



Macharia v Kenya Railways Corporation (Environment and Land Judicial Review Case E005 of 2024) [2025] KEELC 2984 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2984 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E005 OF 2024**

**A OMBWAYO, J
MARCH 28, 2025**

BETWEEN

MONICA WAMUHU MACHARIA APPLICANT

AND

KENYA RAILWAYS CORPORATION RESPONDENT

RULING

1. Monica Wamuhu Macharia being the administrator of the estate of Macharia Marianjugu has come to this court with an application dated 24th February 2025 seeking orders that in the first instance, this court issues summons to the 1st respondent (Mr. Philip J Mainga) to appear in court on a date to be appointed by the court and show cause why he has failed to comply with the orders of mandamus issued by the court and pay the decretal sum, costs and interest in Nakuru ELC E026 of 2020.
2. This court finds that by failing to comply with the aforesaid orders of mandamus, 1st respondent (Mr Philip J Mainga) is in contempt of court and he be convicted accordingly. Upon conviction, 1st respondent (Mr Philip J Mainga) be escorted to and be detained at the Nakuru G.K. prisons male wing for such a period as this court may deem just. That Costs of this application be borne by the 1st respondent (Mr Phili J Mainga) personally.
3. The application is based on ground that the ex-parte applicant lodged a suit which was serialized as Nakuru ELC E026 of 2020 and upon hearing, the court passed it judgment on 12th October 2023 and decreed that the 2nd respondent to pay to the ex parte applicant a sum of Kshs.45,500,000/= being damages for illegal demolition of the applicant's property.
4. The 1st respondent has a statutory obligation under section 88 of the Kenya Railways Act to settle the decretal sum without delay. The 1st respondent failed/refused to perform his statutory duty and the ex parte applicant filed an application of orders of judicial review for orders of mandamus. The



application was considered and orders of mandamus were issued against the 1st respondent requiring him to perform his statutory duties.

5. A copy of judgment together with a notice of penal consequences was served upon the respondents but the 1st respondent has deliberately failed to comply with the order. In fact, the 1st respondent has taken deliberate steps to avoid service by denying the process server access to his office. The conduct of the 1st respondent is in contempt of court.
6. The ex parte applicant is an elderly widow and the property which was demolished by the respondents was her sole source of income which was left to her by her late husband. Under article 57 of *the Constitution*, the state and state agencies such as respondent have the constitutional obligation to ensure the rights of older persons are protected. Those rights include the right to live in dignity and respect and there cannot be a right to live in dignity when the conduct of the respondent has made the ex parte applicant unable to provide for herself and they have declined to settle the damages ordered by the court.
7. The supplementary affidavit reiterates the grounds of application. I do find that the application is merited.
8. I do grant order that Mr. Philip J Mainga the managing director of Kenya Railways the 1st respondent herein, has failed to obey a court order requiring him to pay Ksh.45,500,000 being damages for illegal demolition of the applicant property. The said contemnor to appear in court in person on April 4, 2025. I do order that summons to be issued to the 1st respondent to appear in court and show cause why he should not be imprisoned for disobedience of court order issued by way of mandamus on January 30, 2025

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

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DATE: 2025-03-28 10:39:40

Doc IDENTITY: 3209861195033911552719594946 Tracking

Number:OOQGE22025

