



**Clifford Otieno Obiero t/a C. Obiero & Associates Advocates v CEC
Finance, County Government Of Kisumu & 2 others (Judicial Review
E009 of 2025) [2025] KEELRC 1770 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1770 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW E009 OF 2025**

JK GAKERI, J

JUNE 18, 2025

BETWEEN

**CLIFORD OTIENO OBIERO T/A C. OBIERO & ASSOCIATES
ADVOCATES APPLICANT**

AND

CEC FINANCE, COUNTY GOVERNMENT OF KISUMU 1ST RESPONDENT

KISUMU COUNTY GOVERNMENT 2ND RESPONDENT

**COUNTY SECRETARY, COUNTY GOVERNMENT OF KISUMU 3RD
RESPONDENT**

RULING

1. Before the Court for determination is the Applicant's Notice of Motion dated 16th April, 2025 seeking Orders that-
 1. Spent.
 2. Order of mandamus be issued to the respondents herein to pay the Applicant's Advocate the sum of Kshs.473,212 for the legal services rendered to them in Kisumu ELRC Judicial Review No. E003 of 2022 Republic V The County Government of Kisumu & the Kisumu County Secretary.
 3. The costs of this application be borne by the respondents.
2. The Notice of Motion is expressed under Order 29 and Order 53 Rule 1, 2, 3 of the Civil Procedure Rules and is based on the grounds set forth on its face and the Supporting Affidavit of Clifford Otieno Obiero sworn on 16th April, 2025 who deposes that leave to file the instant motion was granted on 2nd April 2025.



3. The affiant further deposes that he and the respondents had an advocate-client relationship and offered legal representation in Kisumu ELRC No. E003 of 2020 and despite of doing so diligently and securing a favourable outcome, the respondents are yet to settle the legal fees necessitating court action in Kisumu ELRC Misc. App. No. E039 of 2024 and the respondents were notified of the matter and duly served and the Advocate - client bill was taxed at Kshs.473,2012 on 10th July, 2024.
4. The affiant deposes that subsequently, a certificate of costs and Certificate of Order Against the Government were issued on 1st August, 2024 and 26th November, 2024 respectively, and served on the respondents physically on 6th March, 2025 and the applicant is entitled to Kshs.473,212 as per the certificate and it was just that respondents be compelled to pay the sum due to him.

Respondent's case.

5. By a Replying Affidavit sworn by Martin Okode the respondents Chief Finance Officer, the respondents aver that they received the Certificate of Costs and Certificate of Order Against the Government on 6th March, 2025 and had no funds had been set aside for the amount due to the applicant and barely two (2) months ago and the applicant had rushed to court for mandamus and efforts were underway to settle the same in the next financial year.
6. The respondent's case is that previous claims for legal fees have been paid whenever budgeted for and money was available and the applicant's fees had not been budgeted for in the financial year 2024/2025 and the timing of taxation of costs was uncertain.
7. That the taxed costs have been factored-in in the 2025/2026 budget.
8. The respondents contend that owing to budgetary processes provided for under the Public Finance Management Act funds, may be available in August 2025 and monies expended without being budgeted for raise audit queries from the Auditor General.
9. The respondents pray for time for the budgetary process to take its course.

Applicant's submissions.

10. As to whether conditions for grant of the order of mandamus had been met, counsel submitted that they had because the Certificate of Order Against the Government had been served on the Accounting Officer as by law required.
11. Reliance was placed on the provisions of Section 21 of the *Government Proceedings Act* and decisions in **Republic V Attorney General & another Ex Parte James Alfred Koroso [2013] eKLR** and **Republic V Permanent Secretary Ministry of State for Provincial Administration & Internal Security Ex Parte Fredrick Manoah Egunza [2012] eKLR**, to urge that the only recourse available to a decree-holder against the Government was an Order of mandamus under Order 53 of the Civil Procedure Rules as it ensured that public officers performed their statutory duties.

Respondents submissions.

