



Republic v Kisii County Government & another; Mogaka (Exparte) (Judicial Review 11 of 2022) [2023] KEELRC 263 (KLR) (1 February 2023) (Judgment)

Neutral citation: [2023] KEELRC 263 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW 11 OF 2022**

S RADIDO, J

FEBRUARY 1, 2023

(ORIGINALLY KERICHO JUDICIAL REVIEW APPLICATION NO. E002 OF 2022)

**IN THE MATTER OF AN APPLICATION BY THE APPLICANT
FOR THE JUDICIAL REVIEW ORDER OF MANDAMUS**

AND

**IN THE MATTER OF SECTION 44(1) OF THE
COUNTY GOVERNMENTS ACT, NO 17 OF 2012**

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE
LAW REFORM ACT, CAP 26 LAWS OF KENYA**

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010

AND

**IN THE MATTER OF KERICHO EMPLOYMENT PETITION NO.
15 OF 2020 BETWEEN NAFTALI MOGAKA V KISII COUNTY
GOVERNMENT & KISII COUNTY PUBLIC SERVICE BOARD**

BETWEEN

REPUBLIC APPLICANT

AND

KISII COUNTY GOVERNMENT 1ST RESPONDENT

KISII COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

AND

NAFTALI MOGAKA EXPARTE



**(IN THE MATTER OF KERICHO EMPLOYMENT PETITION NO.
15 OF 2020 BETWEEN NAFTALI MOGAKA v KISII COUNTY
GOVERNMENT & KISII COUNTY PUBLIC SERVICE BOARD)**

JUDGMENT

1. The Court granted Naftali Mogaka (*ex-parte* applicant) leave to commence judicial review proceedings against the County Government of Kisii and the County Public Service Board, Kisii on 29 September 2022.
2. On 20 October 2022, the *ex-parte* applicant filed a Motion seeking orders:
 - (1) That a *mandamus* order does issue compelling the Respondents to comply fully with the judgment of Justice Onesmus Makau delivered on 28/4/2022 in Kericho ELRC No. 15 of 2020 between *Naftali Mogaka v Kisii County Government & Anor* to wit:
 - (a) include the *ex-parte* applicant to their payroll forthwith.
 - (b) pay the *ex-parte* applicant a sum of Kshs 1,168,858 being his salary and allowances less annual increment for March 2017 to June 2020 plus compound interest at the rate of 14% per annum from 28/4/2022 until payment in full.
 - (c) to compute and pay the annual salary increments for the said period plus all his salary for the period after 1st July 202 plus compound interest at the rate of 14% per annum from 28/4/2022 until payment in full.
 - (d) pay the applicant Kshs 1,000,000 being general damages for the violation of his constitutional rights under Articles 27,41, and 47 of the *Constitution* plus compound interest at the rate of 14% per annum from 28/4/2022 until payment in full.
 - (2) The costs of this application and interest thereon be provided for.
 - (3) Any other and further relief that this Honourable Court may deem fit and just to grant in the circumstances.
3. When the Motion was placed before the Court on 29 November 2022, the Respondents admitted service had been effected and requested for 7 days to respond.
4. The Court directed the Respondents to file and serve responses before 7 December 2022. The Court also directed the parties to file and exchange submissions.
5. The Respondents' responses were not on record by the agreed timeline, while the *ex-parte* applicant filed his submissions on 20 December 2022.
6. The Court has considered the motion and the submissions, and will grant orders as proposed in 1(a), (b),(c), and (d) as the Respondents did not put any material in opposition to the factual assertions.
7. The Court, however, declines to compound the interest as the trial Court did not award compounded interest.
8. The *ex-parte* applicant to have costs of the Motion.



DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 1ST DAY OF FEBRUARY 2023.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For *ex-parte* applicant Musyoki Mogaka & Co. Advocates

Respondents did not formally participate

Court Assistant Chrispo Aura

