



Republic v Wajir County Government & 3 others; Alhidik Hardware and Construction Company Limited (Exparte Applicant) (Judicial Review 7 of 2022) [2023] KEHC 27376 (KLR) (22 December 2023) (Ruling)

Neutral citation: [2023] KEHC 27376 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT GARISSA

JUDICIAL REVIEW 7 OF 2022

JN ONYIEGO, J

DECEMBER 22, 2023

**IN THE MATTER OF AN APPLICATION FOR
JUDICIAL REVIEW ORDERS OF MANDAMUS**

IN THE MATTER OF THE COUNTY GOVERNMENT ACT

IN THE MATTER OF SECTION 21 OF THE GOVERNMENT PROCEEDINGS ACT

**IN THE MATTER OF ENFORCEMENT OF A JUDGMENT IN THE CIVIL
CASE NO. 019 OF 2021 (ALHIDIK HARDWARE AND CONSTRUCTION
COMPANY LIMITED V COUNTY GOVERNMENT OF WAJIR)**

BETWEEN

REPUBLIC APPLICANT

AND

WAJIR COUNTY GOVERNMENT 1ST RESPONDENT

COUNTY SECRETARY WAJIR COUNTY GOVERNMENT . 2ND RESPONDENT

CHIEF EXECUTIVE COMMITTEE MEMBER FINANCE 3RD RESPONDENT

**CHIEF OFFICER FINANCE & ECONOMIC PLANNING WAJIR COUNTY
GOVERNMENT 4TH RESPONDENT**

AND

**ALHIDIK HARDWARE AND CONSTRUCTION COMPANY
LIMITED EXPARTE APPLICANT**



RULING

1. The ex parte applicant herein through the firm of Kinaro Advocates instituted these judicial review proceedings by way of a notice of motion dated 07.06.2022 seeking a mandamus order compelling the respondents to implement the judgment awarded against them in Garissa CM's court Civil Case No. 019 of 2021 on 22.07.2021 being a decretal sum of Kes. 11,276,500/= together with interest and costs.
2. The application is founded on the grounds set out in the statutory statement of facts dated 05.04.2022 and the affidavit verifying the facts sworn by the managing director of the ex-parte applicant. In a nutshell, the applicant's case is anchored on the grounds that he sued Wajir County Government in Alhidik Hardware & Construction Company Limited v County Government of Wajir in Civil Case No. 019 of 2021 which matter was concluded in his favour.
3. That as a result of the said judgment, the applicant is currently owed a total sum of Kes.11,276,500/- being the principle sum, interest and costs as per the certificate of order against the County Government. That on 17.01.2022, the applicant's advocates on record served the respondents a letter dated 17.09.2021 together with a copy of the judgment, decree and certificate of costs requesting for payment of the decretal sum but to no avail.
4. Despite service of the application upon the respondents, they did not bother to file any response towards the said application. However, the court directed that the application be canvassed by way of written submissions.
5. The applicant submitted that pursuant to the judgment entered on 22.07.2021. It was issued with a decree together with certificate of costs and certificate of order against the Government of Wajir on 13.09.2021 pursuant to Section 21 of the [Government Proceedings Act](#). That copies of the said certificates were served upon the respondents vide a letter dated 17.09.2021.
6. It was submitted that the respondents are jointly responsible for the satisfaction of the court decree on payment of money owed by the 1st respondent by virtue of their roles and functions in line with section 21 of the [Government Proceedings Act](#). Counsel contended that the applicant is entitled to reap the fruits of his judgment. In that regard, reliance was placed on the holding in the case of Republic v County Government of Kiambu ex parte Laban Macharia Muiruri [2021] eKLR.
7. The respondents on the other hand submitted that the applicant was undeserving of the prayers sought as the certificate of costs was obtained in contravention of Order 21 Rule 9A. That the respondents were not served with the statement of costs. It was urged that the certificate of Order condemned the 1st respondent to pay interest for a longer period that is not provided for in the judgment and the decree dated 25.11.2021.
8. The respondents referred the court to the case of Republic v Principal Secretary, Ministry of Internal Security & Another ex parte Schon Noorani & Another [2018] eKLR to express the position that mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty.
9. The respondents argued that the applicant did not follow the procedure set out in Section 21 of the [Government Proceedings Act](#) and Order 21 Rule 9A of the Civil Procedure Rules hence the orders sought cannot issue.



