



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

MISC. CIVIL (JR) NO.78 OF 2019

REPUBLIC.....APPLICANT

- V E R S U S -

THE COUNTY SECRETARY -

KERICHO COUNTY GOVERNMENT.....RESPONDENT

AND

GIDEON WAITHAKA NGOK...EX-PARTE APPLICANT

R U L I N G

1. The Ex-parte Applicant **GIDEON WAITHAKA NGOKO** filed an Application dated 17/7/2020 seeking an order of mandamus compelling the County Secretary, Kericho County Government to pay him Kshs.1,205,407 being the decretal sum awarded in **KERICHO CMCC NO.134 OF 2017** in a Judgment delivered on 26/2/2019 together with interest from 26/2/2019 until payment in full and costs of the suit.
2. The parties filed written submissions which I have duly considered. The Ex-parte Applicant submitted that the Respondent has a duty to meet its obligation to settle the decretal sum as the Ex-parte Applicant is expected to enjoy the fruit of his Judgment.
3. The Ex-parte Applicant relied on the case of **REPUBLIC -VS- PRINCIPAL SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING & ANOTHER NAIROBI HCC 876 OF 2004** where Justice Odunga said that settlement of the decretal sum by the Government whether National or County does not necessarily depend on the availability of funds.
4. The Ex-parte applicant further relied on the case of Republic versus Town Clerk of Webuye County Council & Another, HCC 448 of 206, where Justice Majanja opined that “a decree holder’s right to enjoy fruits of his judgment must not be thwarted, and when the courts are faced with such a scenario, it should adopt an interpretation that favours enforcement and as far as possible secure accrued rights.”
5. The Respondent opposed the Application dated 17/7/2020 and submitted that the decretal sum is a public debt that should legally be settled using Public Finance which are Governed by the Public Finance Management Act.
6. The Respondent further submitted that it’s funds have been depleted and due to the long standing stalemate at Senate regarding the criteria of Revenue sharing at the counties, the CARB 2020 took long to be approved by parliament and that the Respondent does not have finances at the moment.
7. Further the Respondent submitted that upon approval of the Revenue Allocation Formulae, the Respondent will further await the disbursement of the funds to the devolved units.
8. The Respondent asked the Court to take Judicial Notice of the financial hard times due to the Covid-19 Pandemic and that the Respondent went out of their way into spending much of their available funds in prevention measures.
9. The Respondent also relied on the case of **WACHIRA NDERITU, NGUGI & CO ADVOCATES -VS- THE TOWN CLERK, CITY COUNCIL OF NAIROBI – MISCELLANEOUS APPLICATION NO.354 OF 2012** where the Court said that based on the material on record, the Respondent ought to be given some breathing space to arrange its finances and settle the sum due.
10. Githua, J. in Republic versus Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex-Parte

Fredrick Manoah Egunza(2012) eklr, stated that “**once the certificate of order against the Government is served upon the Honorable Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sum specified in the said order to the person entitled or to his Advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.**”

11. I therefore find that the Respondents submission that it does not have funds at the moment to satisfy the decretal sum owed to the Ex-parte Applicant due to the long-standing stalemate at Senate regarding the criteria of Revenue sharing at the counties, leading to the CARB 2020 taking long to be approved by parliament does not hold water as it has no basis in law and in any case, it has since been overtaken by events as funds have now been released to the counties.

12. I find that the Application dated 17/7/2020 is meritorious and the same is allowed in the following terms: -

i. THAT an Order of mandamus be and is hereby issued compelling the County Secretary, Kericho County Government to pay the Ex-parte Applicant a sum of Kshs.1,205,407/= being the decretal sum awarded in Kericho CMCC NO.134 of 2017 with costs and interest from 26/2/2019 until payment in full.

ii. THAT the Respondent will pay the costs of this Application.

Delivered, signed and dated at Kericho this 29th day of January, 2021.

A. N. ONGERI

JUDGE