



**Njuguna & 66 others v Attorney General & 2 others (Employment and Labour Relations
Judicial Review E001 of 2021) [2025] KEELRC 2016 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2016 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS JUDICIAL REVIEW E001 OF 2021
HS WASILWA, J
JUNE 30, 2025**

BETWEEN

RUFUS NJUGUNA & 66 OTHERS APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

KENYA CIVIL AVIATION AUTHORITY 2ND RESPONDENT

CA KUTO 3RD RESPONDENT

RULING

1. The Applicant filed a Notice of Motion dated 7th June 2021 seeking orders of:-
 1. Mandamus to compel the 2nd Respondent herein Kenya Civil Aviation Authority to remit and/or pay to the Applicants a sum of Kshs.180, 300,964.00(read Kenya Shillings One Hundred and Eighty Million, Three Hundred Thousand and Nine Hundred and Ninety Four) together with the interest at court rates from 27th October, 2017 and 28th September, 2018 respectively in satisfaction of the preliminary decree and the Final Decree in Employment and Labour Relations court Judicial Review Application Number 3 of 2015.
 2. That this Honourable Court be pleased to grant leave to the Applicants to commence execution proceedings against the 2nd Respondent to recover the said decretal amounts plus interest pending the taxing and certification of the bill of costs.
 3. That costs of this Application be provided for



Applicants' Case

2. The Applicants aver that they filed a suit in High Court being *High Court suit No.1278 of 2004* in which the court delivered a ruling on 7th November, 2005 granting them salary arrears dating back to 18th April, 2002 being the time when they were dismissed from Employment.
3. The Applicants aver that the Respondents being dissatisfied with the decision, the 2nd Respondent filed Appeal Number 67 of 2010, in which the Court of Appeal *vide* its decision dated 4th April 2014 awarded each one of the Applicants a sum of Kshs.50,000 in addition to the High court award, as damages for wrongful arrest, which amount also carries interest from the said date, and it referred the Applicants to the Industrial Court and now the Employment and Labor Relations court for the final award.
4. It is the Applicant's case that by a decree given on 27th October, 2017 and issued on 14th August, 2020 Hon. Lady Justice Linnet Ndolo awarded 39 of the Applicants herein various amounts of the decree, which amount continues to attract interest at court rates from the date of the judgment until payment in full.
5. The Applicants aver that the remaining 27 Applicants who failed to submit their pay slips before Lady Justice Ndolo, did submit their claims and the Hon. Mr. Justice Onesmus Makau through the Judgment of the court and subsequent decree dated 28th September, 2018 and issued on 14th August, 2020 awarded them various amount as salary arrears for the period between April, 2002 and October, 2014.
6. It is the Applicant's case that two decrees of the court detailing various amounts awarded to the Applicants were served upon the 2nd Respondent's legal office on 3rd September, 2020 and since then the said 2nd Respondent has not made any proposal on how the said amount which continues to attract interest will be settled to satisfy the decrees.
7. The Applicants aver that the judgment/ruling of the court also awarded costs to them, which bills of costs have not been taxed yet.
8. The Applicants aver that they are aware of the provisions of Section 43(1)(b) of the [Civil Aviation Act](#) that safeguards the properties of the Authority, hence the for Orders of Mandamus against the Director General, Kenya Civil Aviation Authority.

Respondents' Case

9. In opposition to the application, the 2nd Respondent filed a replying affidavit dated 30th March 2022, sworn by its Manager, Legal Services, Emily Kyalo.
10. The 2nd Respondent avers that the Applicants failed to disclose that they are actively prosecuting applications for review of the decrees they seek to execute by way of orders they seek before this court in *ELRCJR No. 3 of 2015*; and the application herein is premised on decrees from this court in the said suit which are not final.
11. The 2nd Respondent avers that the decree subject to these proceedings is likely to be amended upon final determination of the applications currently pending in *ELRCJR No. 3 of 2015*.
12. The 2nd Respondent avers that by dint of section 43(1) of the [Civil Aviation Act](#), execution against the assets of the 2nd Respondent is prohibited and the court cannot countenance an illegality.



13. It is the 2nd Respondent's case that it reserves the right to apply for stay of these proceedings pending hearing and determination of *ELRCJR No. 3 of 2015*.
14. The 2nd Respondent denied the amounts in the decrees alluded to in the application being Kshs. 180,300,964 as alleged and avers that the sums awarded to the Applicants is the sum of Kshs. 178,935,540. And that the said sum comprises compensation erroneously awarded to the Applicants in excess of Kshs. 105,928,908 which it is seeking review of *ELRCJR No. 3 of 2015*.
15. The 2nd Respondent avers that it is aware that Kshs. 73,015,632 is due to the Applicants and it is willing to deposit the same before this court as may be directed or into a joint interest earning account in the names of the advocates of the parties herein pending determination of the applications in *ELRCJR No. 3 of 2015*. Further, it has sought to engage the Applicants' advocates to agree on the modalities of settlement of the sum.
16. It is the 2nd Respondent's case that this court in *ELRCJR No. 3 of 2015* issued orders of stay of execution and/or status quo pending hearing and determination of its application for review which still persist.
17. The 2nd Respondent avers that the application is premature, misplaced and gross abuse of the court process.

