



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO.MISC E081 OF 2020

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

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

PRINCIPAL SECRETARY,

MINISTRY OF DEFENCE.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

EX PARTE APPLICANT:

LUCY NDUTA WAMBUI

RULING NO 2

1. Lucy Nduta Wambui, the *ex parte* Applicant herein, has moved this Court in an application brought by way of Chamber Summons dated 15th December 2020, wherein she is seeking leave to apply for judicial review orders of Mandamus directed to the Respondents to settle the decretal sum awarded in **Nairobi CMCC No. 7724 Of 2017 - Lucy Nduta Wambui vs Cabinet Secretary, Ministry of Defence & The Attorney General** of Kshs 998,452.60 together with interest at the rate of 12% p.a. from 13/01/2020 until payment in full. She also prays that the costs of the application.

2. The said application is supported by a statutory statement dated 15th December 2020, and a verifying affidavit sworn on the same date, and a further affidavit sworn on 20th January 2021 by the Applicant. The main ground for the application is that judgment for the decretal sum was awarded in favour of the *ex parte* Applicant in **Nairobi CMCC No. 7724 Of 2017 - Lucy Nduta Wambui vs Cabinet Secretary, Ministry of Defence & The Attorney General**. However, that the Respondents have without any lawful authority and justification failed to pay the decretal sum despite demands made requesting settlement of the same.

3. The applicable law on leave to commence judicial review proceedings is *Order 53 Rule 1* of the Civil Procedure Rules, which provides that no application for judicial review orders should be made unless leave of the court was sought and granted. The main reason for the leave as explained by Waki J. (as he then was), in **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996**, is to ensure that an applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration.

4. It is also trite that in an application for leave such as the present one, the Court ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before court and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave.

5. Upon perusal of the instant application, I note that the *ex parte* Applicant annexed the decree and the Certificate of Order against Government issued in **Nairobi CMCC No. 7724 Of 2017 - Lucy Nduta Wambui vs Cabinet Secretary, Ministry of Defence & The Attorney General**, and the judgment delivered in the said case on 20th November 2018, which is the basis for the said decree and certificate.

6. I therefore find that the threshold of an arguable case has been met by the *ex parte* Applicant for the grant of leave.

7. The *ex parte* Applicant's Chamber Summons dated 15th December 2020 is accordingly found to be merited, and I hereby grant the following orders:

i. The *ex parte* Applicant is granted leave to apply for an order of Mandamus directed to the Respondents to settle the decretal sum awarded in Nairobi CMCC No. 7724 Of 2017 - Lucy Nduta Wambui vs Cabinet Secretary, Ministry of Defence & The Attorney General of Kshs 998,452.60 together with interest at the rate of 12% p.a. from 13/01/2020 until payment in full.

ii. The costs of the Chamber Summons dated 15th December 2020 shall be in the cause.

iii. The *ex parte* Applicant shall file and serve the Respondents with the substantive Notice of Motion and submissions thereon, and shall also serve the Respondent with the Chamber Summons dated 15th December 2020, a copy of this ruling, and a mention notice, within twenty-one (21) days from today's date.

iv. Upon being served with the said pleadings and documents, the Respondents shall be required to file their response to the substantive Notice of Motion and reply submissions within twenty-one (21) days from the date of service by the *ex parte* Applicant.

v. This matter shall be mentioned on 19th April 2021 to confirm compliance for further directions.

vi. In view of the Ministry of Health directives on the safeguards to be observed to stem the spread of the current COVID-19 pandemic, this Court shall hear and determine the *ex parte* Applicant's substantive Notice of Motion on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

vii. All the parties shall file their pleadings electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com and asunachristine51@gmail.com.

viii. The service of pleadings and documents directed by the Court shall be by way of personal service and electronic mail, and in the case of service by way of electronic mail, the parties shall also email a copy of the documents so served to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

ix. The parties shall also be required to send the respective affidavits of service by way of electronic mail to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

x. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 19th April 2021.

xi. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the Applicant by electronic mail by close of business on Monday, 1st February 2021.

xii. Parties shall be at liberty to apply.

8. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 28TH DAY OF JANUARY 2021

P. NYAMWEYA

JUDGE