



**Republic v Clerk, County Assembly of Mombasa & 3 others; Khalid (Exparte Applicant) (Judicial Review Application E003 of 2023) [2024] KEELRC 1481 (KLR) (14 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1481 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
JUDICIAL REVIEW APPLICATION E003 OF 2023**

**M MBARŪ, J  
MARCH 14, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**CLERK, COUNTY ASSEMBLY OF MOMBASA ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF OFFICER, FINANCE COUNTY GOVERNMENT OF  
MOMBASA ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF MOMBASA .... 3<sup>RD</sup>  
RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE, COUNTY  
GOVERNMENT OF MOMBASA ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**WALID KHALID ..... EXPARTE APPLICANT**

**JUDGMENT**

1. The ex parte applicant moved the court through application dated 26 January 2024 seeking judicial review orders against the respondents;

An Order of Judicial Review by way of Mandamus, to direct and compel the Clerk of the County Assembly of Mombasa, the Chief Officer responsible for Finance and financial matters of the County Government of Mombasa, the County Secretary of the County Government of Mombasa, and the County Executive Committee Member responsible for Finance and financial matters of the County Government of Mombasa, to satisfy:



- a. The Certificate of Order against the Government dated 22<sup>nd</sup> September 2023 for the sum of Kshs. 12,800,000 (Kenya Shillings Twelve Million, Eight Hundred Thousand), comprising the Decree dated 26<sup>th</sup> July 2018 issued in Mombasa ELRC Petition No. 342 of 2014 Walid Khalid v County Assembly of Mombasa, Speaker – County Assembly of Mombasa, and the Governor – County Government of Mombasa and the judgement and Order of the Court of Appeal dated 25<sup>th</sup> September 2020 in Mombasa Court of Appeal Civil Appeal No. 155 of 2018;
- b. The Certificate of Order for Costs against the Government dated 18<sup>th</sup> September 2023 for the sum of Kshs. 604,913.33 (Kenya Shillings Six Hundred and Four Thousand, Nine Hundred and Thirteen and thirty-three cents), comprising the Certificate of Costs dated 04<sup>th</sup> November 2021, issued in Mombasa ELRC Petition No. 342 of 2014 Walid Khalid v County Assembly of Mombasa, Speaker – County Assembly of Mombasa, and the Governor – County Government of Mombasa;

2. Costs be borne by the Respondents.

The application is supported by the affidavit of the ex parte applicant on the grounds that he has a decree of the court dated 26 July 2018 issued in Mombasa ELRC Petition No.342 of 2014 Walid Khalid v County Government of Mombasa, Speaker -County Assembly of Mombasa & Mombasa County Government and the judgment Order of the Court of Appeal dated 25 September 2020 in Mombasa Court of Appeal Civil Appeal No.155 of 2018.

3. A Certificate of Order for Costs against the respondents dated 18 September 2023 for the sum of Kshs. 604,913.33 comprising the Certificate of Costs dated 4 November 2021 issued herein against the respondents.
4. The 1<sup>st</sup> Respondent is the Clerk of the County Assembly of Mombasa. The 2<sup>nd</sup> Respondent is the Chief Officer Finance of the County Government of Mombasa. The 3<sup>rd</sup> Respondent is the County Secretary of the County Government of Mombasa. The 4<sup>th</sup> Respondent is the County Executive Committee Member for Finance of the County Government of Mombasa.
5. The ex parte applicant is seeking for an order of Judicial Review by way of Mandamus, to direct and compel the Clerk of the County Assembly of Mombasa, the Chief Officer responsible for Finance and financial matters of the County Government of Mombasa, the County Secretary of the County Government of Mombasa, and the County Executive Committee Member responsible for Finance and financial matters of the County Government of Mombasa. These orders are sought to satisfy the Certificate of Order against the Government dated 22<sup>nd</sup> September 2023 for the sum of Kshs. 12,800,000.
6. The ex parte applicant avers in his affidavit that he has since obtained Certificate of Order for Costs against the Government dated 18<sup>th</sup> September 2023 for the sum of Kshs. 604,913.33 comprising the Certificate of Costs dated 04<sup>th</sup> November 2021, issued herein against the respondents.
7. There exists an unsatisfied Decree and Certificate of Costs of this court all amounting Kshs. 13,404,913.33 as at 22<sup>nd</sup> September 2023. The Decree arises from the judgement delivered on 26<sup>th</sup> July 2018 in favour of the Applicant, and awarded the Applicant therein in the sum of Kshs. 8,000,000 for unlawful and unconstitutional removal from office, and Kshs. 4,000,000 for loss of income and for salary due to the unjustified removal from office. This brought the total sum awarded to Kshs. 12,000,000 which would be subject to statutory deductions. The court also awarded the Applicant the costs of the suit and interest from the date of judgement till payment in full.
8. The Applicant's costs of the suit were taxed at Kshs. 604,913.33 on 04<sup>th</sup> November 2021.



The ex parte applicant aver that aggrieved with the above-mentioned judgement and decree of the Employment and Labour Relations Court delivered on 26<sup>th</sup> July 2018, the respondents filed Mombasa Court of Appeal Civil Appeal No.155 of 2018 The Governor of the County Government of Mombasa v Walid Khalid, County Assembly of Mombasa, Speaker – County Assembly of Mombasa and the County Government of Mombasa. On 25<sup>th</sup> September 2020, the Court of Appeal found that the appeal partially succeeded, and upheld judgment herein with an award of Kshs. 8,000,000. The award of Kshs. 4,000,000 for loss of income and for salary, was set aside.

