



**Nyamori v Maurice Otunga, County Executive Committee Member Responsible
for Finance, County Government of Migori & another (Judicial Review
E022 of 2024) [2025] KEELRC 1736 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1736 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW E022 OF 2024**

JK GAKERI, J

JUNE 16, 2025

BETWEEN

ERASTUS ONYANGO NYAMORI APPLICANT

AND

**MAURICE OTUNGA, COUNTY EXECUTIVE COMMITTEE MEMBER
RESPONSIBLE FOR FINANCE, COUNTY GOVERNMENT OF
MIGORI 1ST RESPONDENT
COUNTY GOVERNMENT OF MIGORI 2ND RESPONDENT**

RULING

1. Before the Court for determination is the applicant's motion dated 1st July, 2024 filed pursuant to the directions of the court dated 19th June, 2024.
2. The Applicant seeks:
 1. An Order of mandamus to compel:
 - i. Maurice Otunga, The County Executive Member responsible for Finance & Planning and
 - ii. The County Government of Migori to pay the applicant the sum of Kshs.7,005,791 as at 9th May, 2023 and as specified in the Certificate of Order Against the County Government of Migori, being the outstanding judgment sum, costs and interest as at the date of the said certificate of Order plus any further and additional interest accruing on the decree dated 2nd November, 2021 until payment of the entire decretal sum adjudged in Kisumu ELRC No.308 of 2014, shall be made in full
 2. Costs of this application be provided for.



3. The motions is expressed under Order 53 Rule 4 of the Civil Procedure Rules, 2010 and Section 8 and 9 of the [Law Reform Act](#) and is based on the grounds set forth on its face and the verifying Affidavit of even date.
4. The applicant avers that Kisumu ELRC No. 308 of 2014 was decided in favour of the applicant together with costs and interest and a decree was subsequently extracted on 20th December, 2021 and the Bill of costs taxed on 25th April, 2023 and a certificate of costs issued on 5th May, 2023.
5. That the notice of entry of judgment and decree were served on the County Government of Migori and County Executive Member for Finance, and the Party and Party Bill of costs was taxed on 25th April, 2023 against the 2nd respondent at Kshs.288,727 and a certificate of costs issued and served upon the County Government.
6. The applicant maintains that the County Government of Migori has failed, refused and neglected to pay the decretal debt as per the Certificate of Order Against the County Government amounting to Kshs.7,005,791.00.

Respondent's response

7. By a Replying Affidavit sworn by Maurice Otunga on 12th September, 2024, the affiant deposes that as per the judgment gratuity was to be computed and paid by the employer but the certificate of Order dated 9th May, 2023 indicated that the sum of Kshs.1,800,000 was gratuity without evidence on how the gratuity was computed, which the respondent disputes.
8. That the applicant was back in court without consulting the respondent and presented the disputed certificate of Order of costs dated 9th May, 2023 and the ruling delivered on 22nd November, 2023.
9. According to the applicant, the respondent is a stranger to the figure on gratuity and the amount is yet to be determined.
10. The affiant depones that the respondent had neither refused nor neglected to pay the decretal sum but was awaiting budgetary allocation from the national government and had inadequate budgetary allocation.
11. That the applicant's hand are dirty as he had not paid the respondents cost taxed at Kshs.62,275 in Kisumu ELRC JR No. E 022 of 2023 and the instant application was incompetent misconceived and untenable.
12. In a Supplementary Affidavit sworn by Erastus Onyango Nyamori on 16th May, 2025 the affiant depones that the issue of gratuity was resolved by the judgment delivered on 17th February, 2021 and the total amount was incorporated in the Certificate of Order Against the Government.
13. That the respondent did not challenge the award or have the judgment reviewed.
14. That gratuity was computed on the terms of the judgment.

Applicant's submissions

15. On the threshold for mandamus, reliance was placed on the provisions of Section 8 and 9 of the [Law Reform Act](#) and Order 53 of the Civil Procedure Rules, as were the sentiments of the court in Kenya National Examinations Council V Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR to urge that a public duty was owed to the applicant who had a valid Certificate of Order Against the County Government.



