



**Republic v County Government of Turkana & another; Public Service Commission (Interested Party); Joseph Kiprono Koech (Ex parte Applicant) (Judicial Review Application 4A of 2023) [2025] KEELRC 1859 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1859 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
JUDICIAL REVIEW APPLICATION 4A OF 2023**

**J RIKA, J**

**JUNE 27, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY GOVERNMENT OF TURKANA ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY SECRETARY, TURKANA COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**PUBLIC SERVICE COMMISSION ..... INTERESTED PARTY**

**AND**

**JOSEPH KIPRONO KOECH ..... EX PARTE APPLICANT**

**RULING**

1. The Respondents filed an Application dated 10th December 2024, asking the Court to grant an order of stay of execution of Judgment delivered on 30th July 2024, pending Appeal at the Court of Appeal.
2. The Judgment granted orders in favour of the Ex-Parte Applicant as follows: -
  - a. An order of mandamus is issued, compelling the 1st and 2nd Respondents, to comply with the orders of the Court in Nairobi E&LRC Misc. E101 of 2022: *Joseph Kiprono Koech v. County Government of Turkana & Another*, and the directive by the Public Service Commission to release all the Ex-Parte Applicant’s withheld salary and allowances from 1st March 2013 to 31st December 2016, amounting to Kshs. 9,308,352 together with interest of 14% p.a. accrued thereto from 1st March 2013 till payment in full.
  - b. That the Respondents will pay the costs of this JR Application.



3. The Application is founded on the Affidavit of the 1st Respondent's Director of Litigation, Ekal Lokuruka, sworn on 11th December 2024.
4. Ekal explains that being aggrieved with the Judgment of the Court, the Respondents filed a Notice of Appeal on 28th August 2024.
5. The Ex Parte Applicant has obtained a certificate of order against the Government, certifying the decretal sum at Kshs. 25,511,993.60.
6. The Ex-Parte Applicant served the Respondents formal notice to pay the said amount, in default, execution proceedings to commence.
7. Ekal argues that the decretal sum is substantial, and that the County Government can only satisfy its financial obligations through budgetary allocation. If execution is not stayed, the Respondents' officers risk committal to civil jail.
8. It is submitted further that the Ex Parte Applicant's means of income are unknown. The Respondents would be hampered in recovery of their money, if their Intended Appeal is upheld. The Intended Appeal is arguable with a reasonable chance of success, in that the order of mandamus issued contrary to the time-limit of 6 months, imposed by Section 9[2] and [3] of the [Law Reform Act](#).
9. The Application is opposed through the Affidavit of the Ex-Parte Applicant Joseph Kiprono Koech, sworn on 29th January 2025.
10. He confirms that he obtained orders of mandamus, extracted decree and obtained certificate of order. These documents were served upon the Respondents calling for settlement of the decree. There was no compliance.
11. Instead, the Respondents waited for expiry of 21 days given to satisfy the decree, and presented the current application for stay of execution of decree.
12. The Ex-Parte Applicant submits that Judgment was delivered on 30th July 2024. Notices of execution issued on 21st August 2024, 13th September 2024 and 21st November 2024. The Application was filed on 10th December 2024. There was inordinate delay.
13. The Ex-Parte Applicant states that the County Government of Turkana received revenue share of Kshs. 13.1 billion from the National Government, for the financial year 2023/2024. The decretal sum, in the words of the Ex Parte Applicant therefore is, pocket change. The Respondents are not likely to sustain substantial loss, if execution proceeds and their Intended Appeal succeeds.
14. The Ex -Parte Applicant posits that, he has not received any draft Memorandum of Appeal. He is not in a position to respond to the submission that the Respondents have an arguable Appeal, with high chances of success.
15. The argument surrounding limitation of time under the [Law Reform Act](#), was not presented to the Trial Court and cannot be raised on Appeal.
16. The Notice of Appeal was filed outside the 14 days allowed under Rule 77 [2] of the [Court of Appeal Rules](#), and is therefore inadmissible. No leave was granted to file the Notice out of time. The intended Appeal is dead on arrival.
17. The Ex-Parte Applicant implores the Court to dismiss the Application.



18. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions. They confirmed filing and exchange of their Submissions, at the last appearance before the Court, on 29th April 2025.

