



Leopard Rock Mico Limited v Chief Officer Finance, County Government of Meru & 2 others (Judicial Review E003 of 2021) [2023] KEHC 303 (KLR) (26 January 2023) (Ruling)

Neutral citation: [2023] KEHC 303 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
JUDICIAL REVIEW E003 OF 2021
TW CHERERE, J
JANUARY 26, 2023**

BETWEEN

LEOPARD ROCK MICO LIMITED APPLICANT

AND

**CHIEF OFFICER FINANCE, COUNTY GOVERNMENT OF
MERU 1ST RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF MERU 2ND
RESPONDENT**

**COUNTY EXECUTIVE MEMBER FOR FINANCE, COUNTY GOVERNMENT
OF MERU 3RD RESPONDENT**

RULING

Background

1. By an order dated June 23, 2022, this court made the following orders as against the Respondents:
 1. An Order of Mandamus be and is hereby issued directing and compelling the Chief Officer responsible for financial matters of the County Government of Meru, County Secretary of the County Government of Meru and County Executive Committee Member responsible for financial matters of the County Government of Meru to pay the Applicant within 30 days the sums contained in:
 - a. The Decree dated June 18, 2021 comprised in the Certificate of Order against the Government dated June 24, 2021 compelling the Respondents to comply with the Certificate of Order against the Government issued in Misc Applic No 1 of 2021, *Leopard Rock Mico Limited vs County Government of Meru*



- b. Certificate of Order for Costs against the Government dated May 11, 2021 issued in Meru Misc Cause No 11B of 2020, *Leopard Rock Mico Limited vs County Government of Meru*
 - c. Certificate of Order for Costs against the Government dated May 11, 2021 issued in Meru Misc Cause No E005 of 2021, *Leopard Rock Mico Limited vs County Government of Meru*
 2. Costs shall be borne by the Respondents
2. Applicant has once again approached the court by way of a Notice of Motion dated August 31, 2022 seeking the following orders:
 1. That the Honourable Court be pleased to cite the Chief Officer Finance, County Secretary and County Executive Committee Member for Finance of the County Government of Meru for being in contempt with the orders issued on June 23, 2022
 2. That the Honourable Court be pleased to imprison the Chief Officer Finance, County Secretary and County Executive Committee Member for Finance of the County Government of Meru for being in contempt with the orders issued on June 23, 2022 for a period of 6 months or such other period as the court will determine until satisfaction of :
 - a. The Decree dated June 18, 2021 comprised in the Certificate of Order against the Government dated June 24, 2021 compelling the Respondents to comply with the Certificate of Order against the Government issued in Misc Applic No 1 of 2021, *Leopard Rock Mico Limited vs County Government of Meru*
 - b. Certificate of Order for Costs against the Government dated May 11, 2021 issued in Meru Misc Cause No 11B of 2020, *Leopard Rock Mico Limited vs County Government of Meru*
 - c. Certificate of Order for Costs against the Government dated May 11, 2021 issued in Meru Misc Cause No E005 of 2021, *Leopard Rock Mico Limited vs County Government of Meru*
 3. Costs shall be borne by the Respondents
3. The application is based on grounds among others that the order issued on June 23, 2022 was physically and electronically served on the Respondents and that a fresh Certificate of Order against the Government dated June 30, 2022 was equally served on the Respondents. Applicant faults the Respondents for disregarding, disrespecting, ignoring and/or neglecting to comply with the court order issued on June 23, 2022 and Certificate of Order against the Government dated June 30, 2022 in clear violation of Articles 73(2) and 232 of the [Constitution](#) and for putting the integrity and dignity of the court in dishonour.
4. The motion is supported by a Supporting Affidavit sworn on August 31, 2022 by the Applicant's Executive Chairman, Mr Michael Dechauffour in which he reiterates the grounds on the body of the application. Annexed to the affidavit are the court order and issued on June 23, 2022 and Certificate of Order against the Government dated June 30, 2022 duly served physically on the office of Deputy Governor and county secretary Meru County Government and also on the Respondents' advocate and electronically to Respondent's advocate and through the email for the County Government of Meru.



