



**Nyang'ongo & another v Cabinet Secretary Ministry of Education & 2 others  
(Judicial Review E008 of 2025) [2025] KEELRC 1751 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1751 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII**

**JUDICIAL REVIEW E008 OF 2025**

**NZIOKI WA MAKAU, J**

**JUNE 17, 2025**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF  
MANDAMUS BY EVANS MORARA NYANG'ONGO AND CHARLES MORARO MOGUNDE**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR  
JUDICIAL REVIEW FOR THE ENFORCEMENT OF COURT ORDERS  
AND DECREE AGAINST THE 1<sup>ST</sup>, 2<sup>ND</sup> AND 3<sup>RD</sup> RESPONDENTS**

**BETWEEN**

**EVANS MORARA NYANG'ONGO ..... 1<sup>ST</sup> APPLICANT**

**CHARLES MORARO MOGUNDE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**THE CABINET SECRETARY MINISTRY OF EDUCATION .. 1<sup>ST</sup> RESPONDENT**

**TEACHERS SERVICE COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**PUBLIC SERVICE COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Ex-parte Applicants filed the Notice of Motion dated 19<sup>th</sup> March 2025. They were successful in Kisumu ELRC Petition E007 of 2022. They thereafter sought costs through a bill of costs which was taxed on 13<sup>th</sup> August 2024. They were awarded Kshs. 413,790/- and obtained a certificate of order against government. The motion thus seeks leave to apply for judicial review orders of mandamus directed against the Respondents to pay the Ex Parte Applicants' a sum of Kshs. 413,790/- as costs to the successful Petitioners now Applicants. The Motion was supported by a statement of facts and the affidavit verifying facts. Enclosed in the affidavit were the decree, taxation notice, certificate of costs



and certificate of order against Government. There was also communication seeking settlement of the costs within 21 days of the letter dated 4<sup>th</sup> February 2025.

2. The motion was not opposed and what the Court is required to do is determine whether the motion is merited.
3. The application for leave is to be considered in light of the parameters below:
  - a. whether the enactment, action, decision, or failure to act that is being challenged is amenable to judicial review;
  - b. whether the applicant has capacity to bring action seeking redress by way of judicial review;
  - c. whether the applicant has a sufficient interest to bring a claim for judicial review;
  - d. whether the particular challenge brought by the applicant is one that may be brought by the judicial review procedure, and whether it is appropriate to bring it by that procedure;
  - e. whether the claim is otherwise an abuse of process;
  - f. whether all or some of the grounds of challenge relied upon by the applicant are sufficiently meritorious to justify the grant of permission;
  - g. whether the application has been brought promptly;
  - h. whether there are any discretionary grounds that justify the refusal of permission in the exercise of the court's discretion.
4. The Court therefore has noted that the move by the Applicant is one necessitated by alleged inaction by the Respondents to meet the judgment. The action of refusal to pay by any entity of Government is one that is amenable to judicial review. In my considered opinion, the steps pre-requisite to leave being available are met in this case as the applicant has capacity to bring action seeking redress by way of judicial review and has demonstrated sufficiency of interest to bring the motion for leave to commence judicial review. The Applicant has chosen judicial review as the vehicle to obtain redress and that is the appropriate procedure. The motion was brought promptly and the request is meritorious as there is no other avenue to move against Government for the enforcement sought. As such the Court grants leave to commence judicial review. The main application for the orders of mandamus must be filed within 21 days of the date of this Ruling failing which the grant of leave will automatically lapse. This file can now be closed as the substantive motion shall be filed in a separate and distinct file. Costs shall abide the outcome in the main motion for judicial review.

Orders accordingly.

**DATED AND DELIVERED AT KISII THIS 17<sup>TH</sup> DAY OF JUNE 2025**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