Applicants' Submissions

18. The Applicants submitted on two issues: whether the Applicants are entitled to the writ of Mandamus; and whether leave ought to be granted to the Applicants to commence execution proceedings against the 2nd Respondent to recover the decretal sum plus interests pending the taxation of the bill of costs.
19. On the first issue, the Applicants submitted that it is trite that judicial review remedies are discretionary and should only be issued where there is no other alternative remedy that is more efficient or suitable. Although the availability of other remedies is no bar to seeking the judicial review remedies, it should however be sought as a matter of last resort.
20. The Applicants relied in the Court of Appeal case of *Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR wherein it explained that an order of Mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.
21. The Applicants submitted that the requirements for an order of Mandamus to issue were explained by Mativo J in *Republic v Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another* [2018] eKLR as follows:

“Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for Mandamus is set out in *Apotex Inc. v Canada (Attorney General)*, [23] and, was also discussed in *Dragan v Canada (Minister of Citizenship and Immigration)*. [24] The eight factors that must be present for the writ to issue are: - (i) There must be a public legal duty to act; (ii) The duty must be owed to the Applicants; (iii) There must be a clear right to the performance of that duty, meaning that: The Applicants have satisfied all conditions precedent; and there must have been: A prior demand for performance; A reasonable time to comply with the demand, unless there was outright refusal; and An express refusal, or an implied refusal through unreasonable delay; No other adequate remedy is available to the Applicants; The



Order sought must be of some practical value or effect; There is no equitable bar to the relief sought; On a balance of convenience, Mandamus should lie”

22. As to whether the 2nd Respondent herein is under a duty to pay the subject decretal sums, the Applicants submitted that it is undisputed that judgment was entered in favour of the Applicants as against the 2nd Respondent in *ELRC Judicial Review Case No. 3 of 2015* on 27th October, 2017 and 14th August, 2020 and decrees were issued pursuant thereto for the total sum of Kshs. 180,300,964 together with interests. The decrees were served upon the 2nd Respondent who has refused and neglected to pay the same despite finalization of the applications which had sought to review the judgments. There is thus an implied refusal on the part of the 2nd Respondent to pay the demanded sums.
23. It is the Applicants submission that Section 43 (1) (a) of the *Civil Aviation Act* mandates the 2nd Respondent’s Director-General to cause to be paid out of the revenue of the Authority such amount as may, by the judgment or order or decree, be awarded against the Authority to the person entitled thereto. Therefore, the Director-General has a legal duty to pay out the decretal sums demanded but has refused to perform that duty hence the pertinent application.
24. The Applicants submitted that the law as it stands presently is that no execution can be levied against the property of a local authority in settlement of a decree in a civil case and hence the only recourse available to a decree holder is to apply for Mandamus against the Chief Officer of the Local Authority, and upon obtaining such orders, the decree holder will be at liberty to apply for committal of the Chief Officer if the order of Mandamus is not complied with.
25. The Applicants submitted that they have a legal right to payment of the decretal sums awarded to them in *Judicial Review Case No. 3 of 2015* and there is no specific remedy for enforcing that right other than by compelling the Director-General of the 2nd Respondent to pay out the decretal sums and in default, execution to issue.
26. It is the Applicants’ submission that they are entitled to enjoy the fruits of the judgment pursuant to Article 48 and 159 of the *Constitution* and the continuous denial of this right amounts to injustice, yet again, following their unlawful dismissal from their gainful employment. Thus, they are entitled to the relief sought.
27. The Applicants submitted that the 2nd Respondent’s application dated 15th March, 2019 which sought review of the judgment rendered on 27th October, 2017 was dismissed for being filed inordinately late while the Applicants’ application dated 22nd July, 2021 which sought to review the ruling dated 28th September, 2018 was struck out as it was inviting the court to review its ruling twice. Consequently, there are no pending proceedings over the award of salary arrears hence the legal duty of the 2nd Respondent’s Director-General has accrued which duty has not been satisfied, thus, the Applicants are entitled to the writ of Mandamus.
28. On the second issue, the Applicants submitted that section 94 of the *Civil Procedure Act* provides as a general rule that execution of orders of the court should await the confirmation of the costs by taxation unless the Court grants leave for execution before taxation of costs.
29. It is the Applicants’ submissions that when awarded costs are not agreed, it often takes a considerable time before the costs are taxed by a taxing officer. In order not to permit a judgment-debtor to hold up execution of a decree for a known sum or a sum to which there can be no sensible contest, section 94 provides that the court may permit the execution of a decree except as to so much thereof as relates to unsettled costs. Accordingly, to proceed to execute an aspect only of that judgment necessarily requires the permission of the court if the decree holder is afterwards going to pursue the remaining portion. That is why we have this provision with regard to cost.



