



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW DIVISION**

**MISCELLANEOUS APPLICATION NO. E025 OF 2021**

**REPUBLIC.....APPLICANT**

**-VERSUS-**

**THE PRINCIPAL SECRETARY, MINISTRY OF WATER, ENVIRONMENT AND NATURAL RESOURCES(MINISTRY OF WATER, SANITATION & IRRIGATION)...1<sup>ST</sup> RESPONDENT**

**THE PRINCIPAL SECRETARY, MINISTRY OF EAST AFRICAN**

**COMMUNITY & REGIONAL DEVELOPMENT.....2<sup>ND</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**EX PARTE: SMEC INTERNATIONAL PTY LIMITED**

**JUDGMENT**

Before court is the applicant’s motion amended on 6 July 2021 and filed under Order 53 Rule 1 of the Civil Procedure Rules. It seeks for the following orders:

**“i. That an Order of Mandamus do issue to compel the Principal Secretary, Ministry of Water, Sanitation and Irrigation, as administrator and accounting officer for the Ministry, to pay the Ex parte Applicant the sums awarded by the court in its judgment of 18<sup>th</sup> September 2020, to wit, the sum of Australian Dollars (AI-JD) 378, 176.00, together with interest thereon at the LIBOR rate +2% per annum from 16<sup>th</sup> August 2012 until payment in full together with taxed costs of Kenya Shillings (KES) 759,909.00**

**ii. That in the alternative to prayer (I) above, an Order of Mandamus do issue to compel the Principal Secretary, Ministry of East African Community and Regional Development, as administrator and accounting officer for the Ministry, to pay the Ex Parte Applicant the sums awarded by the court in its judgment of 18<sup>th</sup> September 2020, to wit, the sum of Australian Dollars (AUD) 378, 176.00, together with interest thereon at the LIBOR rate +2% per annum from 16<sup>th</sup> August 2012 until payment in full, together with taxed costs of Kenya Shillings (KES) 759909.00.**

**iii. THAT any other or further consequential orders and/or directions be given.**

**iv. THAT the costs of and incidental to this Application be provided for.”**

The motion is based on the statutory statement dated 24 February 2021 and an affidavit sworn in its verification by Chike Uchendu on even date.

The applicant’s case is relatively straightforward.

On 31 May 2010, it entered into a contract with the Ministry of Water, Environment and Natural Resources, now the Ministry of Water,

Sanitation and Irrigation ("the Ministry"). A suit ensued apparently after the Ministry breached the terms of the contract; the suit was filed in this Honourable Court as High Court Civil Case No. 305 of 2017.

In a ruling delivered on 22 November 2019, the court entered judgment for the applicant in the sum of "Australian Dollars 378, 176.00 together with interest at the agreed rate of LIBOR +2% per annum from 16<sup>th</sup> August 2012 until payment in full." The Ministry was also ordered to pay costs of the application and the entire suit.

On 1<sup>st</sup> and 2<sup>nd</sup> February 2021, the applicant duly forwarded the and Certificate of Satisfaction of the Decree and Costs to the Principal Secretary Ministry of Water, Sanitation and Irrigation, and the Attorney General. Again, on 30<sup>th</sup> March 2021, the applicant served the Principal Secretary in the Ministry of East African Community and Regional Development with the Certificate of Satisfaction of the Decree and Costs.

The applicant has urged that despite being served with the Certificate of Satisfaction of the Decree and Costs, the Principal Secretary Ministry of Water, Sanitation and Irrigation, the Attorney General and the Principal Secretary in the Ministry of East African Community and Regional Development have neither communicated to the applicant nor taken any steps to satisfy the decretal amount together with the costs.

It is for this reason that the applicant seeks to enforce the settlement of the decree and costs through the order of mandamus.

Although the respondents were served with the application, and there is an affidavit of service on record to that effect, none of them responded.

In the absence of any response to the application, the facts are not in dispute.

As far as the law is concerned, I am satisfied that the applicant has complied with the provisions of section 21 of the Government Proceedings Act, cap. 40 on satisfaction of decrees or orders against the Government.

#### **Satisfaction of orders against the Government**

**21 (1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case 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, issue to that person a certificate in the prescribed form containing particulars of the order:**

**Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.**

**(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.**

**(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, 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:**

**Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.**

**(4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.**

**(5) This section shall, with necessary modifications, apply to any 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. (Emphasis added).**

In compliance with this provision of the law, there is evidence to the effect that the applicant obtained a certificate of order against the Government for payment of the decretal sum and costs and the certificate was duly served upon the accounting officer in the relevant ministry and the Honourable Attorney General.

Being a decree against the Government, the applicant has no alternative means through which it can enforce the judgment entered in its favour other than through an order for mandamus. I am therefore satisfied that the applicant's application is merited. It is allowed in terms of prayer 1 of the amended motion. The applicant's will also have the costs of the application. Orders accordingly.

**SIGNED, DATED AND DELIVERED ON 21<sup>ST</sup> JANUARY, 2022**

**NGAAH JAIRUS**

**JUDGE**