



**Republic v Chief Executive Officer, Siaya County Public Service
Board & 2 others; Ochola (Exparte Applicant) (Judicial Review
E004 of 2025) [2025] KEELRC 1476 (KLR) (14 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1476 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII
JUDICIAL REVIEW E004 OF 2025
NZIOKI WA MAKAU, J
MAY 14, 2025
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
ORDERS OF MANDAMUS
AND
IN THE MATTER OF ARTICLE 23(3) (F) OF THE CONSTITUTION
AND
IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT
2015 & SECTION 21 OF THE GOVERNMENT PROCEEDINGS ACT
AND
IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM
ACT, CAP 26 LAWS OF KENYA
AND
IN THE MATTER OF THE JUDGMENT OF HON NZIOKI WA MAKAU
DATED 22ND JANUARY 2025 IN ELRC KISUMU JR NO. E033 OF
2024

BETWEEN

REPUBLIC APPLICANT

AND

**CHIEF EXECUTIVE OFFICER, SIAYA COUNTY PUBLIC SERVICE
BOARD 1ST RESPONDENT**
**COUNTY EXECUTIVE MEMBER FINANCE & ECONOMIC PLANNING
COUNTY GOVERNMENT OF SIAYA 2ND RESPONDENT**



**CHIEF OFFICER DEPARTMENT OF FINANCE AND ECONOMIC
PLANNING 3RD RESPONDENT**

AND

ERICK JUMA OCHOLA EXPARTE APPLICANT

JUDGMENT

1. Pursuant to leave granted on 22nd January 2025, the Ex-parte Applicant filed the current Notice of Motion dated 24th January 2025. He sought several orders against officials of the Siaya County Government. Chief among them was an order of Mandamus compelling the Chief Executive Officer of the Siaya County Public Service Board to issue him a letter of appointment and allow him to assume his role. He also sought a similar order against the Chief Officer in the Department of Finance & Economic Planning to compel the payment of Kshs. 8,430,144/- being the total decretal sum awarded in ELRC PET E014 of 2024, alongside accrued interest and taxed costs as per the judgment delivered on 26th June 2024. The Ex-parte Applicant further sought that the Court issues directions on the timeframe for executing the orders, award him costs of the application, and grant any other relief necessary to meet the ends of justice. In support of his application, the Ex-parte Applicant asserts that the Respondents were in continued disobedience of the court's judgment in ELRC PET E014 OF 2024. He maintained that despite numerous reminders, the Respondents had failed to satisfy the decree, thereby unjustly denying him the fruits of his judgment. He further emphasized that there was no existing stay of execution and that he would suffer great prejudice if the application was not granted. In support of this position, the Ex-parte Applicant attached copies of the judgment, decree, certificate of order against the government, as well as a series of letters reminding the Respondents to settle the decree and a notice of intention to sue.
2. In response, the Respondents filed a Replying Affidavit sworn by Mr. Wilfred Nyagudi, Chief Executive Officer of the Siaya County Public Service Board. Mr. Nyagudi argued that the current application was premature due to an existing application dated 8th October 2024 seeking to set aside the same judgment. He asserted that the issues and parties involved in both applications were substantially the same, thereby rendering the present motion sub judice. He further asserted that allowing the present application while the motion to set aside the judgment was still pending would be counterintuitive and unjust. Mr Nyagudi urged the court to either stay or dismiss the motion in the interest of justice. In conclusion, while denying any intention to delay the Applicant's enjoyment of his judgment, he asserted that the Respondents would have moved to set aside the judgment sooner had the court not been on vacation.
3. The application was canvassed by way of written submissions.

Ex-Parte Applicant's Submissions

4. The Ex-parte Applicant submits that he has fulfilled all the prerequisites for the grant of an order of mandamus, as stipulated under Order 53 Rule 3 of the Civil Procedure Rules and section 21 of the *Government Proceedings Act*. In particular, he submits that he has duly served the Respondents with all the necessary documents, including the judgment and decree, a certificate of order against the government, a formal request for satisfaction of the decree, demand letters and, a notice of intention to sue.



