



**Mwangi v Chief Finance Officer, County Government of Kisii & another (Judicial Review E010 of 2025) [2025] KEELRC 2072 (KLR) (14 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2072 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
JUDICIAL REVIEW E010 OF 2025**

**JK GAKERI, J**

**JULY 14, 2025**

**BETWEEN**

**CHARLES MWANGI ..... APPLICANT**

**AND**

**CHIEF FINANCE OFFICER, COUNTY GOVERNMENT OF  
KISII ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KISII ..... 2<sup>ND</sup> RESPONDENT**

*(Before Hon. Justice Dr. Jacob Gakeri)*

**RULING**

1. This is the ruling on the Applicant's motion dated 6<sup>th</sup> May, 2025 filed pursuant to leave granted on 2<sup>nd</sup> May, 2025 under certificate of Urgency.

The Notice of Motion is seeking Orders that:

1. An Order of Judicial Review by way of mandamus directed to the Chief Finance Officer, County Government of Kisii, the Executive Member for Finance, County Government of Kisii and the County Attorney, County Government of Kisii, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein respectively to pay the Ex Parte Applicant the sum of Kshs.7,453,047.76 withheld salaries and interest and a further Kshs.1,000,000 damages for discrimination awarded by the trial court in Kisumu ELRC Petition No. 30 of 2023 Dr. Charles Mwangi V County Government of Kisii.
  2. Costs of this application be borne by the respondents.
2. The Notice of Motion is expressed under Order 29 and Order 53 Rule 4 and 5 of the Civil Procedure Rules and is based on the grounds set out on its face and the Supporting Affidavit sworn by the



Applicant on 6<sup>th</sup> May, 2025, who deposes that he filed Kisumu ELRC Petition No. E030 of 2023 and judgment was delivered in his favour and computed the withheld salary and applied for a Certificate of Order Against the Government and served the same upon the County Government of Kisii but no payment had been received.

3. The affiant further deposes that the respondents are the officers in-charge of financial affairs and overall administration of the County government of Kisii and are thus obligated to ensure that all debts of the County Government are settled but had failed to pay the Applicant and the Order of mandamus was the only alternative to compel them to pay.
4. When the matter came up for hearing on 22<sup>nd</sup> May, 2025, Mr. Odhiambo for the respondents informed the court that he only had the application dated 29<sup>th</sup> April, 2025 and did not have the instant motion dated 6<sup>th</sup> May, 2025 and sought 14 days to respond upon service by the Applicant's counsel.
5. However, counsel for the applicant informed the court that he served both applications and they were received and signed. He sought 3 days leave to respond upon service of the respondent's response.
6. The court accorded the respondent's counsel 14 days to file and serve their response and the Applicant's counsel 7 days to file and serve a response, as necessary, and a mention slated for 26<sup>th</sup> May, 2025 when none of the parties was present and hearing of the motion was slated for 12<sup>th</sup> June, 2025, at the court's instigation and only counsel for the Applicant was present.
7. The court directed that the motion be canvassed by way of written submissions. The Applicants counsel had already filed. The respondents were accorded 14 days upon service.
8. As of 12<sup>th</sup> June, 2025, the Applicants Notice of Motion dated 6<sup>th</sup> May, 2025 was unopposed.