30. The Applicants submitted that instant the suit herein was filed a long time ago in the year 2002, and the judgment has been outstanding for a long time since it was passed in the year 2005 to the point that the 1st Applicant passed away before enjoying the fruits of the judgment and since there are no pending appeals against the judgment, the Applicants ought to be granted leave to execute the decrees pending the taxation of costs. They urged the court to be guided by the case of [Mercedes Sanchez Rau Tussel v Samken Ltd, Abercrombie & 2 others](#) [2002] eKLR.

2nd Respondent's Submissions

31. The 2nd Respondent submitted jointly on two issues: Whether an order for Mandamus ought to issue in the present circumstances; and whether the plaintiffs are entitled to leave to commence execution before taxation.
32. The 2nd Respondent submitted that an order for Mandamus ought not to issue as the Applicants' right to payment of compensation is yet to crystallize. It is trite law that an application to an order of mandamus must have an accrued right as held in the Court of Appeal case of *Shah v Attorney General* (No.3) Kampala HMC No.31 of 1969[1970] EA 543 and [Republic v Teachers Service Commission & Another Ex parte William Wairagu Muigai](#) [2016] eKLR. Therefore, it is clear that where there is a dispute on the exact sums payable to an applicant, an order of Mandamus may not issue.
33. The 2nd Respondent submitted that it is uncontroverted that the decree which is the subject of the present application is subject to two review applications filed by the Applicants and the 2nd Respondent which was dismissed by the court on 26th January 2023: Aggrieved with the decision an appeal against those proceedings was instituted in *Civil Appeal E141 of 2023* on 9th March 2023. Therefore, there is a genuine dispute on the amounts due to the Applicants in this matter that the court in *Judicial Review No. 3 of 2015* will have to settle by way of rulings on the two applications for review.
34. It is the 2nd Respondent's submissions that an order of Mandamus ought not to issue as the sums due and payable are the subject of a genuine dispute before the court in *Judicial Review No. 3 of 2015*.
35. The 2nd Respondent submitted that there was procedural non-compliance in the manner the decree was obtained: The Applicants did not comply with Order 21 Rule 8 of the [Civil Procedure Rules](#) and no evidence in this regard has been tendered before this court.
36. The 2nd Respondent submitted that execution before taxation is provided under Section 94 of the [Civil Procedure Act](#) as applied to this court *vide* Rule 32(2) of the [Employment and Labour Relations Court \(Procedure\) Rules](#), 2016. Reliance was also placed in the case of [Karuri Stores Pharmaceuticals Limited v Acacia Medical Centre Limited](#) [2015] eKLR that held:
- “ Before the court grants leave before the taxation of the costs, it should be satisfied that such execution was necessary.”
37. It is the 2nd Respondent's submissions that no material has been placed before this court to justify why execution is necessary save for the prayers in the application. Further, the Applicants have not addressed this prayer in their submissions, therefore, this court lacks a basis to consider the Applicants' prayer for leave to commence execution before taxation.
38. I have examined all the averments and submissions of the parties herein. There is no dispute that the applicants herein filed a claim against the respondents which they prosecuted all the way to the Court of Appeal. It is also not disputed that the Court of Appeal found in favour of the applicants.



39. The respondents contend that they have a pending review application in *JR no 3 of 2015*. It is however true that the review applications were dismissed by this court in *JR 3/2015* on 26/1/23/ the respondents filed another appeal. On the dismissal of the review application which is *CA No E141/2023* on 19/3/2023.
40. In view of the fact that there is an application pending before the Court of Appeal on the issue of review, the execution has not crystalized. However, the respondents have in their submissions alluded that they are agreeable to release kshs 13,015,632 which is undisputed into a joint interest earning account or as may be directed by this court.
41. I will therefore direct that the undisputed amount be forthwith released to the applicant's counsel herein for transmission to the applicants pending final determination of the appeals or agreement by the parties. The amounts be released within 90 days. In default execution may proceed on the said amount . Costs in the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH OF JUNE, 2025.

HELLEN WASILWA

JUDGE

