



**Republic v The County Secretary Nyamira County & 2 others;
Osumu & 3 others (Exparte Applicants) (Judicial Review Application
E009 of 2024) [2024] KEELRC 1597 (KLR) (26 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1597 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

JUDICIAL REVIEW APPLICATION E009 OF 2024

S RADIDO, J

JUNE 26, 2024

**IN THE MATTER OF AN APPLICATION TO
APPLY FOR JUDICIAL REVIEW (MANDAMUS)**

AND

IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT, S (2),(4)

AND

IN THE MATTER OF ORDER 22 AND 29 OF THE CPA CAP 21

AND

IN THE MATTER OF ORDER 53(1) OF THE CIVIL PROCEDURE RULES

AND

**IN THE MATTER OF EXECUTION OF A DECREE
FOR THE SUM OF KSHS 1,762,050.00 ONLY**

AND

**IN THE MATTER OF KISUMU ELRC PETITION
NO. 23 OF 2019, ANDREW OCHENGO OSUMU & 3**

OTHERS V THE COUNTY GOVERNMENT OF NYAMIRA & 6 OTHERS

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY SECRETARY NYAMIRA COUNTY 1ST RESPONDENT

THE CHIEF OFFICER FINANCE & ACCOUNTING SERVICES NYAMIRA

COUNTY 2ND RESPONDENT



**THE CHIEF OFFICER ECONOMIC PLANNING, RESOURCE MOBILISATION
AND ICT, NYAMIRA COUNTY 3RD RESPONDENT**

AND

ANDREW OCHENGO OSUMU EXPARTE APPLICANT

BOAZ MOMANYI NYAUMA EXPARTE APPLICANT

HERBERT NYAMWANGE EXPARTE APPLICANT

EVERLYNE MANGAA EXPARTE APPLICANT

JUDGMENT

1. Through a Motion dated 28 March 2024, the ex parte applicants seek orders:
 - i. An order of mandamus to issue against the Respondents herein namely the County Secretary, the CEC Member, Finance and Accounting Services & the Chief Officer, Economic Planning, Resource Mobilisation & ICT to compel them to proceed and pay out the decretal sum of Kshs 1,762,050.00/- only, being Party to Party Bill of Costs in Kisumu ELRC Petition No. 23 of 2019, Andrew Ochengo Osumo & 3 others v the County Government of Nyamira & 6 others, the same being assessed costs of the Petition whose Ruling was delivered on the 2nd November 2022.
 - ii. The Court be pleased to set timelines and/or duration within which the Respondents will settle the decretal sum with interest accruing until the date of payment.
 - iii. That the applicants be at liberty to apply to this Court for all necessary and/or consequent orders that this Honourable Court may deem fit and just to grant in the circumstances.
 - iv. Costs of the application be provided for.
2. The grounds in support of the Motion are that the ex parte applicants' Party to Party costs were taxed at Kshs 1,762,050/- on 18 January 2022; the Certificate of Taxation was served upon the County Attorney as required by law and that despite the service, the Respondents had refused or declined to satisfy the costs.
3. When the Motion came up on 9 May 2024, Ms Moenche for the Respondents indicated that service was effected on 18 April 2024. Ms Moenche requested for 21 days in order to respond.
4. The Court directed the Respondents to file and serve a response on or before 20 May 2024. The Respondents responses were not on record by 13 June 2024, when the Court prepared this Judgment.
5. The parties were also directed to file and exchange submissions.
6. The ex-parte applicants filed their submissions on 28 May 2024. The Respondents' submissions were not on record by the agreed timeline of 14 June 2024.
7. The Court has considered the Motion, affidavits, and submissions on record.
8. The Court granted leave to the ex parte applicants on 18 March 2024 to commence these judicial review proceedings.



9. There is evidence on record that the Respondents were served for an advocate appeared in Court on 9 May 2024 and addressed the Court, though she had not formally come on record.
10. Further, there is evidence that both the Certificate of Taxation and Certificate of Costs against the County Government were issued and served.
11. The Respondents have failed or declined to satisfy the costs. No explanation or difficulty has been disclosed for the failure to satisfy the costs. It is, therefore, the position that there has been willful neglect to satisfy the costs.
12. The Court finds the Motion merited.

Orders

13. In light of the above, the Court orders:
 - (i) An order of mandamus be and is hereby issued against the Respondents herein namely the County Secretary, the CEC Member, Finance and Accounting Services & the Chief Officer, Economic Planning, Resource Mobilisation & ICT compelling them to pay sum of Kshs 1,762,050.00/- only, being Party to Party Bill of Costs in Kisumu ELRC Petition No. 23 of 2019, Andrew Ochengo Osumo & 3 others v the County Government of Nyamira & 6 Ors to the ex-parte applicants.
14. The ex parte applicants to have costs of the Motion.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 26TH DAY OF JUNE 2024.

Radido Stephen, MCI Arb

Judge

Appearances

For ex parte applicants Ochoki & Co. Advocates

For Respondents no formal participation

Court Assistant Chemwolo

