



**Republic v Maurice Otunga, County Executive Committee Member, Finance
& another; Nyamori (Exparte Applicant) (Judicial Review Application
E022 of 2023) [2023] KEELRC 2976 (KLR) (22 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2976 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

JUDICIAL REVIEW APPLICATION E022 OF 2023

S RADIDO, J

NOVEMBER 22, 2023

IN THE MATTER OF AN APPLICATION FOR THE

JUDICIAL REVIEW ORDER OF

MANDAMUS

AND

IN THE MATTER OF IN THE ENFORCEMENT OF

COURT ORDERS AND DECREE

AGAINST THE GOVERNMENT

AND

IN THE MATTER OF THE LAW REFORM ACT

AND

IN THE MATTER OF THE GOVERNMENT

PROCEEDINGS ACT

BETWEEN

REPUBLIC APPLICANT

AND

**MAURICE OTUNGA, COUNTY EXECUTIVE COMMITTEE MEMBER,
FINANCE 1ST RESPONDENT**

COUNTY GOVERNMENT OF MIGORI 2ND RESPONDENT

AND

ERASTUS ONYANGO NYAMORI EXPARTE APPLICANT



JUDGMENT

1. The Court granted Erastus Onyango Nyamori (the *ex-parte* applicant) leave to commence judicial review proceedings against Maurice Otunga and the County Government of Migori on 19 June 2023.
2. The Motion was filed on 26 June 2023, and the Respondents filed on 25 August 2023 a replying affidavit sworn by the County Executive Committee Member Finance.
3. The Court gave directions on 26 September 2023 on the filing and exchange of submissions.
4. The *ex-parte* applicant's submissions were filed on 6 November 2023 (should have been filed on or before 13 October 2023), while the Respondents filed their submissions on 26 October 2023.
5. The Court has considered the Motion, affidavits and submissions.
6. It is not in dispute that the Court entered judgment for the *ex-parte* applicant on 17 February 2021 in Kisumu Cause No. 308 of 2014, Erastus Onyango Nyamori v County Government of Migori & Ar. In the judgment, the Court awarded the *ex-parte* applicant compensation of Kshs 3,600,000/- and gratuity to be computed.
7. A decree was issued on 18 May 2021 and a Certificate of Costs on 4 May 2023. The Certificate of Costs was followed with a Certificate of Order against the County Government on 9 May 2023.
8. In the affidavit by the County Executive Member, Finance, the Respondents took objection to the grant of the order of mandamus on the grounds that the *ex-parte* applicant had not met the test for grant of judicial review orders because the decree and Certificate of Order against the government had not been served.
9. The deponent also averred that the calculation of gratuity had been done by the *ex-parte* applicant without involving the Respondents and that in any case, the Respondents had not declined to settle the decree, but was handicapped by inadequate budgetary allocations presently.
10. The *ex-parte* applicant has not responded to the assertions that he did not serve copies of the decree, Certificate of Costs and Certificate of Order against the government before invoking the court's judicial review jurisdiction.
11. The *ex-parte* applicant has also not demonstrated how and/or the formula he used to compute the gratuity or whether the computations were made with reference to the Respondents.
12. Orders of judicial review may be declined even where there is merit.
13. It is not clear to the Court whether the *ex-parte* applicant approached the Respondents to settle before suing. The *ex-parte* applicant has taken a lackadaisical approach to these proceedings. He did not seek to respond to allegations of facts presented by the Respondents. He did not bother to file and serve submissions within the timelines agreed with the Court and no explanation has been tendered.
14. The *ex-parte* applicant moved the Court prematurely.
15. The Court declines the Motion and it is struck out with costs to the Respondents.

DELIVERED VIRTUALLY, DATED AND SIGNED IN MIGORI ON THIS 22ND DAY OF NOVEMBER 2023.

RADIDO STEPHEN, MCiarb



JUDGE

Appearances

For ex-parte applicant Ogwe & Associates Advocates

For Respondents Onyony & Co. Advocates

Court Assistant Chrispo Aura

