



**Barus v County Assembly of Baringo & 3 others (Judicial Review  
E005 of 2023) [2024] KEELRC 656 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 656 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
JUDICIAL REVIEW E005 OF 2023  
HS WASILWA, J  
MARCH 19, 2024**

**BETWEEN**

**JANE CHEPKORIR BARUS ..... APPLICANT**

**AND**

**THE COUNTY ASSEMBLY OF BARINGO ..... 1<sup>ST</sup> RESPONDENT**

**THE SPEAKER, COUNTY ASSEMBLY OF BARINGO ..... 2<sup>ND</sup> RESPONDENT**

**THE GOVERNOR, BARINGO COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**THE BARINGO COUNTY PUBLIC SERVICE BOARD ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. This Ruling is in respect of the Applicant’s leave Application filed through chamber Summons dated 4<sup>th</sup> August, 2023, brought pursuant to Order 53 Rule 1(2) of the *Civil Procedure Rules* and all other enabling provisions of the law, seeking for the following orders; -
  1. Spent.
  2. That the Applicant, Jane Chepkorir Barus, be granted leave to apply for an Order of Mandamus directed to the Respondent.
  3. That upon filing of this Application and it being certified urgent and the grant of leave to the Applicant to apply for an Order of Mandamus, the Application for an order of Mandamus herewith filed together with this Application be considered as duly filed.
  4. That the costs of this Application be costs in the cause.
2. The Application is premised on the fact that an order of Mandamus can only be applied for with leave from Court. Accordingly, that Judgement in the primary suit Petition 7 of 2019 was delivered on 25<sup>th</sup> June, 2021 for payment of Kshs 1,000,000 and despite several reminders the decretal sum has not be



- paid to the Applicant to date. Therefore, that its' only recourse is to approach this Court by a Judicial Review to compel the Respondent to pay her her decretal sum.
3. The Application herein is supported by the statutory statement and the verifying affidavit of the Applicant sworn on the 4<sup>th</sup> August, 2023.
  4. The affiant stated that the County Government of Baringo has the ability to pay the decretal sum but have outrightly refused to pay her. In turn, the Applicant has suffered loss due to the actions of the Respondents neglecting to pay the decretal sum.
  5. She avers that the Respondents are aware of the Orders of the Court as they participated throughout the hearing and delivery of the judgement herein. Furthermore, that the Judgement and decree was extracted and served on the Respondents.
  6. The Applicant stated that it is now three years since the judgement was delivered therefore that it behooves this Court to grant her leave to pursue her decretal sum in the Judicial review suit.
  7. The Application herein is opposed by the Respondent who filed a replying affidavit sworn by, Jacob K Chepkwony, the County Secretary of Baringo, on 23<sup>rd</sup> October, 2023.
  8. In the affidavit, the deponent stated that the Respondents have never refused to satisfy the decretal sum rather that the County Government had to make some budget for the same and they are currently in the process of raising the issue in the County's supplementary budget so that the Applicant can be paid.
  9. He maintained that the County Government has agreed in principle to pay the Applicant as soon as Supplementary budget is approved, therefore they urged this Court to indulge them for two more months, where they will make proposal of payments.
  10. He then prayed to be allowed to settle the issue herein out of court.
  11. Directions were given by this Court for the Application herein to be heard by written submission, however only the Applicant filed submissions.

### **Applicant's Submissions.**

12. The gist of the Applicant's submissions is on whether or not the application is merited. On that note the Applicant cited the Court of Appeal case of *Republic v Kenya National Examination Council Ex parte Gathenji and 9 Others* [1997] eKLR where the Court held that;-

“the scope and efficacy of an Order of Mandamus? Once again we turn to Halsbury's Law of England, 4th Edition Volume 1 at page 111 From Paragraph 89. That learned treatise says:- “The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.” At paragraph 90 headed “the mandate” it is stated:

“The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a



mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way...What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

13. On requirements to be made for an order of mandamus to issue, the Applicant cited the case of *Republic v Principal Secretary, Ministry of Internal Security & another Ex-Parte Schon Noorani & another* [2018] eKLR, where the Court held that:-

“Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in *Apotex Inc. v. Canada (Attorney General)* and, was also discussed in *Dragan v. Canada (Minister of Citizenship and Immigration)* The eight factors that must be present for the writ to issue are:-

- (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.”

14. Accordingly, that the Court issued the decree and Certificate of taxation which were all served on the Respondents, however the Respondent have not satisfied the same since 2021, 3 years down the line. Therefore, that the Applicant is not willing to settle the matter herein out of court.
15. It was also argued that execution against Government institutions must be done in line with the *Government Proceedings Act*, wherein section 21(3) imposes a duty upon the County accounting officer to pay such sums indicated in the certificate of Order and reiterated by the Githua J in the case of



Permanent Secretary Provincial Administration and Internal security case, which court stated that this provision does not condition payments to budgetary allocation and parliamentary approval of government expenditure in the financial year subsequent to which Government liabilities accrues.

16. On costs, it was submitted that costs follow event as stated in section 27(1) of the *Civil Procedure Act*, therefore that she is entitled to Costs.
17. I have examined all averments and submissions of the parties. From the response of the Respondents, they are ready and willing to settle the judgment sum as ordered by court. The admission renders filing of a Judicial Review application superfluous.
18. In the circumstances, I will decline the grant of leave to file the Judicial Review application as sought and instead direct the Respondents to settle the decretal sum as admitted.
19. Costs in the application.

**RULING DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF MARCH, 2024.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

In the presence of: -

Awuor for Petitioner – Absent

N/A for Respondents

Court Assistant - Fred

