



Republic v County Secretary Nyamira County Government & 3 others; Jones Nyachiro t/a Nyachiro Nyagaka & Co. Advocates (Exparte) (Judicial Review Application E025 of 2023) [2023] KEELRC 3422 (KLR) (19 December 2023) (Ruling)

Neutral citation: [2023] KEELRC 3422 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E025 OF 2023
CN BAARI, J
DECEMBER 19, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**THE COUNTY SECRETARY NYAMIRA COUNTY GOVERNMENT 1ST
RESPONDENT**

**ECONOMIC PLANNING NYAMIRA COUNTY THE COUNTY COMMITTEE
MEMBER FOR FINANCE & ECONOMIC PLANNING NYAMIRA
COUNTY 2ND RESPONDENT**

**THE CHIEF OFFICER FINANCE & ACCOUNTING SERVICES NYAMIRA
COUNTY 3RD RESPONDENT**

THE COUNTY GOVERNMENT OF NYAMIRA 4TH RESPONDENT

AND

**JONES NYACHIRO T/A NYACHIRO NYAGAKA & CO.
ADVOCATES EXPARTE**

RULING

1. Before Court is the *ex parte* Applicant’s Notice of Motion application brought under Article 23(3)(f) and 47 of the *Constitution*, Order 53 Rule (1), (2) & (4) of the *Civil Procedure Rules* and Sections 8 & 9 of the Law Reform Act. The Applicant seeks orders that: -
 - i. The Ex Parte Applicant be granted an order of Mandamus directed to the Respondents jointly and severally compelling them to forthwith and without delay perform their duty by causing to be paid to the Ex Parte Applicant out of the revenue of the County Government of Nyamira



the judgment debt of Kenya Shillings One Million Six Hundred Forty-Six Thousand, Five Hundred and Five Only (Kshs. 1,646,505/-) together with all accrued interest at 14% per annum from the date of the ruling delivered on 17/5/2022 in Kisumu ELRC Misc.application No. E006 of 2022 Jones Nyachiro t/a Nyachiro & Co. Advocates v. Nyamira County Government.

- ii. The costs of this application be provided to the *ex parte* Applicant.
2. The application is supported by the grounds on the face of the motion and the affidavit of Jones Nyachiro sworn on 26th June, 2023. The Applicant avers that it intends *vide* this motion that the Respondents are compelled to pay the *ex parte* Applicant the decretal sum awarded herein, plus accrued interest.
3. The Applicant states that it filed a Bill of costs against the Respondent, which Bill was taxed and a Certificate of Costs issued. It further avers that the award was adopted as a judgment of the court and a decree issued and subsequently a Certificate of order as against government was issued pursuant to Section 21 of the *Government Proceedings Act*.
4. It is the Applicant's case that the Certificate of Order was served upon the Respondents on 31/1/2023, but the Respondents failed, refused and/or ignored to settle the decretal sum, hence this motion.
5. The Applicant further states that no stay orders have been issued
6. The Applicant further states that a demand notice was issued upon the Respondents on 3/2/2023, which demand has not elicited a response and have since not paid the award.
7. The Respondents filed grounds of opposition.
8. The motion was urged orally on 14th November, 2023, where parties reiterated their pleadings.
9. The Respondents argue that the application is premature and that though it is aware of the liability herein, they are facing serious funding shortages.
10. Counsel for the Respondents told court that the Respondents are aware of the liability herein, and that they have not been intentionally indolent.

Determination

11. I have considered the motion, the grounds and affidavit in support, the grounds of opposition and the parties' oral submissions. The single issue for determination is whether the *ex parte* Applicant is entitled to the reliefs sought.
12. The Applicant sought leave to lodge a judicial review motion, and upon such leave being granted, it lodged the instant motion. The motion was served upon the Respondents, who opposed the same *vide* grounds of opposition filed herein.
13. Despite knowledge of the decree and the Certificate of Order served upon the Respondents, the Respondents did not and have still not settled the decretal sum in the matter.
14. The Respondents' admission of liability and their failure to commit on how it intends to settle the liability is no defence in all fairness.
15. The Applicant having complied with the procedures applicable in execution against government under the *Government Proceedings Act*, I proceed to grant orders as follows: -



- i. An order of Mandamus be and is hereby issued directed to the Respondents jointly and severally compelling them to forthwith and without delay perform their duty by causing to be paid to the *ex parte* Applicant out of the revenue of the County Government of Nyamira the judgment debt of Kenya Shillings One Million Six Hundred Forty Six Thousand, Five Hundred and Five Only (Kshs. 1,646,505/-) together with accrued interest at 14% per annum from the date of this ruling.

16. Orders of the Court.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 19TH DAY OF DECEMBER, 2023.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Nyachiro Present for the Ex Parte Applicant

Mr. Maronga present for the Respondents

Ms. Laura-C/A

