



Republic v Wajir County Government & 3 others; Galeyr Trading Company Limited (Exparte Applicant) (Judicial Review 4 of 2022) [2023] KEHC 27375 (KLR) (22 December 2023) (Judgment)

Neutral citation: [2023] KEHC 27375 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
JUDICIAL REVIEW 4 OF 2022
JN ONYIEGO, J
DECEMBER 22, 2023**

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

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT

AND

**IN THE MATTER OF ENFORCEMENT OF A JUDGMENT IN CIVIL CASE E001 OF 2021
(GALEYR TRADING COMPANY LIMITED V COUNTY GOVERNMENT OF WAJIR**

BETWEEN

REPUBLIC APPLICANT

AND

THE WAJIR COUNTY GOVERNMENT 1ST RESPONDENT

**THE COUNTY SECRETARY WAJIR COUNTY GOVERNMENT 2ND
RESPONDENT**

COUNTY EXECUTIVE COMMITTEE MEMBER FINANCE 3RD RESPONDENT

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

AND

GALEYR TRADING COMPANY LIMITED EXPARTE APPLICANT



JUDGMENT

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 June 7, 2022 seeking judicial review orders of *mandamus* compelling the respondents to implement the judgment awarded in Wajir Magistrates Court Civil Suit No. E001 of 2021 where the trial court ordered that the 1st respondent pay Kes. 898,000/- being the decretal amount awarded in a consent judgment entered on 08.08.2021. The applicant also sought for the costs and interests of the application to be borne by the respondent.
2. The application is founded on the grounds set out in the statutory statement of facts dated April 4, 2022 and the affidavit verifying the facts sworn on April 4, 2022 by Abdula Ahmed Mohamed, the managing director of the ex-parte applicant.
3. The *ex parte* applicant's case is that it sued the 1st respondent in Galeyr Trading Company v County Government of Wajir in Civil Suit No. E001 of 2021 which matter was concluded in its favour and that it is currently owed a total of Kes. 898,000/- being the award in the judgment, interest and costs as per the certificate of order against the government. That despite the consent judgment, the 1st respondent has failed to honour payment of the same.
4. That on January 17, 2022, the applicant's advocates on record served the respondents a letter dated January 15, 2021 requesting for payment to be made as decreed by the magistrate's court at Wajir but to date, no payment has been made and no response has been offered from the respondents.
5. The respondents filed an affidavit of reply sworn on March 22, 2023 by Naema Ibrahim, the County Attorney of the 1st respondent who deposed that the applicant did not follow the laid down procedures in obtaining the certificate of costs and the certificate of order against the 1st respondent. That the applicant extracted the judgment on December 6, 2021 and the decree on December 7, 2021. It was contended that the certificate of costs having been issued on December 7, 2021, the same pointed to the fact that the applicant lodged its party to party bill of costs on December 7, 2021 and the same was allowed by the court on the same day thus denying the respondent an opportunity to defend the application .
6. In the same breadth, counsel swore that in the decree dated December 6, 2021, the interest on the principal sum was at the rate of 14% p.a. from the date of filing the suit until payment in full. However, the certificate of order dated December 7, 2021, the same ordered the 1st respondent to pay an interest at the rate of 16% from 02.11.2018 until full payment. That the said certificate of order thus condemned the 1st respondent to pay the decretal sum at a rate and period that is not provided for in the consent judgment and decree dated December 6, 2021 and December 7, 2021 respectively.
7. It was deposed that the applicant is on a forum shopping spree looking for a favourable court to grant orders of execution against the 1st respondent. That the applicant had previously filed an application of a similar nature seeking a substantive order against the respondents that a notice to show cause be issued against the chief finance officer.
8. That pursuant to that application, the trial court had on February 28, 2023 issued an order directing the 1st respondent to settle the said decretal sum within 21 days' failure to which summons automatically issue to the chief officer. It was urged that the respondents will be prejudiced if the orders sought herein are allowed yet the applicant had sought similar orders in the trial court and further seeks to commit the respondents to civil jail. Further, the certificate of order cannot be enforced as it is contrary to the



contents of the decree. This court was therefore urged to dismiss the application herein with costs to the respondents as the orders sought were not tenable.

