



Leopard Rock Mico Limited v Chief Officer Finance, County Government Of Meru & 2 others (Judicial Review E003 of 2021) [2022] KEHC 10486 (KLR) (23 June 2022) (Judgment)

Neutral citation: [2022] KEHC 10486 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
JUDICIAL REVIEW E003 OF 2021
TW CHERERE, J
JUNE 23, 2022**

BETWEEN

LEOPARD ROCK MICO LIMITED APPLICANT

AND

**CHIEF OFFICER FINANCE, COUNTY GOVERNMENT OF
MERU 1ST RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF MERU 2ND
RESPONDENT**

**COUNTY EXECUTIVE MEMBER FOR FINANCE, COUNTY GOVERNMENT
OF MERU 3RD RESPONDENT**

JUDGMENT

1. Before this court is the applicant's motion dated June 30, 2021 filed on July 2, 2021 under order 53 rule 1 & 4 of the Civil Procedure Rules, article 48 of the Constitution, section 148 of the Public Finance Management Act No. 18 of 2012. The motion seeks the orders that:
 1. An Order of Mandamus do issue to direct and compel the Chief Officer responsible for financial matters of the County Government of Meru, County Secretary of the County Government of Meru and County Executive Committee Member responsible for financial matters of the County Government of Meru to pay the Applicant within 21 days the sums contained in:
 - a. The Decree dated June 18, 2021 comprised in the Certificate of Order against the Government dated June 24, 2021 compelling the Respondents to comply with the Certificate of Order against the Government issued in Misc Applic No 1 of 2021, Leopard Rock Mico Limited vs County Government of Meru



- b. Certificate of Order for Costs against the Government dated May 11, 2021 issued in Meru Misc. Cause No. 11B of 2020, Leopard Rock Mico Limited vs County Government of Meru
 - c. Certificate of Order for Costs against the Government dated May 11, 2021 issued in Meru Misc. Cause No. E005 of 2021, Leopard Rock Mico Limited vs County Government of Meru
2. Respondent pays the costs of this application
2. The motion is supported by a Supporting Affidavit sworn on June 30, 2021 by the Applicant's Chairman and Managing Director, Mr. Michael Dechauffour. He avers that arising from an Arbitral Award issued in favour of the Applicant as against the County Government of Meru on December 19, 2019, the Applicant obtained a decree against for the principal sum of Kshs. 445,025,388.28 together with costs and interest which sum remains unsettled to date.
3. It is Applicant's case that the 2nd Respondent was duly served vide a demand letter dated May 3, 2021 and as such the accounting officers of the County Government of Meru ought to be compelled to pay.
4. Respondent did not oppose the application.
5. Mr. Wanyama, learned counsel for the Applicant submitted that 2nd Respondent is by virtue of the provisions of section 44 of the County Government Act, the 2nd Respondent is an accounting officer of the County whereas the 3rd Respondent is by virtue of section 103 (3) of the Public Finance Management Act, 2012 responsible for finance matters in the County. In support of its case that Respondents are responsible for the satisfaction of the decrees against the County Government of Meru to the Applicant, counsel cited Greenwood Printers & Stationers Ltd v Independent Electoral and Boundaries Commission [2022] eKLR where Ndungu J made reference to section 21 of the Government Proceedings Act and stated thus:
- “The effect of these provisions is that whereas execution proceedings as known in law are not available against the Government, the Accounting Officer of a Government Department or a Government body subject to the Government Proceedings Act is nevertheless under a statutory duty to satisfy a judgment made by court against that department or body.”
6. I have considered the application in the light of the supporting affidavit and annexures thereto and the submissions on behalf of the applicant filed on April 13, 2022 and the issue for determination is whether an Order of Mandamus should issue as prayed in the Ex parte Applicant's application
7. The circumstances under which judicial review order of mandamus are issued were discussed in the case of Republic v Kenya National Examinations Council Ex Parte Gathenji & 8 Others Civil Appeal No 234 of 1996, where the Court of Appeal cited with approval, Halsbury's Law of England, 4th Edition. Vol. 7 p. 111 para 89 thus:
- “The order of mandamus is of most extensive remedial nature and is in form, of a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative legal remedy, yet that mode of



redress is less convenient, beneficial and effectual."...These principles mean that an order of mandamus compels 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."

