



**Republic v Permanent Secretary, Internal Security, Office of the President & 3 others
(Judicial Review E031 of 2023) [2023] KEELRC 2905 (KLR) (16 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2905 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW E031 OF 2023
CN BAARI, J
NOVEMBER 16, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**PERMANENT SECRETARY, INTERNAL SECURITY, OFFICE OF THE
PRESIDENT 1ST RESPONDENT**

**CHIEF FINANCE OFFICER MINISTRY OF NATIONAL TREASURY &
PLANNING 2ND RESPONDENT**

PERMANENT SECRETARY, NATIONAL TREASURY 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. The ruling herein, relates to a notice of motion application dated 17th July, 2023, brought pursuant Order 53 Rules 1, 2, and 3 of the [Civil Procedure Rules](#), Section 3A of the [Civil Procedure Act](#), and Section 134 of the County Government Act as read with Section 129 of the [Public Finance Management Act](#). The Applicant seeks orders that:
 - i. Spent.
 - ii. The Court be pleased to grant an order of mandamus compelling the 1st, 2nd, 3rd and 4th Respondents to comply with the Judgment of Justice Nduma Nderi dated 21st February 2019 in (Employment and Labour Relations Court at Kisumu Petition No.367 of 2017 (Stephen Onyango Ayugi vs Commissioner of Police, The permanent Secretary Internal Security and others) requiring them to pay 3,500,000/- in general damages for malicious prosecution.
 - iii. The Court be pleased to grant an order of mandamus compelling the 1st, 2nd, 3rd and 4th Respondents to comply with the Judgment of Justice Nduma Nderi dated 21st February



2019 in (Employment and Labour Relations Court at Kisumu petition No.367 of 2017 (Stephen Onyango Ayugi vs Commissioner of Police, the Permanent Secretary Internal Security and others) requiring them to pay interest from the date of judgment amounting to Ksh 2,641,166.70.

- iv. The Court be pleased to grant an order of mandamus compelling the 1st, 2nd, 3rd and 4th Respondents to comply with the Judgment of Justice Nduma Nderi dated 21st February, 2019, in (Employment and Labour Relations Court at Kisumu petition No.367 of 2017 (Stephen Onyango Ayugi vs Commissioner of Police, the Permanent Secretary Internal Security and others) requiring them to pay cost taxed at Ksh 616,535/
 - v. The Court be pleased to issue an order of mandamus compelling the 1st, 2nd, 3rd and 4th Respondents to comply with the Judgment of Justice Nduma Nderi dated 21st February 2019 in (Employment and Labour Relations Court at Kisumu petition No.367 of 2017 (Stephen Onyango Ayugi vs Commissioner of Police, the Permanent Secretary Internal Security and others) requiring them to pay interest on cost amounting to Ksh 302,102.15.
 - vi. Costs of and incidental to this Application together with Interests and any other order that this Honourable Court deems fit and just to grant in the circumstances
2. The application is supported by the grounds on the face of it and the affidavit of Stephen Onyango Ayugi. The crux of the application is that the Respondents have failed to comply with the Judgment of Justice Nduma Nderi delivered on 21st February, 2019, in Employment and Labour Relations Court at Kisumu petition No.367 of 2017 (Stephen Onyango Ayugi vs Commissioner of Police, the Permanent Secretary Internal Security and others) requiring them to pay 3,500,000/- in damages for malicious prosecution, interest from the date of judgment amounting to Ksh 2,641,166.70, cost taxed at Ksh 616,535/ and interest on cost amounting to Ksh 302,102.15.
 3. The Applicant avers that the rejection and the negligence to pay is deliberate and perpetuated by the Respondents
 4. The Applicant further avers that the failure to pay is causing injustice to the Decree holder.
 5. The Respondents did not oppose the motion despite being served and a return of service filed before Court.
 6. The Counsel for the Applicant urged the motion orally on 17th October, 2023, where he reiterated his pleadings.

Determination

7. I have carefully considered the application, grounds and affidavit in support, and the oral submissions by Counsel for the Applicant. The singular issue for determination is whether the Applicant is entitled to the orders sought.
8. It is now settled that the rules applicable to normal execution proceedings are not applicable to execution against the Government. An application that seeks to compel the Government to satisfy a decree is subjected to a very elaborate procedure and before the Court issues such an Order, there must be proof that the provisions of Section 21 of the *Government Proceedings Act* have been complied with.



9. In the case of *Permanent Secretary Office of The President, Ministry of Internal Security & Another Ex-parte Nassir Mwandih* (2014) eKLR, Odunga J stated thus on the rationale for the elaborate procedure: -
- “The said elaborate procedure is further meant to give adequate notice to the Government to make arrangement to satisfy the decree. The procedure, in my view is not meant to relieve the Government from meeting its statutory obligations to satisfy decrees and orders of the Court.”
10. The Applicant has sought orders of Mandamus compelling the Respondents to comply with the Judgment rendered on 21st February, 2019.
11. The Court of Appeal in *Republic vs Kenya National Examination Council Ex-Parte Gatheni & Others* (1997) eKLR, stated thus on Mandamus: -
- “The order of mandamus is of a most extensive remedial nature, and is, in form, 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.”
12. The judgment subject of the instant application has been annexed to the motion. The orders granted by the Court that delivered the judgment are as follows: -
- “a. As against the 1st Respondent, special damages in the sum of Kshs. 120,750/-, being half salary during the period of suspension.
- b. As against the 3rd to 5th Respondents, Kshs. 3.5 Million General Damages for malicious prosecution
- c. Interest at court rates from date of judgment till payment in full
- d. 1st, 3rd, 4th and 5th Respondents to pay costs of the suit.”
13. A certificate of costs produced in evidence indicates that costs were assessed at Kshs. 616,535/-. A certificate of order was likewise issued on 21st February, 2019.
14. A Judgment in Kisumu ELRC Cause Number 367 of 2017 was delivered on 21st February, 2019. A Certificate of Order and a Certificate of Costs were served upon and received by the Regional Litigation Office (Attorney General) on 22nd November, 2022.
15. Further, a hearing notice dated 1st August, 2023, and an affidavit of service dated 7th August, 2023, sworn by Counsel for the Applicant were filled stating that the instant application had been served upon the Respondents
16. The parties in the judgment giving rise to this motion were Stephen Ayugi, as the Claimant, while the National Housing Corporation, Inspector Aggrey Amondi, Commissioner of Police, the Permanent Secretary and the Attorney General were the 1st to the 5th Respondents respectively.



17. In the instant motion, Stephen Ayugi is the Ex Parte Applicant, while the Respondents are the Permanent Secretary internal Security, Office of the President, the Chief Finance Officer National Treasury and Planning, the Permanent Secretary National Treasury and Planning and the Attorney General.
18. The Ex Parte Applicant did not explain why the Respondents in this motion, are different from those against whom the orders were made in the judgment sought to be enforced through the Judicial Review Orders Sought herein.
19. In my view, the Applicant has not demonstrated that he has a Judgment against the Respondents, and which they have failed to honour, as to mandate this Court to issue orders of Mandamus.
20. In the final analysis, I find and hold that Applicant has not proved his case for the grant of the Orders of Mandamus, and accordingly the motion is dismissed with no order on costs.
21. Orders accordingly.

SIGNED, DATED AND DELIVERED AT KISUMU THIS 16TH DAY OF NOVEMBER, 2023.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Mwamu present for the Applicant

N/A present for the Respondents

Erwin - Court Assistant

