



Republic v County Secretary, Kisii County Government & another; Kenya Agricultural and Livestock Research Organization (Exparte) (Environment and Land Judicial Review Case 1 of 2023) [2024] KEELC 13271 (KLR) (20 November 2024) (Judgment)

Neutral citation: [2024] KEELC 13271 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 1 OF 2023
M SILA, J
NOVEMBER 20, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**THE COUNTY SECRETARY, KISII COUNTY GOVERNMENT 1ST
RESPONDENT**

**THE CHIEF OFFICER, FINANCE, KISII COUNTY GOVERNMENT 2ND
RESPONDENT**

AND

**KENYA AGRICULTURAL AND LIVESTOCK RESEARCH
ORGANIZATION EXPARTE**

JUDGMENT

(Suit seeking orders of mandamus to compel the respondents settle a decree; suit not opposed; suit allowed and order of mandamus issues)

1. Through an application dated 3 November 2023, Kenya Agricultural and Livestock Research Organization (KALRO) sought leave to commence judicial review proceedings for an order of mandamus to compel the respondents to pay the sum of Kshs. 6, 933, 600/= and taxed costs of Kshs. 637,844.33/= awarded in the suit Kisii ELC Petition No. 3 of 2018. In that application, the ex parte applicant averred that this award was made on 29 August 2019 and the costs taxed on 1 July 2022 but the same have yet to be settled. Leave to file the motion was duly granted on 6 November 2023 and main motion, dated 20 November 2023, was filed on 21 November 2023. It is that motion for mandamus which is the subject of this judgment. That motion seeks an order of mandamus as sought in the application for leave.



2. Despite being duly served and being granted numerous opportunities to respond to the motion, the respondents filed nothing to oppose the application.
3. I have gone through the material presented by the ex parte applicant. I can see that indeed the ex parte applicant sued the County Government of Kisii, and one Ibrahim Mose, the Member County Assembly (MCA), Bobaracho Ward in the case Kisii ELC Petition No. 3 of 2018. The subject matter was a parcel of land which the ex parte applicant contended to be in possession of and had commenced the process of obtaining title. The complaint was that the respondents in the petition had moved to create a road through the disputed land, which the ex parte applicant thought to be an infringement of its constitutional rights to Fair Administrative Action under Article 47 (1) of *the Constitution*, and the right to property under Article 40 of *the Constitution*. The ex parte applicant, as petitioner, also sought compensation in form of damages. No response was filed by the respondents to oppose the petition. The petition was heard by Mutungi J who delivered judgment on 29 August 2019. In that judgment, he inter alia awarded the ex parte applicant the sum of Kshs. 6,933,600/= as damages with interest at court rates from the date of the judgment until payment in full. The ex parte applicant was also awarded the costs of the petition. I have seen a Certificate of Taxation of Costs, which certifies that the costs were taxed on 1 July 2022 in the sum of Kshs. 637,844.33/=. I have also seen a Certificate of Order against the 1st respondent duly signed by the Deputy Registrar certifying the amount awarded in the decree and the interest payable. There is a letter dated 23 January 2023 from M/s Millimo, Muthomi & Company Advocates demanding settlement of the decree. In this suit, it is averred that despite the demand no payment has been forthcoming.
4. As I mentioned earlier, there is nothing filed by the respondents to oppose this judicial review motion. I see nothing that would prevent the ex parte applicant from obtaining the order of mandamus as sought. Indeed the decree remains outstanding and the only way that the ex parte applicant can get the monies awarded is by an order of mandamus.
5. Given the foregoing, I allow this suit. I issue an order of mandamus compelling the respondents to forthwith settle the monetary aspect of the decree in the suit Kisii ELC Petition No. 3 of 2018, which is the sum of Kshs. 6,933,600/= and costs of Kshs. 637,844.33/=:, together with interest at court rates accruing from 29 August 2019 until settlement in full. The ex parte applicant will also have the costs of this suit.
6. Judgment accordingly.

DATED AND DELIVERED THIS 20 DAY OF NOVEMBER 2024

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

At Kisii

Delivered in the presence of :

Mr. Maalim h/b for Mr. Millimo for the ex parte applicant

Ms. Bonareri for the respondents

Court Assistant – David Ochieng’

