



Maritim v Governor, County Government of Bomet & 4 others (Judicial Review Miscellaneous Application E002 of 2023) [2024] KEELRC 142 (KLR) (6 February 2024) (Judgment)

Neutral citation: [2024] KEELRC 142 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E002 OF 2023
HS WASILWA, J
FEBRUARY 6, 2024**

BETWEEN

RICHARD KIMUTAI MARITIM APPLICANT

AND

GOVERNOR, COUNTY GOVERNMENT OF BOMET 1ST RESPONDENT

COUNTY SECRETARY, BOMET COUNTY 2ND RESPONDENT

BOMET COUNTY PUBLIC SERVICE BOARD 3RD RESPONDENT

**CHIEF EXECUTIVE COMMITTEE MEMBER FOR FINANCE, BOMET
COUNTY 4TH RESPONDENT**

CHIEF OFFICER, FINANCE, BOMET COUNTY 5TH RESPONDENT

JUDGMENT

1. This Ruling is in respect of the Applicant's Chamber Summons dated 29th March, 2023, brought pursuant to sections 8,9 & 10 of the [Law Reforms Act](#), Order 53, Rule 1&2 of the [Civil Procedure Rules](#), 2010 and all other enabling provisions of the law, seeking for the following Orders;-
 1. Spent.
 2. That leave be granted to the ex parte applicant to apply for an order of Mandamus to issue against the 2nd, 4th and 5th Respondents namely; County Secretary, Bomet County, Chief Executive Committee member for Finance, Bomet County and Chief Officer, Finance Bomet County, to compel them to proceed and pay out decretal sum of Kshs 187,078 being costs in Kericho ELRC Cause No. 111 of 2018, together with interest accrued from the date of decree.
 3. That the court do grant leave to the ex parte applicant, in default of payment to apply to cite and hold the Respondents to be in contempt of Court.



4. That the Honourable court do grant such further orders and or consequential orders for purposes of enforcing the ex parte applicant's judgement or decree herein.
5. That the costs of and incidental to this Application be provided for.
2. The Application herein is based on the grounds on the face of the application and the supporting affidavit of Joshua Kipkemboi Mutai, the Advocate ceased of the conduct of this matter on behalf of the ex parte Applicant.
3. The Advocate herein stated that he represented the ex parte Applicant herein in the ELRC Cause No. 111 of 2018, where he had been unfairly terminated. Upon filling the suit, the parties compromised the case therein and recorded a consent dated 22nd May, 2018. Further that costs were granted in favour of the claimant.
4. Consequently, he filed a party to party Bill of costs, which was taxed and a certificate of costs issued on the 17th December, 2019 for the sum of Kshs 187,078.
5. That he served the said certificate of costs upon the Respondents but that the said costs remain unpaid to date despite several demands and reminders thereof.
6. The applicant stated that the failure by the Respondents to pay his costs derogates from its obligations under section 21 of the *Government Proceedings Act*.
7. He stated that the actions of the Respondents are unlawful and amounts to abuse of powers as such he urged this Court to grant him leave to file a substantive motion and in effect allow the Application herein as prayed.
8. Despite service of the application herein upon the Respondent's advocates on the 27th July, 2023 as evidenced by the affidavit of service sworn by Joshua Kipkemoi Mutai on the 2nd October, 2023, the Respondent did not enter appearance or filed any response.
9. Direction were given for the application herein to be canvassed by written submission, which the Applicant herein filed on the 31st October, 2023, while the Respondent did not file any submissions.

Applicant's Submissions.

10. The Applicant submitted that the issue of quantum of costs and or taxation of the same is not in dispute and that the only issue is payment of costs due to the advocate as the same was not contested by the Respondents. It was argued that the Respondents have been making promises of satisfying the said costs for the last three years and none of the promises has materialized, causing the Applicant herein to file this Application demanding to be paid the said sum of money. In this he cited the case of *Republic v County Government of Kiambu Ex parte Laban J Macharia Muiruri* [2021] eklr where the Court held that; -

“As to whether the Respondent herein is under a duty to pay the subject decretal sums, an order of mandamus is normally issued when an officer or an authority by compulsion of law or statute is required to perform a duty, and that duty, despite demand in writing, has not been performed. Execution proceedings against a government or public authority under the *Government Proceedings Act* can only be as against the accounting officer or chief officer of the said government or authority, who is under a statutory duty to satisfy a judgment made by the Court against that body.”



11. The Applicant also cited the case of *Republic v Town Clerk of Webuye County Council & Another* HCCC 448 of 2006 wherein Majanja J. addressed the importance of the Court in ensuring that the right of a successful litigant to enjoy the fruits of his judgement as follows:

“...a decree holder’s right to enjoy fruits of his judgment must not be thwarted. When faced with such a scenario the Court should adopt an interpretation that favours enforcement and as far as possible secures accrued rights. My reasoning is underpinned by the values of the Constitution particularized in Article 10, the obligation of the court to do justice to the parties and to do so without delay under Article 159 (2) (a) & (b) and the Applicant’s right of access to justice protected under Article 48 of the *Constitution*.

12. In conclusion, the Applicant urged this Court to allow the application herein and compel the Respondent to pay the costs of Kshs 187,078 together with interest at 12% per annum from 17th December, 2019 which is equivalent to Kshs 89,797. Further award him costs of the Application of Kshs 70,000 owing to the length of time it has taken in court owing to delay cause by inaction by the Respondents all adding up to Kshs 346,875.

13. I have examined the averments and submissions of the applicant herein.

14. It is my finding that the applicant has established their case as required by law.

15. I therefore allow this application as prayed and grant the order of mandamus to issue against the respondents to compel them to pay the decretal sum of kshs.187,078/= being costs in Kericho ELRC Cause No. 111 of 2018 together with interest accrued from the date of this order.

16. Costs be borne by the respondent.

DATED AND DELIVERED IN OPEN COURT THIS 6TH DAY OF FEBRUARY, 2024.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mutai Joshua for Applicant - present

Joh Mark for Respondent – present

Court Assistant – Fred