### **Ex-parte Applicant's Submissions**

9. Concerning the nature of mandamus, counsel relied on the sentiments of the Court of Appeal in Republic V Kenya National Examinations Council ex parte Gathenji & 9 others [1997] eKLR and Mativo J. (as he then was) in Republic V Principal Secretary Ministry of Internal Security & another ex parte Schon Noorani & another [2018] eKLR to urge that mandamus compels a public authority to perform a public legal duty.
10. As to whether the Applicant was entitled to mandamus reliance was placed on the provisions of Section 21 of the [Government Proceedings Act](#), to urge that the County Government of Kisii is a Government under the provisions of Section 21 of the [Government Proceedings Act](#) and thus bound by the provisions.
11. Reliance was also placed on the sentiments of Odunga J. (as he then was) in Republic V Attorney General & another ex parte Stephen Wanyee Roki [2016] eKLR, on the applicability of the [Government Proceedings Act](#) to County Governments as were those of Githua J in Republic V Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012] eKLR to urge that awards against the Government or a Government Department are enforceable against the Accounting Officer of the Government or Government Department and the respondents were jointly responsible for the County's financial and fiscal matters and were bound to pay the Applicant his dues.
12. Counsel submitted that the Applicant had attached the Certificate of Costs and Certificate of Order Against the Government as evidence of the amount due to him and despite being served with the respective applications, the respondents did not respond and had thus, by implication, refused to pay the amount demanded.



13. Finally, counsel relied on the sentiments of Majanja J. in Republic V Town Clerk of Webuye County Council & another HCCC 448 of 2006 to urge that the Applicant had the right to enjoy the fruits of his judgment and that the instant application ought to be allowed.

The respondent did not file submissions.

### **Analysis and determination**

14. As adverted to elsewhere in this ruling, the ex parte Applicant sought and was granted leave to file the instant motion which the respondent did not respond to or challenge.
15. However, the fact that the Motion is unopposed does not obviate the ex parte Applicant's obligation to prove his case on a preponderance of probabilities.
16. It behooves the ex parte Applicant to demonstrate that he is entitled to the Judicial Review Order of mandamus sought by establishing that the motion meets the threshold as articulated in previous decisions.
17. To buttress his case, the ex parte Applicant annexed copies of the leave granted by the court on 2<sup>nd</sup> May, 2025 to institute the instant motion, demand letter dated 3<sup>rd</sup> April, 2025 demanding the sum of Kshs.8,453,049.76. The letter had no enclosures.
18. Also attached was a copy of the Certificate of Order Against the Government dated 29<sup>th</sup> April, 2025 which sets out the amount payable under the judgment and interest separately.
19. Also attached were copies of the court Order dated 4<sup>th</sup> April, 2025 and 10<sup>th</sup> April, 2025.
20. It is trite law that the purpose of the Order of Mandamus is to compel a public body or authority to perform a public duty.
21. In the words of Nyamweya J (as she then was) in Republic V Jomo Kenyatta University of Agriculture & Technology Ex Parte Elijah Kamau Mwangi [2021] eKLR

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*.

It was further been 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..."

22. See also Republic V Kenya National Examinations Commission ex parte Gathenji & 9 others (supra) where the Court of Appeal relied on the Halsbury's Laws of England 4<sup>th</sup> Edition, Vol. I at page 111 paragraph 89 on the nature of mandamus.



23. Similarly, the rendition of *Mativo J* (as he then was) in *Republic V Principal Secretary Ministry of Internal Security ex parte Schon Noorani & another* [2018] eKLR are instructive. The learned judge reiterated the test for mandamus set out in the Canadian case of *Apotex In V Canada* (Attorney General) discussed in *Dragon V Canada* (Minister of Citizenship and Immigration, as public duty to act, owed to the applicant(s), clear right to performance in that the applicant(s) have satisfied all conditions precedent, prior demand, reasonable time to comply with the demand unless outright refusal, express or implied refusal through unreasonable delay, order sought has some practical value or effect, no equitable bar to the relief and on a balance of convenience mandamus should lie.
24. Significantly, the provisions of Section 21 of the *Government Proceedings Act* reproduced by the Applicant's counsel, provide detailed requirements for enforcement of monetary awards including costs against the national government, government department or the County Government.
25. The provisions lay it bare that that party in whose favour a monetary award or costs has been made is required to apply for a Certificate of Order Against the Government or Certificate of Costs in the case of costs, from the proper officer of the court after 21 days after the date of the Order or after costs have been taxed, if awarded and have to be taxed and a copy of the certificate ought to be sent to the Attorney General or County Attorney.
26. The Certificate of Order Against the Government sets out the amount payable to the applicant inclusive of costs and interest, if any.
27. Subsection 4 of the *Government Proceedings Act* is emphatic that there is no other method of enforcing monetary awards against the Government, Government Department or County Government.
28. The foregoing was aptly captured by Githua J. in *Republic V Permanent Secretary Ministry of State for Provincial Administration and Internal Security Ex Parte Fredrick Manoah* (supra) 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....

