



Republic v Chief Officer Finance and Economic Affairs, Nairobi City County; Dlux Limited t/a The Uptown Local (Exparte) (Judicial Review Application E179 of 2022) [2023] KEHC 23108 (KLR) (Judicial Review) (29 September 2023) (Ruling)

Neutral citation: [2023] KEHC 23108 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E179 OF 2022
JM CHIGITI, J
SEPTEMBER 29, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**CHIEF OFFICER FINANCE AND ECONOMIC AFFAIRS, NAIROBI CITY
COUNTY RESPONDENT**

AND

DLUX LIMITED T/A THE UPTOWN LOCAL EXPARTE

RULING

1. The Application before this court is the one dated 13th December, 2022 which seeks the following orders;
 1. That the Honourable Court be pleased to grant an order of Mandamus compelling the Respondent to comply with the Certificate of Order against the Government issued on 8th November 2022 compelling payment of costs amounting to Kshs 124,315/= as taxed and certified by the Deputy Registrar in Nairobi High Court Judicial Review Application No E116 of 2021.
 2. That the Honorable Court be pleased to give further orders and directions as it may deem fit and just to grant.
 3. That the costs of this application be borne by the Respondent.



2. The application is supported by the Statutory Statement dated 8th December,2022 and the Verifying Affidavit sworn by Jasper Lubeto an Advocate of the High Court of Kenya on even date.
3. The Applicant's case is that pursuant to a Decree issued by this Honourable Court on the 17th February,2022 in Judicial Review Application No E116 of 2021 Republic v Nairobi City County Alcoholic Drinks Control & Licensing Board and Dagoretti North Sub-County Alcoholic Drinks Control & Licensing Committee Exparte Dlux Limited T/A The Uptown Local, it was ordered that the *Ex-parte* Applicant herein shall have costs of the suit.
4. The *Ex-parte* Applicant herein is said to have proceeded to tax and assess the costs in the aforesaid suit at Kshs 124,315/= vide a Certificate of Taxation issued by the Hon. Christine Muchoki (DR) on 15th June,2022.
5. The Advocates on record for the Respondent in the said suit that is Messrs. Momanyi & Associates Advocates are said to have been duly served with the said Certificate of Taxation which they acknowledged having received on the 20th June,2022.
6. That following inaction on payment of costs as ordered by this Honorable Court, the *Ex-parte* Applicant herein once again moved to extract a Certificate of Order which was issued on 8th November,2022 and duly served upon the Respondents' Advocates Messrs. Momanyi & Associates Advocates who once again acknowledged receipt of the Certificate of Order on 9th November,2022.
7. The Costs of Kshs 124,315/= still remain unpaid to date and given that liquor licensing is a devolved function of the County Government pursuant to Part 2 Par. 4(c) of the fourth schedule of the Constitution of Kenya 2010, liability for payment of costs attaches to the accounting officer of the Nairobi City County Government that is the Respondent herein.
8. The Applicant contends that it is imperative for this Honourable Court to intervene as a matter of urgency as the Respondent's continued refusal to pay the costs of Kshs 124,315/= owing to the *Ex-parte* Applicant herein will render the aforesaid judgment and decree nugatory thus causing the Ex parte Applicant irreparable harm.
9. The Respondent herein did not file a response to the application despite being granted leave to do so by the Court on 18th April,2022 on which date Counsel Nyakoe was present on behalf of the Respondent.
10. The Applicant filed written submissions dated 15th May,2023. It is the Applicant's submission that pursuant to section 21(3) and (5) of the Government Proceedings Act it is the obligation of the Accounting Officer for Nairobi County to pay to it the costs owed.
11. The Applicant also urges that as seen on the County's website the Finance and Economic Planning Sector has a Chief Officer for Finance and Economic Planning Affairs whose function includes the management of county assets as per Section 153 of the Public Finance Management Act 2012 and that as envisaged in the said provision it is the accounting officer of a county government who shall manage the county's assets and liabilities.
12. The case of Republic v County Government of Kiambu Ex Parte Laban J Macharia Muiruri [2021] eKLR is cited on the order of *mandamus* and similar to the above case the Applicant submits that it has taken steps to demand that the Respondent pay the costs due to it through the service of a Certificate of Taxation dated 15th June,2022 for the taxed and certified costs due to the Ex parte Applicant, which was received by the Respondent on 20th June,2022 and a Certificate of Order against the Government dated 8th November,2022 which order was duly served and received by the Advocates for the Respondent on 9th November,2022.



13. The Respondent it is contended has failed to pay the certified costs due to the Applicant. On the Applicant's only recourse being an Order of Mandamus as it is barred from executing against government the case of Republic v Attorney General & another Exparte James Alfred Koroso [2013] eKLR is cited to further buttress this argument.

Analysis And Determination

14. It is now commonplace that court orders ought to be obeyed by all persons/ parties against whom such orders are made.
15. The Applicant before this court seeks an order of mandamus to compel the Respondent herein to the sum of Kshs 124,315/= which amount was awarded by the by the Deputy Registrar in Nairobi High Court Judicial Review Application No E116 of 2021.
16. The application stands unopposed as the Respondent despite having been represented by counsel on several occasions has not file any response thereon. This the Court would understand that it is not in dispute that there is a subsisting valid unambiguous order of the court that is yet to be satisfied by the Respondent herein as has been alluded to by the Applicant.
17. It is also obvious going by the fact that there is no response on record and that on several occasions between 28th February,2023,14th March,2023 and 18th April,2023 the Respondent through its advocate Nyakoe has referred to the possibility of an out of court settlement which to date is yet to materialize that the applicant has fulfilled the requirements under Section 21 of the Government Proceedings Act.

Order

- a. In light of the above I allow the Applicant's application dated 13th December, 2022 in terms of prayer 1.
- b. The Applicant shall have the costs of the application as it continues to incur more costs in the pursuit of the fulfilment of its Judgement as the Respondent has refused and/or declined to settle the amount it owes
- c. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF SEPTEMBER 2023

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J. CHIGITI (SC)

JUDGE