5. The Ex-parte Applicant further submits that the Respondents have, by implication, refused to comply with court orders. In support of this position, he cites the case of Republic v County Government of Kiambu Ex-parte Laban J. Macharia Muiruri [2021] eKLR, where the court held that the Respondent's failure to pay the decretal sum despite repeated demands amounted to an implied refusal to satisfy the judgment. On the Respondents' claim that the application is premature, the Ex-parte Applicant maintains that it is not. He submits that the only precondition for filing such a motion is the grant of leave by the court, which has already been obtained. Moreover, he notes that the application to set aside the judgment is scheduled to be determined prior to this motion, and therefore the Respondents have no cause for concern. In this regard, he highlights that the application to set aside the judgment was listed for mention on 11th March 2025 for purposes of setting a ruling date, while the present application was scheduled for mention on 19th March 2025 for the same purpose.
6. On the issue of the present application being sub judice, the Ex-parte Applicant submits that this motion is entirely distinct from the application to set aside the judgment dated 8th October 2024. He points out that while the current motion seeks to enforce the decree, the application of 8th October 2024 aims to set it aside, and thus the two do not address the same issues. In light of the foregoing, the Ex-parte Applicant urges the court to uphold his right to enjoy the fruits of his judgment. He relies on the decision in Republic v Town Clerk of Webuye County Council & another [2014] eKLR, where the court emphasized the importance of enforcing a decree holder's rights in the interest of justice, as envisioned under Articles 10, 48 and 159(2)(a) and (b) of the Constitution. Finally, on the matter of costs, the Ex-parte Applicant prays for an award of Kshs 50,000/-, citing the merit of the present motion.

Respondents' Submissions

7. The Respondents submit that the present motion should be struck out on the grounds that it is sub judice. They assert that the current application seeks to enforce the very same judgment and decree that is sought to be set aside by the application dated 8th October 2024. Given that both applications involve the same subject matter and the same parties, the Respondents submit that allowing the current application to proceed poses a real risk of contradictory judgments—a scenario the law seeks to avoid. In support of their position, the Respondents rely on the case of Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] KESC 54 (KLR), where the court defined sub judice as a matter that is “before the court or judge for determination.” The court further emphasized that the doctrine serves to prevent multiple suits involving the same parties and issues, thereby safeguarding the judicial process from abuse and minimizing the risk of conflicting decisions. The Respondents also cite the case of Pktai & another v Cloud Factory Kenya Limited; Adanga (Interested Party) (Civil Suit E006 of 2023) [2024] KEELRC 1328 (KLR) (30 May 2024), where the court struck out a subsequent suit for contravening the sub judice rule. As for costs, the Respondents submit that none should be awarded to the Ex parte Applicant. They submit that the current application amounts to an abuse of court process and ought to have awaited the outcome of the pending application to set aside the judgment. In support of this position, they refer to the case of Mwaro v Judicial Service Commission & 3 others (Cause E093 of 2022) [2023] KEELRC 1721 (KLR) (29 June 2023), where the court dismissed the suit on grounds of sub judice and awarded costs to the Respondent.
8. The present motion must fail. The reason for this is because the Ex Parte Applicant is trying to flog a dead horse. This Court determined the matter in Petition E014 of 2024 (per Radido J.) and my determination that mandamus lies made in JR E033 of 2024. As such, the Ex parte Applicant should not be litigating ad infinitum matters already settled by competent courts and which no appeal has



overturned. All the Ex Parte Applicant needs to do is to execute the decisions of this Court as previously and presently constituted. The Judicial Review is dismissed with costs assessed at Kshs. 50,000/- to the Respondents for being vexatious.

Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 14TH DAY OF MAY 2025

NZIOKI WA MAKAU, MCIARB.

JUDGE