12. As to whether the instant application is merited, counsel for the respondents cited the decision in **Council of Civil Service Unions V Minister for the Civil Service [1985] A. C. 374** to submit that the 2 months accorded by the applicant was not reasonable and the respondents ought to be accorded time to settle the debt, urging that government procedures require transparency and accountability. Counsel submitted that the applicant's application was incompetent on account that it made no reference to the traditional ground of judicial review at common law or those set out under Section 7 of



the *Fair Administrative Action Act* which were distinct, and even if the application was grounded on *the constitution*, no provision of *the Constitution* of Kenya had been cited and thus violated the principles in **Anarita Karimi Njeru V Republic (No. 1) [1976 – 1980] KLR 1272**.

13. Counsel submitted that since the Certificate of Order Against the Government was issued on 26th November, 2024 and the financial year had already commenced, it was improper for the applicant to expect immediate settlement and the court ought to take judicial notice of delayed disbursement, by the National Treasury.
14. According to the respondents the Certificate of Order Against the Government was served late.

Analysis and determination.

15. It is common ground that the applicant sought leave to institute the instant motion vide Chamber Summons dated 28th March, 2025 and the same was granted on 2nd April, 2025, and the motion was filed on 23rd April, 2025.
16. It is equally not in contest that the applicant represented the respondents in Kisumu ELRC No. E003 of 2020 and obtained a favourable outcome and the duly taxed costs remain outstanding service of the certificate of costs and Certificate of Order Against the Government notwithstanding.
17. The foregoing notwithstanding, the respondents contend that the documents were served late after the financial year had commenced, they were not accorded reasonable time to pay, have no funds budgeted for the amount claimed and the application had not cited the typical grounds in judicial review matters.
18. It is not in dispute that the essence of the instant motion is payment of the applicant's costs for services rendered, a fact the respondents have not contested. Indeed, they admit they have not refused to pay but have no monies in their current budget for that purpose.
19. Similarly, they admit that service of the necessary documents was effected on 6th March, 2025.

What other grounds was the applicant required to rely on to demonstrate that its taxed legal fees are outstanding?

20. In the court's view, the instant motion cannot be faulted on the ground that neither of the typical common law or statutory grounds known under judicial review had been cited.
21. On issue of commencement of the financial year and budgetary processes, there is ample judicial authority that the respondents cannot rely on such reasons as defences in the instant application.
22. The court is a loss why the respondents sought legal services when they did to justify subjecting the applicant to the budgetary process yet which most organizations including the Government budget for, legal fees:
23. Concerning service of the Certificate of Costs and Certificate of Order Against the Government on 6th March, 2025, and institution of the instant suit, a duration of three weeks which the respondents consider not reasonable, the court proceeds as follows.
24. It is trite law that what constitutes reasonable time is dependent on the peculiar circumstances of each case. See **Hick V Raymond & Reid [1895] A. C. 22**.
25. One of the requirements for the grant of mandamus is that the payee must be accorded reasonable time to comply with the demand.



30. Although the respondents were served and received the two certificates from the applicant and appreciated their implications and had the concerns they are raising by their response and submissions, the better way to proceed would have been to write to the applicant within a short time thereafter.
31. A simple written acknowledgement of the documents and intimation that the documents were being acted upon or when payment would be processed may have changed the course of events, owing to previous dealings between the parties as adverted to by the respondents.
32. The respondent had not taken any demonstrable step towards the eventual fulfilment of their public duty by the time the instant suit was instituted by the Applicant.
33. It is also notable that the respondents have not specified the duration they would consider as reasonable to comply with the demand, which arguably, would have given the court a comparative duration.
34. In **Republic V Jomo Kenyatta University of Agriculture and Technology Ex Parte Elijah Kamau Mwangi [2021] eKLR** Nyamweya J (as she then was) stated as follows:

“The purpose of an order of mandamus is to compel the performance of a public duty or any act contrary to or evasive of the law. It therefore lies against a public officer when some specific act or thing, which the law requires to be done, has been omitted. The conditions for its grant are that it must be shown that the public officer has failed to perform his duty; the court will not grant mandamus where there is an alternative remedy available to the applicant; and that it may be refused if the enforcement of the order will pose implementation challenges that require the Court’s supervision. See in this regard the decision in *Evanson Jidiraph Kamau & Another vs. The Attorney General Mombasa H.C. Misc. Application No. 40 of 2000.*”
35. It was further held in *Republic vs The Commissioner of Lands & Another Ex-Parte Kithinji Murugu M’agere*, Nairobi High Court Misc. Application No. 395 of 2012 that mandamus is employed to enforce the performance of a public duty which is imperative, not optional or discretionary, with the authority concerned. In addition, that mandamus may be issued to enforce mandatory duty which may not necessarily be a statutory duty, but which has “a public element” which may take any forms...”
36. See **Republic V Kenya National Examinations Council Ex Parte Gathenji and 9 others [1997] eKLR** citing the Halsburys Laws of England 4th Edition Volume I at page 111 para 89, **Republic V Principal Secretary Ministry of Internal Security & another ex parte Schon Noorani and another [2015] eKLR** and **Republic V County Secretary, Executive Committee for Finance Chief Officer, the County Government of Mombasa [2022] KEHC 28 KLR** on the elements or test of mandamus.
37. This application turns on whether applicant has met the threshold for grant of order of mandamus.
38. It is trite law that County Governments are creatures of *the Constitution* of Kenya, 2010 and each County in Kenya has a Government which is a body corporate with capacity to sue and be sued and discharge their functions, hold property, and have perpetual succession.
39. The principles that govern enforcement of monetary awards against the Government are set out in Section 21 of the *Government Proceedings Act* whose subsection (5) renders the provisions applicable to County Governments.
40. Section 21 of the *Government Proceedings Act* provides
 1. ...



2. A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
 3. If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:
41. Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.
4. Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.
42. The foregoing is fortified by the sentiments of Githua J in **Republic V Permanent Secretary Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza (supra)** relied upon by the applicant as follows:
- Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an Order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the *Government Proceedings Act*.
- The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the *Government Proceedings Act* (**hereinafter referred to as the Act**) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General...”
- The court is in agreement with these sentiments.
43. In the **Canadian case of Apotx Inc. V Canada Attorney General [1993] Can. LII 3004 (F.C.A) [1994] I.F.C 742 (CA)**, cited by Mativo J. (as he then was) in **Republic V Principal Secretary Ministry of Internal Security & another Ex Parte Schon Noorani & another [2018] eKLR**, the court articulated the requirements of mandamus, as existence of a public legal duty owed to the applicant, clear right to performance of the duty, all conditions precedent satisfied and a prior demand for performance, reasonable time to comply with the demand, express or implied refusal to honour the demand and no other remedy is available among others.
44. In the instant case, the applicant served and the respondents acknowledged receipt of the Certificate of costs and Certificate of Order Against the Government on 6th March, 2025 accordance with the



provisions of Section 21 of the Government Proceedings Act and no response was forthcoming by 1st April, 2025 when the instant application was filed.

45. The duration was rather short bearing in mind that the applicant obtained the documents in 2024 and could have served them then.
46. Finally, it is trite law that the order of mandamus is of an equitable nature and thus discretionary. The court is required to take into account all the relevant circumstances and the law to determine whether it is the most efficacious relief in the circumstance of the particular case.
47. In this regard, see Mativo J. (as he then was) in **Republic V Principal Secretary Ministry of Internal Security and another Ex Parte Schon Noorani & another (supra)**.
48. For the above reasons, the court is satisfied that the applicant has proved on a balance of probabilities that an Order of mandamus ought to issue against the respondents to fulfil a public duty owed to the applicant.
49. In the upshot, the applicant's Notice of Motion dated 16th April, 2025 is merited and is granted in the following terms:
 - a. An Order of mandamus be and is hereby issued directed to the Chief Finance Officer Kisumu County Government and the CEC Finance, Kisumu County Government to pay the sum of Kshs.473,212 in consonance with the Certificate of Taxation dated 1st August, 2024 and Certificate of Order Against the Government dated 2nd November, 2024, within three (3) months of the date hereof.
 - b. Parties shall bear own costs of this application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 18TH DAY OF JUNE, 2025

DR. JACOB GAKERI

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 Civil 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.

DR. JACOB GAKERI

JUDGE

