



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

JUDICIAL REVIEW NO. 8 OF 2018

REPUBLIC.....APPLICANT

VERSUS

THE COUNTY SECRETARY

COUNTY GOVERNMENT OF HOMA BAY.....1ST RESPONDENT

THE CHIEF OFFICER FOR FINANCE,

COUNTY GOVERNMENT OF HOMA BAY.....2ND RESPONDENT

AND

G.A INSUARANCE LIMITED.....EX-PARTE APPLICANT

RULING

1. The ex-parte applicant moved the court by way of Notice of Motion dated 18th February, 2020 and filed in court on 8th December, 2020. The application is brought under sections 8 & 9 of the Law Reform Act, section 3A of the Civil Procedure Act and Order 53 Rule 3 of the Civil Procedure Rules. The applicant is seeking the following orders:

a) The applicant seeks an order of *mandamus* to compel the Respondents to pay within 7 days of this order the sum of kshs.4, 253,289.60 in accordance with the Certificate of Costs issued in Migori High Court Civil Case No. 13 of 2015 on 25th May 2015 together with interests thereon at the rate of 14% with effect from 21st November, 2017 until payment in full.

b) Costs of the application.

2. The application was premised on the following grounds:

a) The County Government of Homa Bay instituted suit against the applicant by way of a plaint dated 7th May 2014 which was filed as High Court Civil Suit Number 2 of 2015 in the High Court at Homa-Bay, this suit was later transferred to Migori as High Court Civil Case No. 13 of 2015.

b) Judgment was delivered on the 5th of April 2017 dismissing the suit and awarding costs to the applicant herein.

c) Subsequently, the applicant filed its Bill of Costs dated 16th June 2017 which was assessed on 21st November, 2017 by the Taxing Officer at kshs.4, 253,289.60 and a Certificate of Costs issued on 25th May 2017.

d) Despite demand, the County Government of Homa Bay through the respondents has ignored, neglected and or refused to make payment.

e) The respondent is a government institution and does not have personal property capable of being attached for purposes of execution.

f) It is just and fair that the respondents be compelled to pay.

3. The application is supported by a verifying affidavit sworn by Georgiadis Khaseke, advocate of the ex-parte applicant on 30th October 2018.

4. The respondents opposed the application. Their grounds of opposition can be summarized as follows:

a) That the bill of costs pursuant to which this application is brought was assessed without notice.

b) That the interest was not awarded.

c) That the respondents were not issued with a demand notice.

5. There are two conflicting affidavits by the respondents. George Illah, the chief legal officer of the respondents contended they were not issued with a demand to settle the bill since they did not participate in taxation. The gist of the affidavit of Nicholas Obuya Oriko a member of the Executive Committee in charge of Planning and Finance Department of the County Government of Homa Bay tells a different story. He averred that he was aware that the respondents were ordered to pay costs to the applicant. He even went ahead to propose that the County government be allowed to make payments of Kshs.500, 000/= per month awaiting approval of supplementary budget.

6. The proposal by Nicholas Obuya Oriko was made in his affidavit dated 11th October, 2019. It would appear no payments have been made so far in spite of plea to do so. No good faith therefore has been demonstrated by the respondents. I will allow the application as follows:

a) The Respondents are ordered to pay within 60 days of this order the sum of kshs.4, 253,289.60 in accordance with the Certificate of Costs issued in Migori High Court Civil Case No. 13 of 2015 on 25th May 2015 together with interests thereon at court rates with effect from 21st November, 2017 until payment in full.

b) Costs of this application.

Orders accordingly.

DELIVERED and SIGNED at HOMA BAY this 25th day of January, 2022

KIARIE WAWERU KIARIE

JUDGE