10. I have considered the application therein and the annexures thereof. It is clear that the applicant is seeking orders of mandamus against the respondents herein following their reluctance to implement the decree in question. It is trite that an order of mandamus is always issued so as to 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. See *Republic vs Kenya National Examinations Council ex parte Gathenji and 9 Others*, (1997) eKLR.
11. It is not in dispute that judgment was entered in favour of the applicant in *Alhidik Hardware & Construction Company Limited v County Government of Wajir* in Civil Case No. 019 of 2021 and a decree issued which the respondents have failed to satisfy. As such, it is my view that the issue which this court ought to determine is whether the respondents are under a public duty and obligation to satisfy the said decree, and if so, whether the applicant is entitled to the reliefs sought.
12. The 1st respondent, Wajir County Government, is one of the Counties established by Article 6 of *the Constitution* and the First Schedule to *the Constitution*, and is constitutionally recognized as a distinct level of government by the said Article. (See *Republic v County Secretary, Nairobi City County & another Ex Parte Wachira Nderitu Ngugi & Co. Advocates* [2016] eKLR and *Josphat Gathee Kibuchi v Kirinyaga County Council* [2015] eKLR). Being a government, it therefore means that it has a duty to satisfy debts owed to people and which duty is public.
13. Section 44 of the County Government Act of 2012 establishes the office of the County Secretary who is; the secretary to the County Executive Committee and answerable for the operations of the County Executive. Besides, he is also head of the county public service. Section 103 of the *Public Finance Management Act* of 2012 also establishes the County Treasury comprising of the County Executive member of Finance, the Chief Officer and the departments of the County Treasury responsible for finance and fiscal matters. Under the said section, the County Executive Committee Member for Finance is the head of Treasury hence responsible for finance matters in the County.
14. It is clear therefore that the respondents have a statutory and public duty to satisfy the decree issued by a competent court in favour of the applicant. Section 21(5) of the *Government Proceedings Act* Cap. 40 Laws of Kenya recognises the application of Section 21 to civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party. They have a statutory duty bestowed on them by virtue of their roles and functions among them honouring monetary decrees.
15. The legal position is that, where decrees for the payment of money or costs have been issued against the Government in favour of a litigant, and the same remains unsatisfied, it 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*. See *Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security* (2012) eKLR.
16. The only requirement which serves as a condition precedent to the satisfaction or enforcement of such decrees for money issued against the Government is found in Section 21(1) and (2) of the *Government Proceedings Act*. Under the said provisions, the applicant is supposed to obtain a certificate of order from the court which issued the decree.
17. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment or where the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later. Once this requirement



has been met and/ or complied with and the decree is not satisfied, the decree holder can then proceed to seek orders of mandamus.

18. Having perused the application herein, it is clear that the applicant did obtain a certificate of order against the government issued on 13.09.2021. The applicant further obtained certificate for taxation issued on 22.06.2021. The applicant submitted that on 17.01.2022, its advocates on record served the respondents a letter dated 17.09.2021 which letter had a copy of the judgment, decree and certificate of costs against the County Government of Wajir annexed requesting for payment of the principal amount, interest and cost of the suit as decreed by the trial court. The said letter bears the stamps acknowledging receipt by the 1st respondent (whose 2nd and 3rd respondents are its accounting officers).
19. Considering that the application is not opposed, the issues pleaded through submissions challenging non-compliance with Section 21 of the government proceedings Act does not arise. It is trite that factual issues can not be pleaded through submissions. The applicant's claim that they did comply with Section 21 aforesaid is unchallenged. On the question of calculation of the actual amount due, one has to calculate the same applying the order of the court in its judgment.
20. Considering the above, I am satisfied that the applicant has complied with the procedure under Section 21 of the Government Proceedings Act. However, the respondents have, without any lawful justification and/or excuse failed to fulfill their aforesaid duty to the detriment of the applicant despite the fact that no appeal was lodged by the County Government against the said judgment.
21. For sure, the applicant is entitled to enjoy the fruits of its judgment. In that regard, I agree with the holding of Odunga J as he then was in the case of Republic v Attorney General & another Exparte James Alfred Koroso (2013) eKLR, where it was held that: -

“...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 babysitting 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. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his/her lawful rights which have been decreed by a Court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under Article 129 of the Constitution, executive authority derives from the people of Kenya and is to be exercised in accordance with the Constitution in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit...”

22. In view of the foregoing, it is my finding that the applicant has demonstrated that he is deserving of the reliefs sought in the notice of motion dated 07.06.2022. Accordingly, the application is allowed as prayed with costs to the applicant.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF DECEMBER 2023

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J. N.ONYIEGO
JUDGE

