



Oloo v CEC Finance Kisumu County & 3 others (Judicial Review Application E007 of 2025) [2025] KEELRC 1622 (KLR) (4 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1622 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E007 OF 2025**

NZIOKI WA MAKAU, J

JUNE 4, 2025

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW BY WAY OF MANDAMUS**

AND

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW FOR THE ENFORCEMENT OF COURT ORDERS
AND DECREE AGAINST THE COUNTY GOVERNMENT OF KISUMU**

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT, CAP

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AND

**IN THE MATTER OF ORDER 29 AND ORDER 53 OF THE CIVIL
PROCEDURE RULES AND ALL THE ENABLING PROVISIONS OF THE LAW**

BETWEEN

EVANS OTIENO OLOO APPLICANT

AND

CEC FINANCE KISUMU COUNTY 1ST RESPONDENT

CHIEF FINANCE OFFICER KISUMU COUNTY 2ND RESPONDENT

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

COUNTY GOVERNMENT OF KISUMU 4TH RESPONDENT



RULING

1. By way of Chamber Summons dated 18th February 2025, the Applicant seeks leave of this Court to apply for an order of mandamus to compel the Respondents to pay him the sum of Kshs. 497,749/- being taxed costs arising from Kisumu ELRC PET No. E039 of 2022. The Applicant avers that the Petition was compromised by a consent dated 3rd November 2022, which condemned the 2nd Respondent to pay costs of the suit.
2. The Applicant contends that despite knowledge of the taxed costs and the issuance of a demand for payment, the Respondents' have failed, refused, and/or neglected to settle the same. Moreover, he asserts that a certificate of order against the government has been duly served, and as such, the Respondents ought to be compelled to comply with their legal obligation.
3. In opposition, the Respondents filed a replying affidavit sworn by Mr. Martin Okode, the Chief Finance Officer of the County Government of Kisumu. He deponed that the delay in settling the taxed costs was occasioned by the said amount not being factored into the budget for the financial year ending 30th June 2024. However, he stated that the costs had since been incorporated into the current financial year's budget and funds would likely be available by May 2025, subject to the approval and debate of the supplementary budget by the County Assembly, and approval by the Controller of budget and Treasury. The Respondents urged the Court to allow the budgetary process to take its lawful course without interference, pointing out that, in December 2024, they had paid similar legal fees amounting to Kshs. 4,663,093/-.
4. The application was canvassed by way of written submissions.

Applicant's Submissions

5. The Applicant submits that the order for mandamus is merited, having complied with the provisions of Order 29 of the *Civil Procedure Rules* and section 21 of the *Government Proceedings Act*. He asserts that barring any legal justification a decree holder is unequivocally entitled to the fruits of judgment. He cites the decision in the case of *Republic v Attorney General & another Ex parte James Alfred Koroso* [2013] eKLR, in which the court emphasized that public authorities had a mandate to act appropriately upon duties they were statutorily bound by, neglect of which warranted judicial intervention. In further support of this position, the Applicant emphasizes that the remedy of mandamus is instrumental in correcting administrative inaction that obstructs justice. He relies on the case of *Republic v Town Clerk of Webuye County Council & another* [2014] eKLR, in which the court held that mandamus is appropriate where a public body fails to satisfy a decree despite full compliance by the decree holder. He also refers to *Teachers Service Commission v Kenya Union of Teachers & 3 others* [2015] eKLR, which highlighted the need for prompt judicial intervention in cases where delayed administrative action risks frustrating justice or undermining the rights of successful litigants. In conclusion, the Applicant asserts that the sum of Kshs. 4 million referenced by the Respondent pertains solely to legal fees payable to advocates not decree holders. He therefore urges the court to grant him the leave sought.

Respondents' Submissions

6. The Respondents submit that the application does not meet the threshold for grant of a writ of mandamus as set out in *Republic v Baringo County Government & 2 others Ex-Parte KTK Advocates* [2018] eKLR, that:



- (i) There must be a public legal duty to act;
 - (ii) The duty must be owed to the Applicants;
 - (iii) There must be a clear right to the performance of that duty, meaning that:
 - a. The Applicants have satisfied all conditions precedent; and
 - b. There must have been:
 - (i) A prior demand for performance;
 - (ii) A reasonable time to comply with the demand, unless there was outright refusal; and
 - (iii) An express refusal, or an implied refusal through unreasonable delay;
 - (iv) No other adequate remedy is available to the Applicants;
 - (v) The Order sought must be of some practical value or effect;
 - (vi) There is no equitable bar to the relief sought;
 - (vii) On a balance of convenience, mandamus should lie.
7. The Respondents submit that the Applicant has failed to satisfy the conditions under limb (iii), as no evidence has been adduced to demonstrate a deliberate refusal to pay. On the contrary, the Respondents maintain that they have always been willing to settle the costs but were constrained by the fact that the costs had not been incorporated into the budget. They further submit that granting the orders sought would be impractical, as it would compel the County to reallocate funds already earmarked for essential services. Regarding the appropriate relief, the Respondents submit that the circumstances favour dismissal of the application and extension of time to settle the costs. They affirm that this option offers a win-win situation as it avoids disruption of public services while ensuring that the costs are factored into the next budget. To buttress this position, they rely on *Republic v Baringo County Government* (supra) where it was stated:

“Mandamus is a discretionary remedy, which a court may refuse to grant even when the requisite grounds for it exist. The court has to weigh one thing against another to see whether or not the remedy is the most efficacious in the circumstances obtaining. The discretion of the court being a judicial one must be exercised on the basis of evidence and sound legal principles.”

8. In view of its demonstrated willingness to pay the Respondent urges the court to dismiss the application with costs.

Disposition

9. The Applicant has sought an order of mandamus to compel the Respondents to pay the sums due to him on account of success in Court. The conditions for the grant include the condition of deliberate refusal to pay. The Respondents assert they are willing to pay. Nothing demonstrates this. Despite the agreement to pay since the Petition was compromised by a consent dated 3rd November 2022, the 2nd Respondent has declined to pay. The consent which condemned the 2nd Respondent to pay costs of the suit has not been vitiated and holds. Since the consent there has been no provision for payment of



the debt due and that, in the mind of the Court, is clear and demonstrable deliberate refusal to pay. As such, the Court is persuaded that mandamus must lie.

10. The Court therefore issues an order of mandamus directed at the 2nd and 4th Respondents jointly and severally to pay the sum of Kshs. 497,749/- being costs due to the Applicant together with a sum of Kshs. 20,000/- being costs for the motion before this Court. The payment must be made within 21 days of this decision failing which the Applicant is at liberty to execute by attaching the assets of any of the said Respondents as may be sufficient to meet the sum of Kshs. 517,749/- and any incidental costs attendant to the execution.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF JUNE 2025

Nzioki wa Makau, MCI Arb.

JUDGE