**The Court Finds: -**

19. The order sought by the Respondents, to stay execution of the Judgment delivered on 30th July 2024, is an extremely hard ask.
20. The Judgment itself was in the nature of execution proceedings for Judgments of the Court, delivered in favour of the Ex-Parte Applicant, in previous actions.
21. Judgment was first obtained by the Ex-Parte Applicant against the Respondents, in Nakuru E&LRC Cause Number 92 of 2014 between the Parties herein.
22. The Respondents were ordered to reinstate the Ex-Parte Applicant, without loss of benefits. They were ordered also, to pay all his withheld salaries.
23. Decree was extracted on 17th October 2014. The amount due was computed at Kshs. 9,308,352. This is over 10 years ago.
24. The Respondents did not pay. The Ex-Parte Applicant filed Nairobi Miscellaneous Application No. E101 of 2022, seeking enforcement of the decree. The Court granted him an order on 21st September 2022 for payment of the decretal sum.
25. The Public Service Commission also made orders on the dispute, on 23rd March 2016 and 24th August 2016, directing the Respondents to pay the Ex-Parte Applicant his withheld salaries and allowances. The Judgment of the Court in Miscellaneous Application No. 101 of 2022, was in fact issued, in aiding execution of the orders of the Public Service Commission.
26. The Respondents still did not pay, warranting the filing of the current JR Application, which culminated in the Judgment sought to be stayed by the Respondents.
27. The prayer for an order of stay of execution is clearly, an extremely hard ask.
28. Past Judgments and orders issued by the Court and the Public Service Commission were not challenged on appeal or review by the Respondents. What makes the latest Judgment appealable or suitable for stay of execution?
29. There is a long chain of decisions of the Court and the Public Service Commission, which established the Respondents' indebtedness to the Ex-Parte Applicant. Their findings and conclusions have not been faulted and / or set aside by any superior jurisdiction. Constitutional order and the rule of law, demand that these decisions must not be in vain, and must be implemented. Litigation must come to an end. The Court cannot make decision. after decision. all in vain.
30. It is correct that the Application for stay of execution, was presented after an inordinate delay. Judgment was delivered on 10th July 2024. The Application was presented 5 months later, on 10th December 2024.
31. The Notice of Appeal was filed outside the stipulated 14 days, under Rule 77 [2] of the [Court of Appeal Rules](#), 2022. No leave was obtained. Without leave there can be no legally valid Appeal.
32. The submission surrounding statutory time-bar, under the [Law Reform Act](#), appears sterile, considering that Article 23 [3] [f] of the [Constitution](#), mandates the Court to grant an order of judicial review. It is preposterous to submit that successive Judgments of the Court, and Orders of the Public



Service Commission, can be rendered inexecutable on the basis of limitation of time. More so when delay in implementation of Judgment, is the result of a sustained refusal to pay, by a party who seeks to rely on the limitation law.

33. The Court has not been availed a draft Memorandum of Appeal, to augment, the Respondents' submission that they have an arguable Appeal with high chances of success.
34. The submission that the decretal sum is substantive, and disruptive of the Respondents' budgetary projections is unmerited. In issue is not the size of the decretal sum; in issue is whether the sum was found to be owing by the Court and the Public Service Commission; and whether, it has been satisfied.
35. The amount was found due way back in 2014, and the Respondents have had over 10 years, to factor its payment, within their budgetary cycles. County Governments must prioritize settlement of judgment-debts, in their budgetary planning, especially where such debts involve employment dues.
36. The decretal sum includes unpaid salaries. The salary of an Employee has statutory protection under Part IV of the *Employment Act*. It must be paid when due, under Section 18 of the *Employment Act*. There can be no justification for the Respondents to persist in withholding of the Ex-Parte Applicant's salaries, years after the Court ordered the Respondents to pay.
37. The order sought to stay execution of the Judgment of the Court, is in abuse of the process of the Court, without merit and is declined.

It Is Ordered: -

- a. The Application filed by the Respondents dated 10th December 2024 is declined.
- b. Costs to the Ex-Parte Applicant.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAKURU, THIS 27<sup>TH</sup> DAY OF JUNE 2025.**

**JAMES RIKA**

**JUDGE**