9. In its rejoinder, the applicant filed a supplementary affidavit sworn by Abdullahi Mahat Aden, stating that his advocates on record served upon the defendant through the 4th respondent and thereafter their advocates on record via their mail address being hassanadvocates@gmail.com/osman@hosadvocates.com with a draft decree. Further, that the same was served via a process server and an affidavit of service duly filed in court evidencing the same. That the applicant obtained a decree on December 7, 2021 together with a certificate of order and a certificate for order of costs against the government and served upon the government vide a letter dated January 17, 2022.
10. It was its position that the respondents have deliberately failed to honour the amounts owed. That having been served with the relevant certificates bearing the decretal sum together with interest and costs, the respondents are jointly responsible for the satisfaction of the court decree on payment of money owed by the 1st respondent. He urged this court to allow the prayers sought in the application herein.
11. The court directed that the application be canvassed by way of written submissions wherein both parties complied with the said direction.
12. The applicant in their submissions dated July 14, 2023 submitted that pursuant to the judgment entered on October 8, 2021, the applicant was awarded Kes. 898, 000/-. That despite the consented judgment agreed by the parties, the respondents have failed to honour the same. It was submitted that on January 17, 2022, the applicant's advocate served the respondents a letter dated February 15, 2021 requesting for payment of the decretal award to be made as decreed by the trial court but the same has not been heeded to. That in the given scenario therefore, the only option is for this court to compel the respondents to honour their dues. Reliance was placed *inter alia* on the case of [*Republic v County Government of Kiambu & 2 others ex parte Simon Ndung'u Mungai & Another*](#) [2022] eKLR where it was held that:

‘whereas the execution proceedings as are known to law are not available against the government, the accounting officer for the government department concerned is nevertheless under a statutory duty to satisfy a judgment made by the court against that department as required by section 21(3) of the [*Government Proceedings Act*](#).’
14. The applicant stated that the conditions precedent to the enforcement of decree for money against a government were duly met and as such, urged this court to allow the application with costs.
15. The respondents submitted that the applicant was undeserving of the prayers sought as the certificate of costs was obtained in contravention of Order 21 Rule 9A of the [*Government Proceedings Act*](#). 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 than what is provided for in the judgment and the decree issued on August 26, 2021; which provided for interest rate as 12 p.a. from 26.03.2019 to September 27, 2021. That therefore, the total amount owed ought to be Kes. 866,550/-.
16. That the 1st respondent was not served with any bill of costs or written request, statement of costs and supporting documents as required before the applicant's bill was taxed and certificate of costs issued. That the amount demanded by the applicant is exaggerated and way beyond the acknowledged amount allegedly owed.
17. I have considered the application before me and the annexures thereto. It is clear that the applicant is seeking orders of *mandamus* against the respondents. Ordinarily, 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.

18. It is not in dispute that judgment was entered in favour of the applicant against the 1st respondent in *Galey Trading Company v County Government of Wajir* in Civil Suit No. E001 of 2021 which matter was concluded in its favour and that it is currently owed a total of Kes. 898,000/- ; being the award in the judgment, interest and costs as per the certificate of order against the government. That despite the consent judgment, the 1st respondent has failed to pay the same.
19. In reference to the above, 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.
20. Section 44 of the [County Government Act](#) of 2012 establishes the office of the County Secretary who is; secretary to the County Executive Committee; answerable for the operations of the County Executive, and; being 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 and is thus responsible for finance matters in the County.
21. 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.
22. It is trite that where decrees for the payment of money or costs have been issued against the Government in favour of a litigant, and if it remains unsatisfied, the same can be enforced by way of an order of *mandamus*. [See [Republic v Principal Secretary, Ministry of Internal Security & Another ex parte Schon Noorani & Another](#) [2018] eKLR].
23. 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 ought to obtain a certificate of order from the court which issued the decree. 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.
24. Once the above 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*.
25. In the instant case, it was stated that on 17.01.2022, the applicant's advocate served the respondents a letter dated 15.02.2021 together with the certificate of costs and certificate of order against the county government of Wajir requesting for payment of the decretal award to be made as decreed by the trial court but the same has not been heeded to. Having perused the record herein, this court notes that indeed, the record speaks of itself. The 2nd respondent acknowledged receipt of the said letter together with the annexures thereof by stamping the same. In fact, the respondents did not deny that indeed they were served. As such, it is my humble view that the applicant complied with the procedure under Section 21 of the [Government Proceedings Act](#).
26. From the record, it would appear that the key issue in dispute is the computation of interest. Regarding failure to serve the bill of costs, that is an issue to be challenged before the trial court for review or



through a reference to the high court. As concerns the interest, the same should be calculated as per the judgment order till full payment. If there is any discrepancy, that can be amended to be in sync with the judgment order.

27. Concerning the filing of another execution process before the lower court, the same is revolving on contempt proceedings which is not the subject before this court. When similar application comes before this court, appropriate orders shall be made.
28. However, from the above finding the respondents herein have without any lawful justification failed to honour the aforesaid duty to the detriment of the applicant despite the fact that no appeal was lodged by the Government against the said judgment entered in favour of the applicant in the subordinate court.
29. In view of the foregoing, it is my view that the applicant has demonstrated that he is deserving of the relief sought subject to amendment of the interest to be calculated in accordance with the judgment order. Owing to lack of that clarity, I will order that each party to bear own costs.

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

J.N.ONYIEGO

JUDGE

