



**Republic v County Government of Busia; Osinya (Exparte Applicant)
(Environment and Land Court Judicial Review Application E003 of 2022)
[2023] KEELC 16073 (KLR) (21 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 16073 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT AND LAND COURT JUDICIAL REVIEW APPLICATION E003 OF 2022
BN OLAO, J
FEBRUARY 21, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF BUSIA RESPONDENT

AND

DISMAS EGESA OSINYA EXPARTE APPLICANT

JUDGMENT

1. Dismas Egesa Osinya (the *ex-parte* applicant herein) first moved to this court *vide* his plaint filed in Busia Elc case No 23 of 2009 seeking compensation and damages following the conversion of part of his land parcel No Bukhayo/mundika/7883 to put up a sewage system as well as the trauma resulting in the exhumation of his parents' remain therefrom. The claim was resisted by the respondent but having heard all the parties, Omollo J delivered a judgment on January 26, 2022 directing the respondent to, *inter alia*, pay the applicant the sum of Kshs 4,500,000. Costs were subsequently taxed at Kshs 140,915. That sum remains un-paid to-date.
2. The applicant has therefore moved to this court *vide* this application seeking an order of mandamus to compel the respondent to settle the decretal sum of Kshs 4,500,000 being the principal sum together with the costs of Kshs 140,915 plus interest at 12% per annum since January 26, 2022 when the said judgment was delivered. The application is supported by the grounds set out on the face thereof and the affidavit verifying the facts.
3. In brief, the applicant's case is that although he has always been the registered proprietor of the land parcel No Bukhayo/mundika/7883 on which he relied as his source of income due to his age and failing health, the respondent evicted him and fenced it for purposes of erecting a sewerage disposal pond.



The land is therefore no longer suitable for human habitation including agriculture. The respondent should therefore be compelled to compensate the applicant in terms of the judgment delivered in Busia Elc case No 23 of 2009 and they are in fact in contempt of court.

4. Annexed to the application are the following documents:
 1. Leave granted in Busia Elc Misc application No E006 of 2022 to commence these proceedings.
 2. Judgment delivered by Omollo J on January 26, 2022 in Busia Elc case No 23 of 2009.
 3. Certificate of costs as taxed by Hon T A. Madowo on May 25, 2022 in Busia Elc case No 23 of 2009.
5. When the application was placed before me on November 24, 2022, I directed that it be canvassed by way of written submissions. However, the respondent did not file any response nor submissions as directed. On January 18, 2022, Mr Wambura, counsel for the respondent, sought more time through Mr Sichangi who was holding his brief. However, as there was no good reason for extending time, the application was declined by the court and the judgment was fixed for delivery on February 21, 2023 by way of electronic mail.
6. I have considered the application, un-opposed as it is. It is clear from the judgment delivered by Omollo J on January 26, 2022 that the defendant are obliged to settle a decree in favour of the applicant for the principal sum of Kshs 4,500,000 being compensation for a portion of the suit land measuring 0.9 hectares which the defendant unlawfully appropriated together with the taxed costs of Kshs 140,915. No appeal appears to have been filed against the said judgment. As to whether the applicant is entitled to the order of *mandamus* sought, I can do no better than cite the case of [Kenya National Examination Council v R ex parte Geoffrey Gatbenji Njoroge & others](#) CACivil Appeal No 266 of 1996 [1997 eKLR]. Therein, the Court of Appeal said as follows citing *Halsbury's Law of England* 4th Edition:

“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 remedy, yet that mode of redress is less convenient, beneficial and effectual.”

There is no doubt that as provided in section 21 of the [Government Proceedings Act](#), the respondent herein is obliged to satisfy the judgment and subsequent decree issued in Busia Elc case No 23 of 2009. The applicant has stated in paragraph (K) of his affidavit verifying the facts as follows:

“That the ex-parte applicant has written to the respondent herein seeking for payment and those demands have not been met nor even acknowledged the same.”

The respondent did not file any response to this application and therefore, this court has no reason to doubt that the relevant provisions of the said Act have been complied with prior to the filing of this application. This court must conclude, therefore, that the conduct of the respondent is merely refusal to pay and not inability to do so. Indeed in paragraph (o) of the same affidavit, the applicant has deposed that the “respondent herein is in contempt of the court order.” I have no doubt in my mind therefore that that is a proper assessment



of the respondent's indifference to the applicant's plight compounded by the fact that it did not even bother to defend the claim.

7. The up-shot of all the above is that there shall be judgment for the applicant as against the respondent in the following terms:
 1. An order of mandamus is hereby issued compelling the respondent to settle the decretal sum of Kshs 4,500,000 plus costs of Kshs 140,915 as ordered in Busia Elc case No 23 of 2009 plus interest at court rates.
 2. The respondent shall also meet the costs of this application.

BOAZ N. OLAO

JUDGE

21ST FEBRUARY 2023

JUDGMENT DATED, DELIVERED AND SIGNED AT BUSIA ON THIS 21ST DAY OF FEBRUARY 2023 BY WAY OF ELECTRONIC MAIL. RIGHT OF APPEAL.

BOAZ N. OLAO

JUDGE

21ST FEBRUARY 2023

