



**Kenya Medical Practitioners, Pharmacists and Dentists Union v Laikipia
County Service Public Board & 2 others (Judicial Review Application
E001 of 2024) [2024] KEELRC 2759 (KLR) (8 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2759 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
JUDICIAL REVIEW APPLICATION E001 OF 2024
ON MAKAU, J
NOVEMBER 8, 2024**

BETWEEN

**KENYA MEDICAL PRACTITIONERS, PHARMACISTS AND DENTISTS
UNION APPLICANT**

AND

LAIKIPIA COUNTY SERVICE PUBLIC BOARD 1ST RESPONDENT

**CHAIRPERSON, LAIKIPIA COUNTY SERVICE PUBLIC BOARD 2ND
RESPONDENT**

**SECRETARY, LAIKIPIA COUNTY SERVICE PUBLIC BOARD 3RD
RESPONDENT**

JUDGMENT

1. The applicant filed a Notice of Motion dated 6th March 2024 pursuant to the leave given by this Court on 28th February 2024. The application seeks the following reliefs:
 - a. An order of mandamus to compel the Respondents to forthwith pay or cause to be paid the sum of Kshs. 15,000,000 (Fifteen Million Kenya Shillings) to satisfy the certificate of taxation and certificate of order made against it in Nyeri ELRC Petition 26 of 2020.
 - b. The said payment be made in full within thirty (30) days from the date of order 1 above, and in default, a notice to show cause be issued against the 1st Respondent’s Chairman and the secretary to show cause why they should not be cited and committed to jail for six months for contempt of court.
 - c. Costs of these judicial review proceedings be granted and assessed at Kshs. 100,000.00.



2. The application is premised on the grounds set out on the body of the motion, the Statutory Statement and verifying Affidavit filed with the leave application. In brief the applicant's case is that the Court dismissed with costs, Nyeri ELRC Petition 26 of 2020 vide which the respondents were challenging the Public Service Commission (PSC) decision in Appeal No. CAP/31/19 of 2019; that, subsequently, the Applicant filed its Party and Party Bill of costs dated 22nd June 2022 which was taxed on 16th August 2023 at Kshs. 15,000,000; that the 1st Respondent challenged the award of costs by filing Misc. Application E017 of 2023 which was struck out by this Court with costs on 27th October 2023; and that despite serving the 1st Respondent, its counsel and the County Attorney with Certificate of Taxation and a Certificate of Order Against the Government, in Nyeri ELRC Petition 26 of 2020 followed by several demands for payment, the respondents have failed to settle the taxed costs.
3. The Respondents opposed the motion vide the Replying Affidavit of Josephat Lekamario, the 3rd Respondent herein sworn on 14th May 2024. In the respondents' case is that the 1st Respondent has been unable to settle the pay the debt owing to financial constraints as there was no budgetary allocation for the same; that the budget process had closed by the time the ruling on the costs was entered; that it is impossible for the respondents to pay the debt without budgetary allocation because even the annual budget for the 1st respondent is Kshs. 14,000,000; that effort to meet the applicant's counsel to agree on a payment plan with reasonable terms and the discussions were still ongoing; that plans to cater for the debt in the supplementary and subsequent budgets has been initiated; that payment of the whole sum within 30 days was as prayed is impossible and unrealistic considering the 1st Respondent's budget which never goes past Kshs. 14,000,000; that payment proposal has been forwarded the to the 1st Respondent's members for approval before forwarding it to the county assembly for approval; that the application is premature, superfluous and an abuse of court process in light of the said negotiations. Therefore, the respondents prayed for the application to be dismissed with costs.

Determination

4. The main issue for determination by this Court is whether the Applicant has demonstrated sufficient grounds for the court to issue the order of Mandamus against the respondents.
5. The Court of Appeal discussed the circumstances under which an order of mandamus is issued in *Republic v Kenya National Examination Council ex-parte Gathenji & 8 others* Civil Appeal No. 234 of 1996 by citing with approval, the *Halsbury's Law of England*, 4th Edition.Vol.7p.111 para 89 thus:

“The order of mandamus is of most extensive remedial nature and is in form of a command issuing from the high Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”
6. As held by the Court of Appeal in the above case, the principle of law flowing from the foregoing paragraph is that an order of mandamus is issued to compel a person or body of persons to perform a public duty imposed on them by a statute and where that person or body of persons have failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.



7. In the instant case, there is a valid Certificate of Costs and an Order Against the Government and the respondents did not dispute the obligation to settle the same. All what they requested for was time to secure budgetary allocation to facilitate the settlement of the debt. They alleged that the court decision came after the close of budget process and the Kshs.14,000,000 annual budget for the 1st respondent cannot cater for the applicant's debt. They have however, taken steps to have the applicant's debt included in a supplementary budget and also engaged the applicant's counsel to agree on a reasonable payment plan.
8. The time when the respondents' request to seek budget allocation to facilitate settlement of the Certificate of Costs was contained in the Replying Affidavit sworn on 14th May 2024. The process of budget making for the new financial year must have ended by now and therefore the failure to settle the applicant's Certificate of Costs not justified.
9. The applicant cannot execute against the 1st respondent under the *Civil Procedure Rules* but only pursue payment under section 21 of the *Government Proceedings Act* which provides as follows:

“ 21. Satisfaction of orders against the Government

- (1) 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.

- (2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
- (3) 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:

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.

- (4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.
- (5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.”

10. The applicant has demonstrated that he fully complied with the above provision of the law but the respondents have failed to settle the Certificate of Costs issued by this court. I appreciate the explanation given by the respondents that they were prevented from settling the Certificate of Costs by factors beyond their control. However, it is trite law that a Certificate of Costs from the Court is never a request but a lawful command to be complied with by the person to whom it is directed. It should also be complied without any delay.

11. I gather support from *Republic v Town Clerk of Webuye County Council & Another* [2014] eKLR where Majanja J stated as follows:

“... On the other hand, a decree holder’s right to enjoy fruits of his judgment must not be thwarted. When faced with such a scenario the Court should adopt an interpretation that favours enforcement and as far as possible secures accrued rights. My reasoning is underpinned by the values of the *Constitution* particularized in Article 10, the obligation of the court to do justice to the parties and to do so without delay under Article 159 (2) (a) & (b) and the Applicant’s right of access to justice protected under Article 48 of the *Constitution*.”

12. In this case the respondents had sufficient time to mobilize funds for settling the decretal sum but they have persisted in their default. Consequently, I am satisfied that the applicant has laid before the court sufficient basis upon which an order of mandamus should issue.

13. However, the application for an order to have the 2nd and 3rd respondent attend court to show cause why they should not be committed to civil jail for failure to settle the Certificate of Costs is a bit premature and it is declined. Likewise, the order for award of Kshs.100,000 as costs of the application is decline because no basis has been shown for that figure. Consequently, I allow the application to the extent highlighted above and enter judgment for the applicant and against the respondents as follows:

- i. An order of Mandamus be and is hereby issued compelling the Respondents to pay the Applicant the sum of Kshs. 15,000,000 being the costs awarded to him in Nyeri ELRC Petition No E026 of 2020.
- ii. The applicant is also awarded cost of this suit, to be agreed upon or taxed.

DATED, SIGNED AND DELIVERED AT NYERI THIS 8TH DAY OF NOVEMBER, 2024.



ONESMUS N MAKAU

JUDGE

ORDER

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the [ELRC Procedure Rules](#) which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

