



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. MISC E001 OF 2021

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

BETWEEN

SAMUEL E.O BOSIRE.....APPLICANT

VERSUS

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

PRINCIPAL SECRETARY MINISTRY OF LANDS

AND PHYSICAL PLANNING.....2ND RESPONDENT

RULING

1. Samuel E.O. Bosire, the Applicant herein, is a retired Judge of the Court of Appeal. The Applicant has moved this Court in an application which is brought by way of Chamber Summons dated 14th December 2020 under a certificate of urgency, wherein he is seeking leave to commence proceedings in the nature of judicial review against the Respondents herein.
2. The Applicant is seeking leave to apply for an order of mandamus compelling the Attorney General to pay to the *ex-parte* Applicant the sum of Kshs. 836,557/- with interest at Court rates from 1st June 2011, in terms of the Certificate of Order against the Government issued pursuant to the judgment delivered in **Nairobi ELC Case No. 491 of 2015 - Samuel E.O Bosire vs The Hon. Attorney General** delivered on 26th July 2018. The Applicant also seeks an order that costs of this application be provided for.
3. The said application is supported by a statutory statement dated 14th December 2020, and a verifying affidavit sworn on the same date by the Applicant. The main ground for the application is that the Applicant has served the Attorney General with the Certificate of Order against the Government and demanded payment of the sum of Kshs. 836,557/- of the decretal amount, together with interest on the sum awarded calculated from 1st June 2011 until payment in full. However, that the Respondent has failed and neglected to make payment.
4. 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.
5. 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 the court, and make a decision as to whether an applicant's case is sufficiently meritorious to justify leave.
6. In the present application, the Applicant has provided evidence of the pleadings filed, and judgment delivered in **Nairobi ELC Case No. 491 of 2015 - Samuel E.O Bosire vs The Hon. Attorney General** on 28th July 2018, as well as the Certificate of Order against Government dated 2nd September 2020 issued therein. To this extent I find that the Applicant has met the threshold of an arguable case, and is therefore entitled to the leave sought to commence judicial review proceedings against the Respondent.
7. In light of the foregoing findings, the Applicant's Chamber Summons dated 14th December 2020 is found to be merited. I accordingly grant the following orders:

I. The Applicant's Chamber Summons dated 14th December 2020 is hereby certified urgent and is hereby admitted to

hearing *ex-parte* in the first instance.

II. The Applicant is granted leave to apply for an order of mandamus compelling the Respondents to pay to the *ex-parte* Applicant the decretal sum of Kshs. 836,557/- with interest at Court rates from 1st June 2011, in terms of the Certificate of Order against the Government issued pursuant to the judgment delivered in Nairobi ELC Case No. 491 of 2015 - Samuel E.O Bosire vs The Hon. Attorney General delivered on 26th July 2018.

III. The costs of the Chamber Summons dated 14th December 2020 shall be in the cause.

IV. The 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 14th December 2020, a copy of this ruling, and a mention notice, within twenty-one (21) days from today's date.

V. 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 submissions thereon within twenty-one (21) days from the date of service by the Applicant.

VI. This matter shall be mentioned on 15th April 2021 for further directions.

VII. 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.

VIII. 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.

IX. 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.

X. 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.

XI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 15th April 2021.

XII. 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 Friday, 8th January 2021.

XIII. Parties shall be at liberty to apply.

8. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 7TH DAY OF JANUARY 2021

P. NYAMWEYA

JUDGE