8. On whether Respondents ought to be compelled to settle the sums due, I am guided by the case of *Republic v Attorney General & another Ex parte James Alfred Koroso* [2013] eKLR where Odunga J with approval cited *Shah vs. Attorney General (No. 3)* Kampala HCMC No. 31 of 1969 [1970] EA 543 where Goudie, J expressed himself, inter alia, as follows:

"Mandamus is a prerogative order issued in certain cases to compel the performance of a duty..... Thus it is used to compel public officers to perform duties imposed upon them by common law or by statute and is also applicable in certain cases when a duty is imposed by Act of Parliament for the benefit of an individual. Mandamus is neither a writ of course nor of right, but it will be granted if the duty is in the nature of a public duty and especially affects the rights of an individual, provided there is no more appropriate remedy.....With regard to the question whether mandamus will lie, that case falls within the class of cases when officials have a public duty to perform, and having refused to perform it, mandamus will lie on the application of a person interested to compel them to do so. What the applicant is seeking is not relief against the Government but to compel a Government official to do what the Government, through Parliament, has directed him to do."

9. It is settled law that before an order of mandamus is issued, an Applicant must abide by the procedure in section 21 of *Government Proceedings Act* which provides:

"(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."

10. Section 21 (3) of the said Act on the other hand provides:

"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."



11. It is also trite that execution against the Government can only be mounted after service of a Certificate of Order against Government. (See *Maggy Agulo Construction Co Ltd v Ministry of Public Health & 4 others* [2020] eKLR, *Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza* [2012] eKLR and *Republic vs. County Secretary Migori County Government & another* [2019] eKLR). Respondents have not denied the fact that demand for payment was made to the Respondents by a letter dated 03rd May, 2021 served upon the 2nd Respondent on the same day.
12. From the material placed before this court, Applicant has demonstrated by way of evidence, compliance with the provisions of section 21 of the *Government Proceedings Act*. The Respondents on their part have not given any satisfactory reason as to why the decree has not been satisfied.
13. From the foregoing, I find that apart from Mandamus, Applicant has no other option of realising the fruits of its judgement since it is barred from executing against the Government.
14. It is for the above reasons that I find that an order of Mandamus is merited to enforce the judgment in favour of the Applicant or else it would be left babysitting on what Odunga J referred to as a barren decree. (See *Republic v Attorney General & Another ex parte James Alfred Koroso* (supra).
15. Accordingly, it is hereby ordered:
 1. An Order of Mandamus be and is hereby issued directing and compelling the Chief Officer responsible for financial matters of the County Government of Meru, County Secretary of the County Government of Meru and County Executive Committee Member responsible for financial matters of the County Government of Meru to pay the Applicant within 30 days the sums contained in:
 - d. The Decree dated June 18, 2021 comprised in the certificate of order against the Government dated June 24, 2021 compelling the Respondents to comply with the Certificate of Order against the Government issued in Misc Applic No 1 of 2021, Leopard Rock Mico Limited vs County Government of Meru
 - e. Certificate of Order for Costs against the Government dated May 11, 2021 issued in Meru Misc. Cause No. 11B of 2020, Leopard Rock Mico Limited vs County Government of Meru
 - f. Certificate of Order for Costs against the Government dated May 11, 2021 issued in Meru Misc. Cause No. E005 of 2021, Leopard Rock Mico Limited vs County Government of Meru
 2. Costs shall be borne by the Respondents

DATED IN MERU THIS 23rd DAY OF June 2022

WAMAE. T.W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Applicant - Mr. Wanyama for Manyonge Wanyama & Associates LLP

For Respondent - Mr. Mogire for Munga Kibanga & Co. Advocates