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”

The court is in agreement with these sentiments.

29. In the instant case, it is verifiable that this court awarded judgment in his favour against the County Government of Kisii and attempts to have the Judgment set aside for want of service of summons was unsuccessful.



30. It was clear that the County Government of Kisii was served and accorded time to participate in the suit but opted not to and puzzlingly, adopted a similar approach in the instant application as the respondent's counsel was accorded 14 days effective 23<sup>rd</sup> May, 2023 to respond to the motion but had not done so by 12<sup>th</sup> June, 2025 when directions on the filing of submissions were given.
31. It is worth reiterating that the court by its judgment in Kisumu Petition No. E030 of 2023 directed the respondent to compute and release the Petitioner's withheld salary from 29<sup>th</sup> July, 2022 to date together with interest at 12% p.a from 29<sup>th</sup> August, 2022, Orders the respondent did not comply with but when the Petitioner computed the salaries and interest after awaiting for computation by the respondents for inordinately long, the respondent still maintained that it was directed to do but provided no evidence if it had done so or the timelines within which it could do so.
32. In sum, the respondents were comfortable with the status quo as they took time before deciding to compute the Petitioner's salary.
33. Even after the Petitioner had computed the salary and interest, the court accorded the respondent 30 days to comply with the Orders of the court and compute the salary and interest but blatantly refused, failed or neglected to do so, the court had no alternative but adopt the Petitioner's computation for purposes of the enforcement of the court's judgment. At this point, the suit had already crossed the rubicon and no appeal was filed to reverse the situation and none is pending.
34. Notably, the County Attorney, County Government of Kisii was served and received a demand letter on 7<sup>th</sup> April, 2025 but did not respond.
35. However, it is also discernible that the Certificate of Order Against the Government dated 29<sup>th</sup> April, 2025 has not been served on the respondents or the County Attorney for payment.
36. Finally, it is trite that the Order of mandamus is of an equitable nature and thus discretionary. The court is enjoined to take into consideration all relevant circumstances and factors and the law in determining whether it is the most efficacious relief in the circumstances. 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)*.
37. Although the demand letter was served and received by the County Attorney's Office on 7<sup>th</sup> April, 2025 and the Application for leave was filed was dated 29<sup>th</sup> April, 2025, less than one (1) month, the court is not satisfied that the absence of reasonable time for the respondents to honour the demand of itself would justify denial of the Order of mandamus in this instance.
38. This reasoning is fortified by the fact that the respondents neither responded to the motion nor plead that the duration of less than one (1) months was not reasonable.
39. For the above reasons, the court is satisfied that the applicant has demonstrated on a balance of probabilities that the respondents have failed to perform a public duty and his application dated 2<sup>nd</sup> May, 2025 was merited and it is allowed in the following terms:
  - a. An Order of Judicial Review by way of mandamus be and is hereby decreed directed to the Chief Finance Officer, County Government of Kisii and the Executive Committee Member Finance, County Government of Kisii, the 1<sup>st</sup> and 2<sup>nd</sup> respondents to pay the Ex Parte Applicant within 2 months from the date hereof, the sum of Kshs.7,453,047.76 withheld salaries and interest and Kshs.1,000,000 damages for discrimination awarded by the court in Kisumu ELRC Petition No. E030 of 2023 *Dr. Charles Mwangi V The County Government of Kisii*.



Costs of this Application to the Applicant.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 14<sup>TH</sup> DAY OF JULY, 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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

