



**Republic v Chief Finance Officer, County Government of Kisumu & 2 others;
Otieno, Yogo, Ojuro & Co Advocates (Exparte Applicant) (Judicial Review
E020 of 2024) [2024] KEELRC 2571 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2571 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW E020 OF 2024
JK GAKERI, J
OCTOBER 24, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**CHIEF FINANCE OFFICER, COUNTY GOVERNMENT OF
KISUMU 1ST RESPONDENT**

**EXECUTIVE MEMBER OF FINANCE, COUNTY GOVERNMENT OF
KISUMU 2ND RESPONDENT**

COUNTY GOVERNMENT OF KISUMU 3RD RESPONDENT

AND

OTIENO, YOGO, OJURO & CO ADVOCATES EXPARTE APPLICANT

RULING

1. Before the Court for determination is the Applicants Notice of Motion dated 19th June, 2024 seeking orders THAT:
 - i. An order of Judicial Review by way of mandamus directed to the Chief Finance Officer, County Government of Kisumu, Executive Member for Finance County Government of Kisumu and the County Government of Kisumu the 1st, 2nd and 3rd Respondents herein respectively to pay the Ex parte Applicant the sum of Kshs.411,988.00 together with 14% per annum from 21st November, 2023 until full payment and interest payable on the cost of the suit from 15th February, 2024 in MISC. CIVIL APP. NO. E017 of 2023. The same arose from ELRC Petition No. E08 of 2020.
 - ii. The costs of this Application be borne by the Respondents.



2. The Notice of Motion is expressed under Order 29 and 53 Rule 3 and 4 of the Civil Procedure Rules and is based on the grounds set out on its face and the Supporting Affidavit of Mr. Eric O. Ojaro sworn on 19th June, 2024 who deposes that he is a partner in the firm of Otieno Yogo, Ojuro Company Advocates and had personal knowledge of the Applicant.
3. The affiant deposes that the Applicant was on record for the Respondents in ELRC Petition No. E08 of 2020, prepared and filed its Bill of Costs for the above matter in ELRC MISC. APP. No. E017 of 2023 and the Registrar issued certificate of costs at the sum of Kshs.411,988.00.
4. That the relationship between the parties was severed prompting the instant application to convert the certificates of costs to a decree and judgment in favour of the Applicant/Advocates and the same was issued on 27th May, 2024.
5. The affiant further deposes that as the Chief Finance Officer and Executive Member for Finance of the County Government of Kisumu are in charge of financial affairs of the County Government of Kisumu, and as Public Officers it is their obligation to ensure that all debts of the County Government of Kisumu are settled promptly.
6. The affiant deposes that the Respondents here failed, refused and neglected to discharge their public duty of paying the Applicant by failing to make payment as ordered by the Court and the Applicant has no other way of enforcing the Judgment of the Court as the 3rd Respondent is a County Government created wider.
7. *The Constitution* of Kenya and is protected from any other form of execution. That the Court Granted leave to the Applicant to file this Application on 5th June, 2024.

Response

8. When the Application dated 15th May, 2024 came up for hearing on 22nd July, 2024 Counsel for the Respondents sought 14 days to file a response but the Court granted her 7 days to do so and hearing was slated for 17th September, 2024 when Counsel for the Respondent was absent and hearing was postponed to 14th October, 2024 when Counsel for the Respondent was once again absent.
9. Counsel for the Applicant seeks the Orders of Mandamus against the Respondents for the sum of Kshs.411,988.00 with interest at 14% per annum and costs of the instant Application.
10. From the record, it is decipherable that the Respondents were served with the instant Application but have refused, failed and/or neglected to file a response notwithstanding the fact that they were accorded adequate time by the Court and hearing of the Application postponed once to accommodate them.
11. Failure by the Respondents to file a Reply and/or participate in the proceedings leaves the Court with no other option but to grant the instant Application as it is unopposed.
12. Consequently, the Applicants Notice of Motion dated 19th June, 2024 is granted as prayed.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 24TH DAY OF OCTOBER, 2024

DR. JACOB GAKERI

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 15th March 2020 and subsequent directions of 21st April 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 *Civil 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.

DR. JACOB GAKERI

JUDGE

