



**Republic v Principal Secretary-State Department, Ministry of Interior and  
Coordination of National Government; Rono (Exparte) (Judicial Review  
E006 of 2021) [2022] KEELRC 1548 (KLR) (9 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1548 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
JUDICIAL REVIEW E006 OF 2021**

**HS WASILWA, J**

**JUNE 9, 2022**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL  
REVIEW FOR ORDERS OF MANDAMUS AND OR  
MANDATORY ORDERS UNDER ARTICLES 10 & 47 OF THE  
CONSTITUTION, SECTION 11(1)(F) OF THE FAIR  
ADMINSTRATIVE ACTIONS ACT , ORDER 53 OF THE IVIL  
PROCEDURE RULES AND GOVERNMENT PROCEEDINGS**

**ACT**

**AND**

**IN THE MATTER OF UNSATISFIED JUDGMENT AGAINST  
THE INSPECTOR GENERAL OF POLICE AND THE  
ATTORNEY GENERAL IN NAJURU ELRC CAUSE NO. 403 OF  
2014; GEOFFREY RONO V THE NAKURU COUNTY AP  
COMMANDER & 2 OTHERS**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**PRINCIPAL SECRETARY-STATE DEPARTMENT, MINISTRY OF INTERIOR  
AND COORDINATION OF NATIONAL GOVERNMENT ..... RESPONDENT**

**AND**

**GEOFFREY RONO ..... EXPARTE**



## JUDGMENT

1. The *Ex-parte* Applicant herein filed a Notice of Motion application dated 18<sup>th</sup> November, 2021 on even date through the firm of Kanyi Ngure and company advocates, brought pursuant to Order 53 Rule 3 & 4 of the *Civil Procedure Rules*, Section 9 & 11(1)(f) of the *Fair Administrative Actions Act* and all other enabling provisions of law, seeking the following orders; -
  1. That an order of mandamus do issue compelling the principal secretary - State Department of Interior and Coordination of National Government, to settle the Decretal sum together with interest and costs as awarded in Nakuru ELRC Cause No. 403 of 2014 as follows; -
    - a. Kshs. 2,182,466 inclusive of interest as at 8<sup>th</sup> January, 2021.
    - b. Interest of 14<sup>th</sup> per annum calculated on the principal sum of Kshs 1,014,955 from the 8<sup>th</sup> January, 2021 till payment in full.
  2. That costs of this Application as well as the application for leave be assessed by the Court and be borne by the Respondent.
2. The application is made on the following grounds: -
  - a. That judgement was delivered in favour of the ex-parte applicant in Nakuru ELRC Cause number 403 of 2014 on the 11<sup>th</sup> November, 2016. Decree and certificate of costs was extracted and served. A certificate of Order against the government was also issued and served upon the Attorney General.
  - b. The decretal sum together with interest remained unsatisfied and is now at Kshs 2,182,466 as at 8<sup>th</sup> January, 2021.
  - c. He maintained that the ex parte applicant continues to be deprived of the fruits of its judgement without any explanation by the Respondent.
  - d. He prayed for the application to be allowed as prayed.
3. The Application is supported by the supporting affidavit of the Exparte applicant deposed upon on the 18<sup>th</sup> November, 2021, the statement of facts and the verifying affidavit dated 18<sup>th</sup> May, 2021.
4. The Application is opposed by the Attorney General who filed grounds of opposition dated 24<sup>th</sup> March, 2022 and filed on 29<sup>th</sup> March, 2022 which came out as follows; -
  - i. That the Application is fatally incompetent and incurably defective.
  - ii. That the Applicant's application seeking an Order of mandamus is mis-advised since the Respondent has not failed, neglected and or refused to pay the applicant the decretal amount of Kshs 2,182,466.00 inclusive of interest and costs awarded at Kshs 260,220.67 in ELRC No. 403 of 2014.
  - iii. That the government has various competing interest catered for in the budget and that the court should allow the applicant application claim to be factored in the forthcoming budget as approved since the government cannot expend money not approved in the budget.
  - iv. The Respondent is willing to pay once the same is allocated for and approved.



- v. That the Respondent has not consented and or connived to commit contempt of Court.
  - vi. That the court allow for budgeting, allocation and approval of the amounts decreed through the procedure provided for under the [Government Proceedings Act](#).
  - vii. The applicant has not demonstrated any prejudice that it will suffer if the Orders sought are not granted.
  - viii. The application is an abuse of precious judicial time and it is in the interest of justice and fairness that the instant Application be dismissed with costs to the Respondent.
5. The application was dispensed with by way of written submissions with the Exparte applicant filing on the 8<sup>th</sup> April, 2022 however the Respondent did not file submissions.

