



Republic v County Government of Meru & 4 others; Muccheke (Exparte Applicant) (Judicial Review Application E003 of 2024) [2024] KEELRC 2764 (KLR) (8 November 2024) (Judgment)

Neutral citation: [2024] KEELRC 2764 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
JUDICIAL REVIEW APPLICATION E003 OF 2024
ON MAKAU, J
NOVEMBER 8, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF MERU 1ST RESPONDENT

**COUNTY EXECUTIVE COMMITTEE (CECM) MEMBER FINANCE,
GOVERNMENT OF MERU 2ND RESPONDENT**

**CHIEF OFFICER FINANCE, COUNTY GOVERNMENT OF
MERU 3RD RESPONDENT**

**CHIEF OFFICER LEGAL AFFAIRS, PUBLIC SERVICE MANAGEMENT AND
ADMINISTRATION, COUNTY GOVERNMENT OF MERU 4TH RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF MERU 5TH
RESPONDENT**

AND

FRANCIS KIBURI MUCHEKE EXPARTE APPLICANT

JUDGMENT

1. By a Notice of Motion dated 15th February 2024 the applicant seeks the following orders:
 - a. This Honourable Court do issue an order of mandamus compelling the Respondents herein to pay the Applicant the following sums:
 - i. Kshs. 3,107,863.10 together with interest thereon at court rates from 17th November 2022 until the date of payment in full, being compensation award by the Director Occupation Safety and Health Services awarded to the ex-parte Applicant against the



1st Respondent and adopted by this Court in Meru ELRC Misc Application No E006 of 2022.

- ii. Kshs. 196,307.26 being costs which were awarded to the ex-parte applicant herein against the 1st Respondent herein in Meru ELRC Misc Application No E006 of 2022.
 - b. The Honourable Court be pleased to issue such further relief or orders as it may deem fit and just to grant.
 - c. That the costs of this application be provided for.
2. The Application is premised on the grounds set out in the motion, Supporting Affidavit, and the Statutory Statement. In brief, the applicant's case is that he suffered bodily injury while in the course of employment by the 1st respondent; that the matter was referred to Director of Occupational Safety and Health (DOSH) where the damages were assessed at Kshs 3,107,863.10; that the respondents failed to pay the assessed compensation and he filed Meru ELRC Misc Application No E006 of 2022 for adoption of the award by the DOSH; that this court adopted the award for enforcement as decree of the court for enforcement; that the court also condemned the 1st respondent to pay the cost of the application plus interest; that on 2nd August, 2023 the costs were thereafter taxed at Kshs.196,307.26 and a certificate of order against government was issued on 19th October, 2023; and that despite service of the said certificate the Respondents failed to pay the applicant the said amounts.
3. The Respondents opposed the Motion vide the replying affidavit sworn on 8th April 2024 by Charles Mwenda, the 3rd respondent herein. In brief the respondents' case is that the County Government had financial difficulties as a result of delays in disbursement of the funds from the National Treasurer which in turn delayed the settlement of the decretal sum; that the award would be budgeted for and settled during the next financial year; that if given a period of 5 months the decretal sum would be budgeted for and payment facilitated; and that the parties should be given an opportunity to settle the matter amicably.

Submissions

4. It was submitted for the applicant that he has satisfied the requirements for issuance of the order of mandamus including compliance with the procedure laid out under Section 21 of the [Government Proceedings Act](#). For emphasis, reliance was placed on Republic v Kenya National Examination Council ex-parte Gathenji & 8 others Civil Appeal No. 234 of 1996, Republic vs Principal Secretary Ministry of Internal Security & another ex parte Schon Noorani & another [2018] eKLR, [Republic vs Town Clerk of Webuye County Council & another HCCC 448 of 2006](#) and Republic v The Attorney General & Another ex-parte James Alfred Koroso [2013] eKLR.
5. The Respondent, on the other hand reiterated that the delay in settling the decretal sum was caused by the lack of funds due to the delay by the National Treasury to disburse funds to the County Government. They reiterated the request for time to pay the debt during the next budgetary allocation.

Determination

6. The main issue for determination by this Court is whether applicant has demonstrated sufficient grounds upon which the order of mandamus can be issued.



7. 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.”

8. 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.
9. In the instant case, there is a valid decree and an order against government which has not been challenged by the respondents. The respondents did not dispute the obligation to settle the decretal sum but only sought for time to secure budgetary allocation to facilitate the settlement. In other words, the failure to pay was not deliberate but due to delay by the National Treasury to disburse funds to the County Government. They requested the court for five months to budget for and settle the decretal sum.
10. Five months have lapsed since the time when the respondent made the request vide the Replying Affidavit sworn in April 2024. Likewise, the process of budget making for the new financial year must have ended by this time. The applicant cannot execute against the government under the Civil Procedure Rules pursuant to 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.”

11. In this case, the applicant has produced a Certificate of order against government issued on 19th October, 2023 and a certificate of cost issued on 2nd August, 2023. The Applicant has also produced a demand letter dated 15th August 2023. I appreciate the explanation given by the respondents that they were prevented from settling the decree by factors beyond their control. However, the decree of the court is not a suggestion but a command to be complied with by the person to whom it is directed. The respondents have had sufficient time to mobilize funds for settling the decretal sum but they have persisted in their default.
12. In view of the above matters, I am satisfied that the applicant has laid before the court sufficient basis upon which an order of mandamus should issue against the respondents. Consequently, I allow the application and enter judgment for the applicant against the respondents as follows:
 - a. An order of Mandamus be and is hereby issued compelling the Respondents to pay the Applicants the sum of Kshs. 3,107,863.10 being the decretal sum awarded to him in Meru ELRC Misc Application No E006 of 2022 plus Kshs.196,307.26 being the costs certified by the court together with interest thereon at court rates from date of judgment until payment in full.



b. The applicant is also awarded cost of this suit.

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

