



**Republic v County Government of Nyamira & 2 others; Kerosi
(Exparte Applicant) (Judicial Review Miscellaneous Application
E002 of 2025) [2025] KEELRC 1772 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1772 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E002 OF 2025
NZIOKI WA MAKAU, J
JUNE 5, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF NYAMIRA 1ST RESPONDENT

COUNTY EXECUTIVE OFFICER 2ND RESPONDENT

DEPT. OF FINANCE (NYAMIRA COUNTY) 3RD RESPONDENT

AND

BOB MOSETI KEROSI EXPARTE APPLICANT

RULING

1. By way of chamber summons dated 15th January 2025, the Ex-parte Applicant seeks leave of this Court to apply for an order of mandamus to compel the Respondents to pay him Kshs 2,029,783/=, being the amount arising from the decree and certificate of costs issued in Nyamira CMC ELRC No. E003 of 2021. He also seeks the same order to compel the 2nd Respondent to issue him with a Personal Identification Number.
2. The Ex-parte Applicant avers that despite service of the decree and certificate of costs upon the Respondents, they have persistently refused and/or failed to satisfy the same, resulting in the accrual of the said amount. He contends that even after obtaining and serving a certificate of order against the Government, the Respondents remained in default. In light of this conduct, the Applicant maintains that unless leave is granted, he stands to suffer great prejudice by being denied the fruits of his judgment.
3. In opposition, the Respondents filed a Replying Affidavit sworn by Jack Magara, the County Secretary and Head of Public Service, on their behalf. They contended that the Chamber Summons application



is premature, as the primary suit remains active before the Magistrate’s Court. They referred the Court to an extant order dated 26th March 2025—issued in Nyamira CM ELRC No. E003 of 2021—which restrains execution of the decree. Additionally, the Respondents averred that they have filed an application in the said matter seeking to set aside the entire judgment.

4. Based on the foregoing, the Respondents argued that it would be in the interest of justice for the judicial review proceedings to await the conclusive determination of the suit pending before the Magistrate’s Court.
5. Both parties filed written submissions in support of their respective positions.
6. Ex-parte Applicant’s Submissions
7. The Ex-parte Applicant submitted that an order of mandamus is intended to compel the performance of a statutory duty, particularly where such a duty has not been fulfilled to the detriment of a party with a legal entitlement. In support of this proposition, he relied on the decision in *Republic v Kenya National Examinations Council ex parte Gathenji & Others* [1997] eKLR.
8. He further cited *Republic V Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza*[2012]eKLR, where the court held that the government does not enjoy special privileges regarding the satisfaction of monetary decrees, except in respect of the mode of execution, and that the immunity conferred upon the government under Section 21(4) of the Government Proceedings Act, only meant that a decree against them could only be enforced through an order of mandamus.
9. As regards the pending application before the Magistrate’s Court, the Ex-parte Applicant submitted that it was filed as an afterthought. He asserted that the said application was lodged two months after directions had already been issued in this suit. He further submitted that it was unconscionable for proceedings before this Court to be stayed by an order issued in the Magistrate’s Court.
10. On the issue of costs, the Ex-parte Applicant urged the Court to exercise its discretion in his favour. He cited the case of *Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another* [2016] eKLR, where the Court observed that the principle of costs following the event is not meant to punish the losing party, but to compensate the successful party for the effort expended in prosecuting or defending the case.
11. In light of the unheeded demands for payment and the absence of a plausible explanation for the failure to settle the decretal sum, the Ex-parte Applicant submitted that the application ought to be allowed with costs.
12. Respondents’ Written Submissions
13. In response, the Respondents submitted that granting the orders sought would undermine the ongoing proceedings in Nyamira CMC ELRC No. E003 of 2021, particularly the existing order restraining execution and the pending application to set aside the judgment. They stressed that an order of mandamus, being absolute and draconian in nature, should only issue as a last resort and in exceptional circumstances. In support, they cited *Market Plaza Limited v Commissioner for lands & 3 others* [2019]eKLR and *Corrugated Sheets Limited v Kenya Revenue Authority* [2018] KECA 410 (KLR), both of which emphasized that orders of judicial review ought to be sought as a measure of last resort and in exceptional circumstances.
14. The Respondents further submitted that a writ of mandamus cannot be issued to enforce a judgment whose validity is under challenge. They relied on *Republic v County Government of Kwale; Charpenel Enterprises Limited (Ex parte)* [2021] KEHC 200 (KLR), where the Court held that issuing a



mandamus in such circumstances would render the pending application in the lower court nugatory and offend Section 21(3) of the Government Proceedings Act.

15. They also relied on *Republic v Ministry of Transport, Infrastructure, Housing & Urban Development & 2 Others ex parte Naphas Mmenya t/a Muamala Enterprises* [2019] eKLR, where the Court declined to grant an order of mandamus due to a pending application to set aside the judgment, observing that to do so would be to act in vain if the judgment were ultimately overturned.
16. In view of the foregoing, the Respondents submitted that it would only be just and prudent for the proceedings before the Magistrate's Court to be allowed to run their full course. They further emphasized that the existing orders in Nyamira CMC ELRC No. E003 of 2021 were valid and ought to be respected. Accordingly, they urged this Court to dismiss the instant application with costs.

Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 5TH DAY OF JUNE 2025

NZIOKI WA MAKAU, MCIARB.

JUDGE

