



**Boro & another v Nairobi City County (Judicial Review E015 of 2024)
[2024] KEELRC 2437 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2437 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW E015 OF 2024
AN MWAURE, J
SEPTEMBER 30, 2024**

BETWEEN

CHARLES GICHIA BORO 1ST APPLICANT

JONES KIMUYU NGUNGH 2ND APPLICANT

AND

NAIROBI CITY COUNTY RESPONDENT

RULING

1. The applicant by his notice of motion application dated May 4, 2024 seeks the following prayers:
 1. That an order of *mandamus* do issue to compel the respondent to comply with the honourable court’s decree and certificate of order issued on December 19, 2019 and March 22, 2024 respectively in ELRC Nairobi claim No. 376 of 2014 *Charles Gichia Boro and Jones kimuyu Ngungah v Nairoi City County* and pay the applicants the sum of Kenya shillings one million, five hundred and eight thousand, two hundred and forty five ninety seven cents (kshs 1,508,245.97) being the decretal sum and interest and the cost of the suit.
 2. That all the necessary and consequential orders and directions be given.
 3. That the costs of this application be award to the applicant herein.
2. The court granted the applicant by its order issued on May 7, 2024 the above judgment. The applicant is supported by the supporting affidavit of Charles Gichua Boro who deponed that judgment was entered in favour of the applicant on 5th July 2019 for Kshs 459,665/- for Charles Gichia Boro and for Jones Kimuyu Ngungah he was awarded kshs 423,120/40 with interest and costs. Decree was issued on December 19, 2019 and a certificate of order was issued on March 22, 2024.



3. The said sums have continued to accrue interest respectively and bill of costs was taxed on August 16, 2019 at kshs 127,150/-. The respondent therefore owes the applicants kshs 1,508,245.97 and respondent has failed to settle the same.
4. The respondent in his replying affidavit deponed by Asha Abdi the County Chief Officer Finance and of the respondent dated July 15, 2024 avers that County Government works on strict budget constraints and so they had not provided these sums in their current financial year budget. They claim they only received this demand in May 2024 after they had made their budget and so they oppose the application.
5. The court considered the applicant's submission dated July 9, 2024 and the respondent's submissions as well dated 15/7/2024.
6. The respondents in their submissions aver they are willing to settle the decretal sum once the sum is factored in the county budget. They state that currently the budget has already been approved and the said sum was not provided. They therefore urge the court to grant them consent to settle the said sum once it is provided in the County Government.

Analysis and determination

7. The applicants vide suit E376 of 2014 and judgment delivered on July 5, 2019 were awarded the sum of kshs 459,665/00 and 423,120/40 respectively and thereafter were awarded costs of kshs 127,150/- by the bill of costs dated August 6, 2019. The total amount due and owing is kshs 1,508,245/97. The respondent have never paid the said amount and they have never appealed against the judgment of this honourable court. Neither has the honourable court set the same aside. The same ought then to have been settled. The certificate of order was issued on March 22, 2024.
8. The respondent's defence for failure to settle the decretal sum is that the same was not in their budget and they claim they are willing to settle the same once it is budgeted for.
9. This is a very old case of 2014 and judgment was delivered on July 5, 2019. The respondents should have given concrete proposals as to how they intend to settle the decretal sum. They cannot make blanket propositions that they will settle the decretal sum when funds are available. Funds must be budgeted for. Their averment that they will settle the decretal sum cannot be taken seriously and if the court rejects this application injustice will be meted on the applicants who will have a mere paper judgment with no likelihood of realising the fruit of their judgment.
10. In the case of *Kisya Investments Ltd v Attorney General & Another* [2005] eKLR the court placed a duty on the respondent to honour judgment as the public interest also refers to the applicant's right to realize the fruit of its judgment.
11. As held in the case of *Republic v Attorney General & Another ex parte James Alfred Koroso* [2013] eKLR which was cited by the applicants if mandamus was refused there is no other legal remedy open to the applicant. it was also admitted in that matter that there were no alternative instructions as to the manner in which, if at all, the government proposed to satisfy the applicants decree.
12. The instant case the court is convinced the applicants deserve to receive the fruit of their judgment and so grants them the order of *mandamus* to compel the respondent to comply with the honourable court's decree and certificate of order issued on December 19, 2019 and March 22, 2024 respectively in ELRC Nairobi Claim No 378 of 2014 and pay the applicants the sum of Kenya shillings 1,508,245/97 being the decretal sum and interests as well as the costs of the suit.
13. The court also awards the costs of the application to the applicants.



Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 30TH DAY OF SEPTEMBER, 2024.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on March 15, 2020 and subsequent directions of April 21, 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the *Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the *Constitution* and the provisions of Section 1B of the *Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