16. Further reliance was placed on Republic V County Secretary Nairobi City County & another Ex Parte Peter Wachira Nduritu Ngugi & Co. Advocates [2016] eKLR on the effect of service of the certificate.
17. Concerning computation of gratuity counsel submitted that the respondent had an opportunity to object to the taxation or issuance of certificate but did not.
18. Reliance was also made on the sentiments of the court in Republic V Attorney General & another Ex Parte James Alfred Koroso [2013] eKLR.
19. On alleged budgetary constraints, the decision in Republic V Permanent Secretary Ministry of State for Provincial Administration & Internal Security and Republic V Attorney General & another Ex Parte Wanjee Raki [2016] eKLR, to urge that budgetary constraints or lack of funds are not legally recognized justifications for disobeying court orders.
20. As regards unclean hands, counsel submitted that costs can be enforced independently and could not extinguish the applicant's right to the decretal sum, and Government bodies were bound to honour decrees and failing to do so was a constitutional violation.
21. That the applicant had met all the requirements and there was no alternative remedy.

Respondent's submissions

22. As to whether the application is merited, counsel submitted that mandamus was an equitable remedy and the applicable test was laid down in Republic V Principal Secretary, Ministry of Internal Security & another Ex Parte Schon Noorani & another [2018] eKLR.
23. Further reliance was placed on the sentiments of the court in Kenya National Examinations Council V Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] KECA 58 (KLR) to set forth the ingredients of mandamus.
24. Counsel urged that according to the judgment delivered on 17th February, 2021, compensation was fixed at Kshs.3,600,000 and gratuity was to be computed and paid by the respondent and wondered how the sum of Kshs.1,800,000.00 was arrived at.
25. Reliance was placed on the sentiments of the court in Pathfinder International Kenya Ltd V Stephen Ndegwa Mwangi [2019] KECA 759 (KLR), to urge that the applicant had to demonstrate where he obtained gratuity and how it was computed.
26. Further reliance was made on the decisions in Arthur Kinuthia Albert V Permanent Secretary Ministry of Health [2008] eKLR quoted in Republic V Principal Secretary Ministry of Transport & Infrastructure & another Ex parte Justino Pitia [2016] eKLR to urge that where there was a dispute on the figures the order of mandamus should not issue urging that the applicant had not met all the requirements for mandamus to issue.
27. Finally, counsel submitted that the respondent was facing financial challenges and had neither refused nor neglected to satisfy the judgment and decree and was seeking "breathing space to arrange its finances".
28. Counsel urged the court to dismiss the application with costs.

Analysis

29. It is common ground that by a judgment dated 17th February, 2021, the court awarded the claimant Kshs.3,600,000 compensation and gratuity, which was to be computed and paid by the respondent,



interest at court rates till payment in full and costs and although the decree was issued, bill of costs taxed and a Certificate of Order Against the Government issued and served against the respondents, the amount remains unpaid to date.

30. The respondents cite the dispute on gratuity, inadequate budgetary allocation by the National Government and financial constraints and contends that the Order of mandamus sought by the applicant should not issue because there was a genuine dispute and cites the decision in Republic V The Principal Secretary Ministry of Transport & Infrastructure & another Ex Parte Justino Pitia (supra) where the court stated inter alia:

“...This court’s jurisdiction is limited to compelling the Respondent to pay based on the judgment, decree and certificate of Order but it is not to determine what is due to the applicant and this court would decline to grant the order prayed...In other words where there is a condition precedent necessary for the duty to accrue an Order of mandamus will not be granted until that condition precedent comes to pass. Therefore, where there is a genuine dispute as to the exact sums payable, the court will not by an order mandamus compel the respondents to exercise that duty until the disputes is sorted out”.

31. Whereas the respondents admit that the judgment in Kisumu ELRC No.308 of 2014 Erastus Onyango Nyamori V County Government of Migori and Migori Governor Zachary Okoth Obado directed the respondent to compute and pay gratuity, it contends that it is unaware as to how the sum of Kshs.1,800,000 was arrived at and disputes the same. Indeed, the respondent’s counsel submitted for the applicant to claim gratuity, he had to demonstrate where he got it from and how it was computed.
32. This submission appears superfluous to the extent that the court awarded gratuity and the respondent was to compute and pay but it is apparent that the respondent did not and had not bothered to do so even by the time the instant application was filed.
33. The respondent’s argument that the sum of Kshs.1,800,000 claimed as gratuity ought to be justified is puzzling and disingenuous on account that the respondent has not demonstrated that any step was taken to compute or calculate gratuity or pay the amount it believed to be the correct figure as directed by the court on 17th February, 2021.
34. Similarly, the respondent acknowledges having received the Certificate of Order against it dated 9th May, 2023 and did not challenge it before the Deputy Registrar or register its disagreement with the amount stated or provide the figure it had computed and how it arrived at the figure.
35. The court is left wondering how it can deem the respondent’s deposition and submission that there is a genuine dispute on the amount claimed as gratuity yet it has had the figure since 27th November, 2023 when the applicant reminded it the amount payable under the judgment.
36. The respondent had sufficient time to object to the sum claimed as gratuity and provide a counter figure but refused, failed or neglected to do so.
37. For the foregoing reasons, the court finds and holds that it has not been demonstrated that there is a genuine dispute between the parties on the amount claimed as gratuity.
38. More intriguing, the respondent deposed and submitted that it had neither refused, failed nor neglected to pay the decretal sum but was facing financial constraints due to inadequate budgetary allocation by the national government.
39. In the court’s view, if the respondent had intended to pay the decretal sum it would have budgeted for it in the financial year 2023/2024 or 2024/2025 or 2025/2026.