5. The application is opposed by way of a replying affidavit sworn on October 13, 2022 by Rufus Miriti, the County Secretary of County Government of Meru (2nd Respondent) in which he avers that the amount due to the Applicant was not budgeted for.

Analysis and Determination

6. I have considered the application in the light of the affidavits and submission on record. Section 21 (3) of *Government Proceedings Act* requires an accounting officer to whom a Certificate Order against the Government to pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon.
7. Respondents do not deny that the Applicant is entitled to payment of the sum in the Certificate Certificate of Order against the Government dated June 30, 2022 but dismiss the claim as unbudgeted for.
8. In *Republic vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza* [2012] eKLR, the court in a persuasive decision stated as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the *Government Proceedings Act*. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the *Government Proceedings Act* (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.”

9. And in *Jaribu Credit Traders Limited vs Nairobi County Government* [2018] eKLR, the court addressed itself to the issue of payment of a decretal amount by a public entity as hereunder;

“It should also be noted that the law does not condition settlement of decree on budgetary allocations. In any case, the decree subject of these proceedings is over one year from



February 29, 2016 and each year that passes, the respondent County Government is allocated funds and generates revenue from its own sources to cater for such eventualities/meeting their legal obligations especially for a civil suit that proceeded to hearing interpartes hence there can be no genuine claim that the respondent has been ambushed with these mandamus proceedings. Furthermore, provision for settlement of decrees emanating from courts is something each Government agency must make in its annual budgetary projections. This position is supported by the holding in *Republic vs Permanent Secretary of State for Provincial Administration* (*supra*) where the court stated, and I agree:

“This provision [section 21(1)(2) of Cap 40] does not condition payment to budgetary allocation and Parliamentary approval of government expenditure in the financial year subsequent to which government liability accrues. The respondent’s claim that the applicant should have waited until the start of the next financial year to enforce payment of the decree issued in his favour cannot be sustained firstly because it has no legal basis and secondly because it is the responsibility of the government to make contingency provisions for its liabilities in tort in each financial year so that successful litigants who obtain decrees against the government are not left without a remedy.”

10. I associate myself with the holding in the aforementioned cases and find that the settlement of the decretal sum to the Applicant is not conditioned on budgetary allocation but on the fact that the Respondents have a lawful duty to obey court orders for court orders are not made in vain.

11. From the foregoing, I have come to the following conclusion:

1. The Respondents well aware of the court order issued on June 23, 2022 whose terms are unambiguous are in contempt by failing to settle:
 - a. The Decree dated June 18, 2021 comprised in the Certificate of Order against the Government dated June 4, 2021 compelling the Respondents to comply with the Certificate of Order against the Government issued in Misc Applic No 1 of 2021, Leopard Rock Mico Limited vs County Government of Meru
 - b. Certificate of Order for Costs against the Government dated May 11, 2021 issued in Meru Misc Cause No 11B of 2020, Leopard Rock Mico Limited vs County Government of Meru
 - c. Certificate of Order for Costs against the Government dated May 11, 2021 issued in Meru Misc Cause No E005 of 2021, Leopard Rock Mico Limited vs County Government of Meru
2. Summons are hereby issued requiring the Respondents to appear before the court to show cause why they should not be imprisoned for a period of 6 months or such other period as the court will determine until satisfaction of the aforementioned decrees and Certificates
3. The examination of the Respondents is set down for hearing on March 16, 2023
4. Costs of this application shall be borne by the Respondents

DATED IN MERU THIS 26TH DAY OF JANUARY 2023

WAMAE. T.W. CHERERE

JUDGE



Appearances

Court Assistant - Morris Kinoti

For Applicant - Mr. Wanyama for Manyonge Wanyama & Associates LLP

For Respondents - Mr. Omagwa for Munga Kibanga & Co. Advocates

