



Republic v Nairobi County Government & another; Ong’ang’o (Ex parte Applicant) (Employment and Labour Relations Judicial Review E062 of 2024) [2025] KEELRC 1973 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 1973 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS JUDICIAL REVIEW E062 OF 2024
HS WASILWA, J
JULY 3, 2025

BETWEEN

REPUBLIC APPLICANT

AND

NAIROBI COUNTY GOVERNMENT 1ST RESPONDENT

THE COUNTY EXECUTIVE MEMBER, FINANCE 2ND RESPONDENT

AND

AGGREY OUTA ONG’ANG’O EX PARTE APPLICANT

RULING

1. The Respondents/Applicants filed a Notice of Motion dated 26th November 2024 seeking orders that:
 1. the Honourable court be pleased to issue orders of judicial review of mandamus against the Respondents compelling them to satisfy the decree in ELRC Cause No. 205 of 2018 dated 28th April 2023 and Certificate of Taxation dated 15th October 2024.
 2. the costs of the application be provided for.

Ex-parte Applicant’s Case

2. The Ex-parte Applicant avers that the application is made pursuant to leave granted by the court’s order dated 22st November 2024.
3. It is the Ex-parte Applicant’s case that he instituted a suit against the 1st Respondent in ELRC Cause No. 205 of 2018 and the court delivered its judgment on 16th February 2023 in his favour against the 1st



Respondent for Kshs. 511,125 together with costs and interest from the date of judgment till payment in full. Consequently, he extracted the decree for the decretal sum issued on 28th April 2023.

4. The Ex-parte Applicant avers that he subsequently filed his party to party bill of costs on 13th April 2023 and the Deputy Registrar assessed and taxed the costs at Kshs. 172,340 on 13th October 2023. He then obtained a Certificate of Order and Certificate of Order of Costs on 16th and 15th October 2024 and served them upon the Respondents and their advocates on 28th and 30th October 2024. However, despite several notices, the Respondents have declined, failed, neglected and/or ignored to settle the decretal amount.
5. The Ex-parte Applicant avers that the appropriate mode of execution proceedings against county governments is by way of orders of mandamus against the accounting officer of the relevant county government, in this instance, the County Executive Member for Finance, is the accounting officer.
6. The Ex-parte Applicant avers that the Respondents' properties are protected from due process of execution in the usual manner.

Respondents' Case

7. In opposition to the application, the Respondents filed a replying affidavit dated 11th March 2025, sworn by Asha Abdi, the Chief Officer- Finance, Nairobi City County.
8. The Respondents aver that the notice of motion is defective, an abuse of the court process and/or incompetent as the Applicant failed to point out in the required manner how the 1st Respondent failed to honour his payment.
9. It is the Respondents' case that the ex-parte Applicant served them the Certificate of Order on 23rd October 2023, which was towards the close of the second quarter of the financial year thus there were no available funds to make the payment. The County had already fully utilised all the amounts allocated for payment of legal fees and decretal for the Financial Year 2023/2024.
10. The Respondents aver that the 1st Respondent is funded through allocation of funds by the County Assembly and it can only be able to determine how much decretal sums it can pay based on the allocations for the financial year.
11. It is the Respondents' case that the ex-parte Applicant did not follow the procedure provided under Section 21 (4) of the *Government Proceedings Act*, Cap 40, Laws of Kenya which provides that no execution or attachment or 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.
12. The Respondents aver that the 2nd Respondent is not individually liable under any order for payment by government and that the 1st Respondent as a public institution dealing with public funds, is constrained by the *Public Finance Management Act* among other legislation regarding county expenditure.
13. The Respondents aver that 1st Respondent cannot commit funds unless budgeted for and approved by the County Assembly.
14. It is the Respondents' case that Section 125 of the *Public Finance Management Act* provides for the budget making process and the settlement of funds owed by the county must comply with Sections 117, 125, 129, 131 and 133 of the *Public Finance Management Act*.



15. The Respondent avers that the decision to pay involves various stakeholders and the many department of the County responsible for financial and fiscal matters. In the instant case involving human resource, the department has been informed to prioritize and budget for it in the next financial year.
16. The Respondents aver that the Applicant has not satisfied the requirements of execution as per the Public Finance Management Act and the Government Proceedings Act, therefore, he should not be granted the orders sought.

Ex-parte Applicant's Submissions

17. The Ex-parte Applicant submitted that on two issues: whether the Respondents have a legal obligation to satisfy the decree issued in ELRC Cause No. 205 of 2018; and whether the Ex-Parte Applicant is Entitled to Costs of this Application.
18. On the first issue, the Ex-parte Applicant submitted that Section 21(1) and (3) of the Government Proceedings Act provides that once a Certificate of Order against the Government has been issued and duly served, payment is mandatory. Additionally, the courts have consistently held that an order of mandamus is the appropriate remedy in such circumstances, as was affirmed in Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security ex parte Fredrick Manoah Egunza [2012] eKLR.
19. The Ex-parte Applicant submitted that he has complied with this statutory requirement by obtaining and serving the Certificate of Order and the Certificate of Order of Costs on the Respondents, however, the Respondents have failed, refused, and/or neglected to settle the decretal sum. He contends that the Respondents have no legal basis to withhold payment, and this court ought to compel them to comply through an order of mandamus.
20. It is the Ex-parte Applicant's submission that the Respondents are legally bound to settle the judgment debt, and the 2nd Respondent, as the accounting officer, bears the statutory duty to satisfy the decree but has failed to do so. This failure warrants the issuance of a writ of mandamus to compel compliance.
21. The Ex-parte Applicant submitted that the 2nd Respondent as the accounting officer, is responsible for financial obligations of the County, including settlement of court decrees, as provided under Section 148(1) of the Public Finance Management Act. Therefore, he is directly responsible for ensuring that the judgment in favor of the Applicant is settled.
22. The Ex-parte Applicant submitted that if indeed the Respondents are unable to satisfy the decretal amount they are at liberty to move the court for appropriate orders which would enable it to settle its obligations while staying afloat. However, it is not a reason for the Respondents to evade their responsibility to settle such obligations. Financial difficulty is only a consideration when it comes to determining the mode of settlement of a decree but is not a basis for declining to compel the Respondent to settle a sum decreed by the court to be due from it.
23. It is Ex-parte Applicant's submission that the Respondents' failure to settle the decree violates established legal principles requiring government bodies to meet court-ordered obligations. And the continued refusal to honour the judgment in favour of the Applicant is unlawful and unjustified.
24. On costs, the Ex-parte Applicant submitted that the Respondents' inaction has necessitated the filing of this judicial review application. In line with the principle that costs follow the event, the Ex-Parte Applicant is entitled to costs of this application.
25. I have examined the averments and submissions of the parties herein. The applicant has demonstrated that he is owed the moneys in question being kshs 683,465/-. The respondents have also not denied



owing the said money by virtue of the judgment entered against them in ELRC 205/2018 and the subsequent taxation of the bill of costs by the Deputy Registrar on 13/4/2023. The respondents had averred that they had not refused to pay the moneys in question but that the same had not been budgeted for.

26. It is now 2 years since the said judgment on February 2023 and so the respondent should have by now budgeted for the said amount. I find the application is merited and I allow the application for an order of mandamus which I now grant compelling the respondents to satisfy the decree in ELRC No 205 of 2018 dated 28th April 2023 and certificate of taxation dated 15th October 2024 all to the tune of kshs 683,465/-. The respondents will pay cost of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