40. From its deposition, it is discernible that no step has been taken and it was praying for breathing space to arrange its finances, but forgot to specify any time line within which it could meet its public duty.
41. Having found the respondents depositions and submissions unmerited or unsustainable, I will now proceed to determine whether the applicant is entitled to the Order of mandamus in this instance.
42. The circumstances in which the judicial review Order of mandamus may be issued were discussed in many decisions. In *Republic V Kenya National Examinations Council Ex Parte Gathenji & 8 others* (supra), the court relied on paragraph 89 of the Halsbury's Laws of England 4th Edition Vol.7 at page 111 thus:

“The Order of mandamus is of utmost extensive remedial nature and is in form of a command issuing from the High Court of Justice, directed to any corporation or inferior tribunal requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly, it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual... These principles mean that an Order of mandamus compels 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”.

43. As regards enforcement of rights against the National or County government or a government department, it is settled law that the only mechanism is the one prescribed under Section 21 of the *Government Proceedings Act* thus:
 1. Where any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order including an order for costs is made by any court in favour of any person against the Government or against a Government Department or against an office of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed at any time after costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order provided that if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.
 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 herein after provided, pay to the person entitled or to his advocate the amount together with interest, if any, lawfully due thereon.
 4. Save as aforesaid no execution or attachment 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.



44. In Republic V Attorney General & another Ex Parte Orbit Chemicals Ltd [2017] eKLR Odunga J. (as he then was) stated:

“It is therefore clear that in applications for mandamus seeking to compel the satisfaction of a decree, it is the accounting officer of the relevant government department that is obliged to satisfy the decree notwithstanding the fact that the said officer was not a party to the trial proceedings and that in fact the only defendant therein was the Attorney General...”

45. See also James Samuel Mburu V Attorney General & another [2017] eKLR, Kisya Investments Ltd V Attorney General [2005] eKLR, Susan Wayua V Attorney General & another [2019] eKLR, Attorney General & Analysis Ex Parte Ongeta Works Ltd [2016] eKLR eKLR.

46. Clearly, the provisions of the [Government Proceedings Act](#) do not subject the satisfaction of the decretal sum and costs, if any to any other condition.

47. The argument of inadequate budgetary allocation and financial constraints are of no persuasion under the provisions of Section 21 of the Act as correctly held by Githua J in Republic V Permanent Secretary Ministry of State for Provincial Administration and Internal Security Ex Parte Fredrick Manoah Egunza [2021] eKLR as follows:

...When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered, against the Government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs has 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 executions and attachment of its properties/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 decree for money issued against the government is found in Section 21(4) of the [Government Proceedings Act](#) (hereinafter referred to as the Act) which provides that payment will be based on a certificate obtained by the successful litigant from the court issuing the decree which should be served on the Hon. Attorney General. The Certificate of Order Against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of Order against the Government is served on the Hon. Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said Order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues”.

48. See also Republic V County Secretary Migori County Government & another [2019] eKLR.

49. Having considered the documents annexed to the applicants Verifying Affidavit sworn on 1st July, 2024, the court is satisfied that the applicant has satisfied the requirements of Section 21 of the [Government Proceedings Act](#) consistent with Order 29 of the Civil Procedure Rules, 2010.



50. The court is satisfied that the applicant has demonstrated that the Judgment delivered by Radido J. on 17th February, 2021 against the County Government of Migori remains unsatisfied and it is only fair that the respondents be compelled to perform their public duty to pay the applicant.

51. In the upshot, the applicant's application dated 1st July, 2024 is allowed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 16TH 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