### **Ex-Parte Applicant's Submissions.**

6. The *Ex parte* Applicant submitted on only one issue; whether the Order Mandamus should issue and submitted that the law provides that enforcement of orders against the government can only be done through prerogative orders of mandamus, certiorari and prohibition. He argued that the Respondent has not in its grounds of opposition denied service of any of the Orders upon it and merely indicated its intention to pay however that decree was served on them in the year 2017 and if they had any intentions of paying the same ought to have been made in financial year for 2018, 2019,2020 and 2021.
7. It is his arguments that no explanation has been given by the Attorney general for failing to pay the decretal sum from the year 2018 to date. It was thus submitted that its only imperative for the Orders of mandamus to be issue to compel the Respondent to pay him. To support this argument the *Ex-parte* applicant relied on the case of [Republic v County Government of Nakuru & Another Ex-Parte James Mwangi Muraya](#) [2021] eklr where this Court held that:-

“I have examined the averments of the parties herein. The exparte applicant has demonstrated that he was awarded a Judgment and decree by this court (J Radido) in ELRC No. 124 of 2016 for kshs.617,432/= .15. The exparte applicant further demonstrated that he extracted the decree and served it upon the respondents on 20/3/2018.16. The respondents have not denied the issuance of the Judgment against themselves and further the service of the decree upon themselves. They have not also demonstrated what steps they have taken to satisfy the decree since 2018.17. They only aver that the same was not factored in the budget until 2020/2021. We are in year 2021 and still no payment has been made.18. It is my finding that indeed the respondents have neglected to make good the Judgment and decree as served upon them.19. The application before me is merited and enter Judgment against the respondents as follows;

- a) That an Order of Mandamus be directed against the Respondents compelling the 2nd Respondent to fully comply with the decree”

8. The ex parte applicant also cited the case of [Republic v Chief Officer Department of Trade Industry, Tourism and entrepreneurship county Government of Vihiga and another Ex parte Galexon Kenya Limited](#) [2020] eklr where the Court held that;

“Evidently, I am persuaded that the Respondents were on 27.06.19 duly served with demand letters, decree, certificate of costs and receipt thereof was acknowledged... In seeking an order for mandamus the Applicant is seeking, not relief against the County Government of Vihiga, but to compel its officials, and in particular the Respondents who the Chief



Officer Department of Trade, Industry, Tourism & Entrepreneurship, County Government of Vihiga and Head of Treasurer respectively to do what the County Government, through Parliament, has directed him to do the fact that he was not a party to judicial review application No. 10 of 2019 notwithstanding. The fact that the sum in issue is colossal is not a reasonable defence for the reason that Respondents had both satisfy the decree issued by a competent court. The Respondents have failed a statutory and public duty to and/or neglected to fulfill their aforesaid duty to the detriment of the Applicant despite the fact that no appeal was lodged against the judgment entered in Applicant's favour. 22. In view of the foregoing, I am satisfied that the Applicant has demonstrated that he is deserving of the relief sought. Consequently, the Notice of Motion dated 24<sup>th</sup> September, 2019 and filed on 27<sup>th</sup> September, 2019 is allowed as against the Respondents as prayed”

9. The ex parte applicant in conclusion urged this Court to issue the Orders sought since he has made out a case in favour of issuance of the Orders Sought.
10. I have examined the averments of the parties herein. The applicant seeks an order to compel the respondents to pay him as awarded in Nakuru ELRC Cause No. 403 of 2014 on 11<sup>th</sup> November, 2016.
11. The respondents aver that they have not refused to pay the awarded amount and save that the government has competing interests in its budget and so should be allowed to pay off the award as budgeted for.
12. Given the response of the respondent's herein, it is my finding that the respondents admit owing the applicant the awarded amount are therefore liable to pay.
13. The respondents have indicated they be allowed to pay when the same is catered for in the budget. The respondents have not even indicated that the Judgment claim has been catered for in its budget and if not when.
14. From 2016 when the applicant obtained Judgment in this case, 6 years have gone by and the delay in paying up the Judgment order is inordinate.
15. I therefore find the prayers sought are valid and I allow the application and grant an order of Mandamus to compel the Principal Secretary – State Department of Interior & Coordination of National Government to settle the decretal sum together with interest and costs as awarded in Nakuru ELRC Cause 403 of 2014 as follows;
  - a. Kshs.2,182,466/= inclusive of interest as at 8<sup>th</sup> January, 2021.
  - b. Interest at 12% calculated on the principle as for 8<sup>th</sup> January, 2021 till payment in full.
  - c. Costs of the application be borne by the respondent.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 9<sup>TH</sup> DAY OF JUNE, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

Kanyi Ngure for Ex-parte Applicant – present

No appearance for Respondent

Court Assistant - Fred

