



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. E1129 OF 2020**

**BETWEEN**

**NYABARO ONDITI.....APPLICANT**

**VERSUS**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....RESPONDENT**

**RULING NO 2**

1. Nyabaro Onditi, the Applicant herein, has moved this Court in an application brought by way of Chamber Summons dated 10<sup>th</sup> November 2020, wherein it is seeking leave to compelling the Respondent to pay and settle the taxed party and party costs of Kenyan Shillings Two Million One Hundred And Twenty Thousand And Forty Six (Kshs 2,120,046/=), awarded to the Applicant on 20th January 2016 by the Court of Appeal in **Kisumu Civil Appeal Number 44 of 2013**.

2. The said application is supported by a statutory statement dated 10<sup>th</sup> November 2020, and a verifying affidavit sworn on the same date by the Applicant, and a supplementary affidavit sworn on 24<sup>th</sup> November 2020 by Jackson Omwenga, the Applicant's Advocate. The main ground for the application is that the Court of Appeal delivered a judgement on 21st February, 2014 wherein it awarded the Applicant the costs of the appeal, and the said costs were taxed by the Deputy Registrar on 26th January 2016 in the sum of Kshs 2,120,046/=. However, that the Respondent has without any lawful authority and justification failed to pay the taxed costs despite requesting for time to settle 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. The Applicant has in this regard annexed copies of letters written to the Respondent demanding payment of the taxed costs, of the Certificate of Costs dated 29<sup>th</sup> January 2020 issued in **Kisumu Civil Appeal Number 44 of 2013**, and of the judgment of the Court of Appeal in the said appeal, which is the basis for the said costs.

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

7. The Applicant's Chamber Summons dated 10<sup>th</sup> November 2020 is accordingly found to be merited, and I hereby grant the following orders:

**I. The Applicant is granted leave to apply for an order of Mandamus to compelling the Respondent to pay and settle the taxed party and party costs of Kenyan Shillings Two Million One Hundred And Twenty Thousand And Forty Six (Kshs 2,120,046/=), awarded to the Applicant on 20th January 2016 by the Court of Appeal in Kisumu Civil Appeal Number 44 of 2013.**

**II. The costs of the Chamber Summons dated 10th November 2020 shall be in the cause.**

III. The Applicant shall file and serve the Respondent with the substantive Notice of Motion and submissions thereon, and shall also serve the Respondent with the Chamber Summons dated 10th November 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 Respondent shall be required to file its response to the substantive Notice of Motion and reply submission within twenty-one (21) days from the date of service by the Applicant.

V. This matter shall be mentioned on 19<sup>th</sup> 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 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](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto: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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto: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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

X. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 19<sup>th</sup> 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 Thursday, 28<sup>th</sup> January 2021.

XII. Parties shall be at liberty to apply.

8. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JANUARY 2021

P. NYAMWEYA

JUDGE