



**Republic v County Government of Kisumu & 3 others; Nakitari (Exparte Applicant) (Judicial Review Application E002 of 2024) [2024] KEELRC 1203 (KLR) (22 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1203 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
JUDICIAL REVIEW APPLICATION E002 OF 2024  
S RADIDO, J  
MAY 22, 2024  
IN THE MATTER OF APPLICATION FOR THE  
JUDICIAL REVIEW ORDER FOR MANDAMUS  
AND  
IN THE MATTER OF ENFORCEMENT OF COURT  
ORDERS AND DECREES AGAINST THE GOVERNMENT  
AND  
IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT  
AND  
IN THE MATTER OF THE COUNTY GOVERNMENTS ACT**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF KISUMU ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF KISUMU .... 2<sup>ND</sup>  
RESPONDENT**

**CFO FINANCE, COUNTY GOVERNMENT KISUMU ..... 3<sup>RD</sup> RESPONDENT**

**CEC-FINANCE & ECONOMIC PLANNING, COUNTY GOVERNMENT OF  
KISUMU ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**HUMPHREY OKUKU NAKITARI ..... EXPARTE APPLICANT**



## JUDGMENT

1. The Court granted leave to Humphrey Okuku Nakitare (the *ex parte* applicant) on 5 February 2024, to commence judicial review proceedings against the Respondents.
2. The *ex parte* applicant filed the Judicial Review Motion on 8 February 2024, and the Respondents filed a Notice of Appointment of Advocate on 5 March 2024.
3. When the Motion came up for hearing on 5 March 2024, the Respondents informed the Court that they wished to attempt an out-of-court settlement, and the Court gave the parties up to 8 April 2024 to negotiate.
4. The parties did not reach an agreement and when they appeared in Court on 8 April 2024, the Court directed that if no consent was reached by 23 April 2024, the Motion would be heard on 23 April 2024.
5. When the Motion came up on 23 April 2024, the Respondents informed the Court that payment was being processed and the Court directed that the proceedings be mentioned the next day.
6. However, the Respondents did not keep their promise on processing the payment and on 24 April 2024, the Court directed the Respondents to file a response to the Motion before 1 May 2024, the *ex parte* applicant to file a further affidavit, and further that the parties to file and exchange submissions.
7. The *ex parte* applicant filed a further affidavit and submissions on 13 May 2024 (should have been filed and served by 8 May 2024). The Respondents' submissions were not on record by the agreed timeline of 15 May 2024.
8. The Court has considered the Motion, affidavits and submissions.
9. The *ex parte* applicant extracted and served a decree upon the Respondents on 7 September 2023, and he formally demanded payment through a letter dated 8 September 2023.
10. The Respondents did not pay hence the instant proceedings.
11. Execution proceedings against the government is guided by section 21 of the [Government Proceedings Act](#).
12. One of the primary requirements before the Court gives its imprimatur to execution against the government is a Certificate of Order against the government as envisaged by section 21 of the [Government Proceedings Act](#) and Order 29 Rule 3 of the [Civil Procedure Rules](#).
13. The High Court dealt with the question of Certificate of Order against the government in [R v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security ex-parte Fredrick Manoah Egunza](#) (2012) eKLR follows:

In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. 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. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. 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. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.

14. This Court endorses and applies the holding in the above-cited decision that a Certificate of Order against the government should have been obtained and served upon the County Attorney (instead of Hon Attorney General as the execution is against a County Government).
15. The ex parte applicant herein has not exhibited any Certificate of Order against the government or explained whether such a Certificate was issued.
16. The failure renders the proceedings incompetent.

#### **Orders**

17. In light of the above, the Court strikes out the Motion dated 7 February 2024 and filed in Court on 8 February 2024 for being incompetent.
18. No order on costs as the Respondents did not file a response within the agreed timelines.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 22<sup>ND</sup> DAY OF MAY 2024.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For ex parte applicant Amondi & Co. Advocates

For Respondents Office of the County Attorney

Court Assistant Chemwolo