9. The Applicant has now obtained a Certificate of Order against the Government dated 22<sup>nd</sup> September 2023 for the decretal sum of Kshs. 8,000,000 plus interest accrued at 12% per annum from 26<sup>th</sup> July 2018, being Kshs. 4,800,000. The Applicant has also obtained a Certificate of Order for Costs against the Government dated 18<sup>th</sup> September 2023 for the sum of Kshs. 604,913.33. This brings the total outstanding sum due to Kshs. 13,404,913.33.
10. The Applicant served the said Certificates upon the Respondents, who are the authorized signatories of the accounts and have the constitutional obligation to satisfy the Decree, but the Respondents, in gross contempt of the Decree and Orders of the Court, neglected to pay. The Applicant demanded payment owed, vide a letter dated 25<sup>th</sup> September 2023 within ten (10) days, but this effort bore no results, thereby necessitating this application. The Respondents have not engaged the Applicant on how to settle the decree and have declined to reply to the aforesaid demand letter. This application is the only remaining means for ensuring that the Applicant enjoys the fruits of his judgment and ensures that his fundamental right to access justice guaranteed by Article 48 of *the Constitution*, is protected.
11. The exported applicant avers that for each month that the Decree remains unpaid, it continues to accrue Kshs. 80,000 as interest on the Decree. It is therefore in public interest that the application filed herewith is determined as soon as possible, to save the public from further avoidable losses, and to ensure prudence in expenditure of public finance, a duty upon this Honourable Court and upon the Respondents, under Articles 10 and 201(d) of *the Constitution* of Kenya.

## DIVISION

### Determination

12. The respondents and the officers responsible were served with the application herein but failed to attend or respond to the same.

The ex parte applicant has moved the court to secure his rights seeking orders of Mandamus, to compel the Respondents to perform their functions under *the constitution* and the law. He has valid Certificate of Order against the respondents and Government dated 22<sup>nd</sup> September 2023 for the decretal sum of Kshs. 8,000,000 plus interest accrued at 12% per annum from 26<sup>th</sup> July 2018, being Kshs. 4,800,000. The ex parte applicant has also obtained a Certificate of Order for Costs against the Government dated 18<sup>th</sup> September 2023 for the sum of Kshs. 604,913.33. This brings the total outstanding sum due to Kshs. 13,404,913.33.

13. Section 21(1) of the *Government Proceedings Act* provides:

Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or,



in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

14. Further, Section 21 (3) of the said Act on the other hand provides;

If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:

15. Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.

16. The ex parte applicant has used the judicial process to secure his rights and obtained orders from this court and the Court of Appeal. he holds a Certificate Order against the Government dated 22 September 2023 and Certificate of Order for Costs against the government dated 18 September 2023. In the case of Republic v The Attorney General & Another ex parte James Alfred Koroso, the Court held that;

...in the present case the ex parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done he will forever be left baby sitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of *the Constitution* which enjoins the State to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his/her lawful rights which have been decreed by a Court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under Article 129 of *the Constitution* executive authority derives from the people of Kenya and is to be exercised in accordance with *the Constitution* in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit...

The institution of judicial review proceedings in the nature of mandamus cannot be equated with execution proceedings. In seeking an order for mandamus the applicant is seeking, not relief against the Government, but to compel a Government official to do what the Government, through Parliament, has directed him to do. The relief sought is not “execution or attachment or process in the nature thereof”. It is not sought to make any person “individually liable for any order for any payment” but merely to oblige a



Government officer to pay, out of the funds provided by Parliament, a debt held to be due by the High Court, in accordance with a duty cast upon him by Parliament. ...

17. The respondents are public and accounting officers who owe a duty to the people of Mombasa County who they serve. These include the ex parte applicant. In mandamus cases it is recognised that when statutory duty is cast upon a Public Officer in his official capacity and the duty is owed not to the State but to the public any person having a sufficient legal interest in the performance of the duty may apply to the Courts for an order of mandamus to enforce it. In other words, mandamus is a remedy through which a public officer is compelled to do a duty imposed upon him by the law as held in Republic v Attorney General & another Ex-Parte the Standard Limited & Baraza Limited [2018] eKLR.
18. without any objections to the orders sought, in the interests of justice and to secure the ex parte applicant from incurring further costs, the orders sought are justified.
19. Accordingly, judgment is hereby entered for the ex parte applicant against the respondents who are directed to satisfy the following;
  - a. The Certificate of Order against the Government dated 22<sup>nd</sup> September 2023 for the sum of Kshs. 12,800,000 comprising the Decree dated 26<sup>th</sup> July 2018 issued in Mombasa ELRC Petition No.342 of 2014 Walid Khalid v County Assembly of Mombasa, Speaker – County Assembly of Mombasa, and The Governor – County Government of Mombasa and the judgement and Order of the Court of Appeal dated 25<sup>th</sup> September
  - b. The Certificate of Order for Costs against the Government dated 18<sup>th</sup> September 2023 for the sum of Kshs. 604,913.33 comprising the Certificate of Costs dated 04<sup>th</sup> November 2021, issued in Mombasa ELRC Petition No.342 of 2014 Walid Khalid v County Assembly of Mombasa, Speaker – County Assembly of Mombasa, and The Governor – County Government of Mombasa;
  - c. Payment within 21 days of this Judgement and Order;
  - d. Costs of these proceedings to be borne by the respondents.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 14 DAY OF MARCH 2024.**

**DELIVERED IN OPEN COURT AT MOMBASA THIS 14 DAY OF MARCH 2024.**

M. MBARÚ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and .....

