



**Republic v Chairman, National Land Commission & another; Ondino  
& 2 others (Exparte) (Environment and Land Judicial Review Case  
E001 of 2022) [2023] KEELC 40 (KLR) (18 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 40 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2022  
DO OHUNGO, J  
JANUARY 18, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE CHAIRMAN, NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR, KAKAMEGA COUNTY ... 2<sup>ND</sup> RESPONDENT**

**AND**

**AGNES MULIMA ONDINO ..... EXPARTE**

**PRESTON CHITERE ..... EXPARTE**

**SALOME CHITERE ..... EXPARTE**

**JUDGMENT**

1. Having been granted leave on January 27, 2022 to apply for judicial review orders of *mandamus* against the above listed respondents, the *ex parte* applicants filed Notice of Motion dated February 9, 2022 seeking the following:

An order of *mandamus* do issue compelling the respondents jointly and severally to:

- i. Remove the caution on Land Reference South Wanga/Ekero/2552, 2553 and 2554 forthwith.
- ii. Pay Kshs 120,000/= mesne profits with interest from February 1, 2019 being the date of judgment till payment in full.



- iii. Pay Kshs 108,290/= with interest from April 2, 2019 being the date of certificate till payment in full.
2. The application is supported by an affidavit sworn by Preston Chitere who deposed that the 1<sup>st</sup> applicant is the registered owner of plot numbers South Wanga/Ekero/2552 and 2553 and that the 3<sup>rd</sup> *ex parte* applicant is the registered owner of land proprietor of land reference number South/Wanga/Ekero/2554. That the *ex-parte* applicants filed Kakamega ELC No 72 of 2018 against the respondents and that the said suit later became Mumias Principal Magistrate’s ELC No 70 of 2018. That an order was issued in Mumias Principal Magistrate’s ELC No 70 of 2018 on February 1, 2019 wherein the 1<sup>st</sup> respondent herein was ordered to satisfy the decretal sum and costs in the suit. That a certificate of order against the government was issued and was served. He further deposed that the 2<sup>nd</sup> respondent was ordered to remove restrictions on land parcel numbers South/Wanga/Ekero/2552, 2553 and 2554 but the respondents completely refused to comply with the orders.
3. The application was canvassed through written submissions. Although evidence of service was availed, the respondents neither filed a response nor written submissions. They did not also attend court at the hearing of the application. The *ex parte* applicants filed submissions on March 29, 2022. They argued that they have established their case and they therefore urged the court to grant them the orders sought.
4. I have considered the application, the affidavits, the statement of facts and the submissions. The sole issue for determination is whether the orders sought should issue.
5. The *ex parte* applicants seek judicial review orders of *mandamus*. The Court of Appeal discussed the circumstances under which such an order should issue in *Kenya National Examinations Council v Republic ex parte Geoffrey Gathenji Njoroge & 9 others* [1997] eKLR as follows:
- The next issue we must deal with is this: What is the scope and efficacy of an order of *mandamus*? Once again we turn to Halsbury’s Law Of England, 4<sup>th</sup> Edition Volume 1 at page 111 from paragraph 89. That learned treatise says:-
- “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.”
- ... What do these principles mean? They mean that an order of *mandamus* will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.
6. The *ex parte* applicants’ case is entirely unchallenged. From the material on record, it is apparent that the *ex parte* applicants were plaintiffs in Mumias Senior Principal Magistrate’s ELC No 70 of 2018 and that the respondents herein were defendants in the said case. The case was heard, and judgement was delivered on 1<sup>st</sup> February 2019 wherein judgement was entered against the respondents herein jointly and severally for removal of cautions on land reference number South/Wanga/Ekero/2552, 2553 and 2554 forthwith, KShs 120,000 being mesne profits and costs of the suit.



7. The costs were assessed at KShs 108,290 and a certificate of costs issued on April 2, 2019. A Certificate of Order Against the Government was also issued. Both the certificate of costs and Certificate of Order Against the Government were annexed to the affidavit in support of the present application. Equally annexed is a copy of an extracted order detailing the terms of the judgment, a letter dated December 19, 2019 from R. V. Mukoya & Co. Advocates on behalf of the *ex parte* applicants to the first respondent herein demanding settlement of the judgment debt. The first respondent acknowledged the letter through his letter dated 10<sup>th</sup> February 2020. A reminder letter dated June 17, 2020 was issued by the *ex parte* applicants' advocates. Going by the contents of the supporting affidavit herein, it is clear that the respondents have not complied with the terms of the judgment. The respondents have a statutory obligation to comply with the judgement

8. In *Republic v Attorney General & another Ex parte James Alfred Koroso* [2013] eKLR Odunga J (as he then was) held as follows:

In the present case the *ex parte* applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from *mandamus*, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done he will forever be left baby sitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of the Constitution which enjoins the State to ensure access to justice for all persons. ...

9. In view of I am satisfied that the *ex parte* applicants have made a case for the orders sought.

10. I therefore enter judgment in favour of the *ex parte* applicants and make the following orders:

- a. An order of *mandamus* is hereby issued compelling the respondents jointly and severally to:
  - i. Remove the caution on Land Reference South Wanga/Ekero/2552, 2553 and 2554 forthwith.
  - ii. Pay KShs 120,000 (One Hundred Twenty Thousand) with interest from February 1, 2019 being the date of judgment till payment in full.
  - iii. Pay KShs 108,290 (One Hundred Eight Thousand, Two Hundred Ninety) with interest from April 2, 2019 being the date of certificate of costs till payment in full.
- b. Since there was no prayer for costs in Notice of Motion dated February 9, 2022, I make no order as to costs.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 18<sup>TH</sup> DAY OF JANUARY 2023.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

Mr Kiveu holding brief for Mr Mukoya for the *ex parte* applicants

No appearance for the respondents

Court Assistant: E. Juma

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