court is clear the Applicants are not ambiguous who is responsible to settle the decretal sum. In any event if this was an issue of concern it should have been raised during the pleadings and not at this stage. The Respondents have not appealed the court’s judgment and it is the courts view that the Applicant’s are deserving to partake of the fruits of their judgment.



33. In view of the foregoing, the Application dated 25th March 2024 is merited and the court hereby issues an order of Mandamus compelling the County Executive Officer in charge of Finance at the County Government of Nakuru and the County Government of Nakuru to settle the decretal sum of Kshs.718,594.06/= that was awarded to the ex-parte Applicants vide the Certificate of order issued on the 21st of September, 2023 in Nakuru Employment and Labour Relations Court Cause No. 140 of 2018.

34. The Respondents will also bear the costs of this application.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 30TH DAY OF MAY, 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

