



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

JUDICIAL REVIEW APPLICATIONS NO. 24 AND 25 OF 2019

REPUBLIC.....APPLICANT

VERSUS

THE PRINCIPAL SECRETARY, STATE

DEPARTMENT OF INDUSTRIALIZATION.....1ST RESPONDENT

KENYA INDUSTRIAL TRAINING

INSTITUTE, NAKURU.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

AND

GEOFFREY GATHUA NDEGWA

T/A GESIN GENERAL SUPPLIES &

ROGENA GENERAL SUPPLIES.....EX-PARTE APPLICANT

JUDGEMENT

1. There are two sets of applications herein namely number **24 of 2019** whose parties are as shown above. The second application number **25 of 2019** are similar in nature save that the applicant is **NAFTALI KANEGEEI T/A COMPUTER ARE US, GOODWILL ENGINEERING WORKS, CANLY AUTO SERVICES 7 CANLY SUPPLIES** and the respondents are the same. The facts are similar save that the amount are different. The court shall proceed to make findings on **No.24** and the same shall apply *mutatis mutandis* to **Number 25**. The parties in any even have made one joint submissions over the two applications.

2. The Ex-parte applicants Notice of Motion dated **18th November 2019** seeks the following writs;

a) An orders of *mandamus* compelling the respondents to pay the balance on the applicant's judgement debt in the sum of Kshs.2,806,812 together with costs of Kshs.218, 050 and interest arising from a consent judgement in this suit.

b) An order of *mandamus* compelling the respondents to transfer the sum of Kshs. 3,024,862 from the 2nd respondent's bank account at Kenya Commercial Bank Nakuru main branch account number 11129777716 such that the balance goes below the sum of Kshs. 3,024,862 until the debt is repaid in full.

3. The applicant prayed for the costs of this suit as well.

4. The application is premised on the statement as well as the affidavit of **Geoffrey Gathua Ndegwa** the proprietor of the businesses.

5. The application was not opposed by the respondents by way of a replying affidavits or grounds of opposition. The only meaningful opposition was by way of written submissions by the 3rd respondent.

6. The facts are clear and straight forward as evidence by the annexures to the supporting affidavit. The applicant did supply goods to the 2nd respondent namely bread pursuant to a tender which he had won. The said goods were received and acknowledged but were not paid for.

7. The applicant was thereafter forced to file suit for the recovery of the debt. The parties vide suit **No. Nakuru CMCC 251 of 2018** entered into a consent where the 2nd respondent agreed to settle the decree. The respondent despite all the reminders which are on record failed to honour the obligation which necessitated the applicant to file this application.

8. As at the time the matter came before this court, there was no evidence of payment. There was no explanation on the part of the respondents why they have failed to honour their obligations.

9. The respondents in their submissions have stated that the reason why the debt has not been honoured is because they realised after the filing of the consent that there was no documentation to support the claim which was contrary to Section 21 of the Government Proceedings Act. In that regard they suspected fraud in the whole transaction and by paying the debt they would be perpetuating corruption.

10. The court has read clearly the submissions by the respondents as well as the applicant. The court takes notice that despite the respondent's fears they have not filed any application to set aside the consent at the lower court nor taken any meaningful steps to challenge the suit at the lower court. This court cannot therefore act merely on suspicions and fears by state agencies which have the instruments to carry out their investigations and remedy the situation.

11. This court being a court of justice cannot countenance this defiance by the respondents. They cannot receive goods, utilise them happily and render the supplier suffer and forced to seek legal redress. It is too late at least in this application to allege some corruption in the deal between the applicant and the 2nd respondent or any other party herein for that matter.

12. As deponed by the applicant the period which the respondents have delayed must have caused pecuniary embarrassment. My brother **Majanja J** in **REPUBLIC VS. TOWN CLERK OF WEBUYE COUNTY COUNCIL & ANOTHER HCC NO 448 OF 2006** in a similar situation rendered himself as hereunder;

13. "On the other hand, a decree holder's right to enjoy fruits of his judgment must not be thwarted. When faced with such a scenario, the Court should adopt an interpretation that favours enforcement and as far as possible secures accrued rights. My reasoning is underpinned by the values of the Constitution particularised under Article 10, the obligation of the court to do justice to the parties and to do so without delay under Article 159(2)(a) and (b) and the applicant's right of access to justice protected under Article 48 of the Constitution."

14. This court is left with no other option but to allow the application. The respondents are obliged just like any other debtor to honour their obligations. They cannot use and at the same time abuse.

15. The 4th and 5th prayers cannot be allowed for the simple reason that the statement attached is an old one and beside that there could be other obligations due to 3rd parties by the 2nd respondent who may be innocently prejudiced by the order.

16. Suffice to state that the prayers granted are sufficient in the circumstances.

17. The application is therefore allowed as follows;

a) An order of mandamus is hereby issued to compel the respondents to pay to the applicant the sum of Kshs. 1,050,814, interest of Kshs 915,072 and costs of Kshs. 218,050 totalling Kshs. 2,183,936 forthwith and or within 45 days from the date herein.

b) Cost of this application to the applicant.

18. As regards application **Number 25 of 2019** stated above the applicant Motion dated 18th November 2019 prayed for the following orders:

a) Orders of mandamus to compel the 2nd respondent to pay the balance of Kshs. 4,051,736 and interest.

b) The order of mandamus to compel the 2nd respondent to transfer the above sum from its account at Kenya Commercial Bank Nakuru branch No 1112977716 to the applicants account.

19. The only difference stated herein were the goods supplied which in this case were computer accessories, foodstuffs and other assorted items.

20. For the reasons given above the application is allowed and the 2nd respondent herein is compelled by an order of mandamus to pay to the applicant the sum of Kshs. 4,051,736 together with interest forthwith and or within 45 days from the date herein. The applicant shall as well have the costs of the application.

Dated signed and delivered electronically at Nakuru this 25th day of February 2021.

H. K. CHEMITEI

JUDGE

