



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E045 OF 2021

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

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE COUNTY SECRETARY,

NAROK COUNTY GOVERNMENT.....1ST RESPONDENT

THE CHIEF OFFICER FINANCE,

NAROK COUNTY GOVERNMENT.....2ND RESPONDENT

EX PARTE APPLICANT:.....SEC & M COMPANY LIMITED

RULING

1. SEC&M Company Systems Limited, the *ex parte* Applicant herein, has moved this Court by way of two Chamber Summons applications dated 29th March 2021, wherein it is seeking leave to be admitted to hearing during the Court vacation, and to commence proceedings in the nature of judicial review against the Respondents for an order of mandamus.
2. The order of mandamus sought seeks to command and compel the Respondents to settle the decretal sum arising from the decree issued on 23rd September 2015 by the High Court of Kenya at Nairobi, Milimani Commercial & Admiralty Division, Miscellaneous Civil Case No. 71 of 2014, as adopted in the Certificate of Order against the Government issued on 21st June 2018. The *ex parte* Applicant also seeks an order that the costs of this application be provided for.
3. The said application is supported by a statutory statement dated 29th March 2021, and a verifying affidavit and supporting affidavit both sworn on the 29th March 2021 by Chrisphine Maondo, the *ex parte* Applicant's Advocate on record, and Humphrey Kaburu Michael, the *ex parte* Applicant's Director. The grounds for the application are that the *ex parte* instituted arbitral proceedings against the Narok County Government with regard to payment of fees for professional services rendered, leading to the issuance of a final award by the Arbitrator on 29th November 2013.
4. However, that the Narok County Government being dissatisfied with the said award lodged an application before the High Court of Kenya at Nairobi, Commercial and Admiralty Division in Miscellaneous Civil Case No. 71 of 2014, seeking to have the said final award of the Arbitrator set aside, which application was dismissed by the Court in a ruling delivered on the 9th December 2014 .
5. Subsequently, that the final award by the Arbitrator was adopted by the High Court and a decree issued on the 23rd September 2015 . Further, that a Certificate of Taxation was issued on the 23rd September 2018 and the Certificate of Order against the Government was issued on 21st June 2018. Lastly, that an appeal against the decision of the High Court delivered on the 9th December 2014 lodged by the Narok County Government at the Court of Appeal, being Civil Appeal No. 268 of 2015, was also dismissed in a judgement delivered on the 4th December 2020.
6. The *ex parte* Applicant contends that the Respondents are the accounting officers of the Narok County Government, and have, despite been issued with demand for payment of the sums due under the Certificate of Order against the Government. failed to comply with the said demand. Therefore, that it is necessary that leave be granted to the Applicant to commence enforcement proceedings against the said persons

in by way of an order of mandamus to command and compel the payment of the decretal sum, costs and interests.

7. 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.

8. 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 it and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave.

9. In the present application, the *ex parte* Applicant annexed a copy of the Arbitral Award, of the ruling delivered by the High Court in Miscellaneous Civil Case No. 71 of 2014 and the decree, Certificate of Order against the Government, and Certificate of Taxation issued therein, the ruling delivered by the Court of Appeal delivered in Civil Appeal No. 268 of 2015, as well as a copy of the demand letter sent to the Respondents.

10. In the premises, I find that the threshold of an arguable case has been met by the *ex parte* Applicant for the grant of leave, and I hereby order as follows:

I. The *ex parte* Applicant's Chamber Summons applications dated 29th March 2021 are hereby certified urgent and admitted to hearing during the court recess.

II. The *ex parte* Applicant is granted leave to apply for an order of Mandamus to command and compel the Respondents to settle the decretal sum arising from the decree issued on 23rd September 2015 by the High Court of Kenya at Nairobi, Milimani Commercial & Admiralty Division, Miscellaneous Civil Case No. 71 of 2014, as adopted in the Certificate of Order against the Government issued on 21st June 2018.

III. The costs of the Chamber Summons applications dated 29th March 2021 shall be in the cause.

IV. The *ex parte* shall file and serve its substantive Notice of Motion within fourteen (14) days of today's date, and shall also serve the Respondents with (i) the Chamber Summons applications dated 29th March 2021, (ii) a copy of this ruling, (iii) the substantive Notice of Motion, and (iv) a mention notice, within the said fourteen (14) days.

V. The Respondents shall file and serve their responses to the substantive Notice of Motion within fourteen (14) days of service.

VI. This matter shall be mentioned by email on 24th May 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. The parties shall file their pleadings and submissions 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 file their respective affidavits evidencing service in the Judiciary's e-filing system.

XI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention by email on 24th May 2021.

XII. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the *ex parte* Applicant by electronic mail by close of business on Thursday, 1st April 2021.

XIII. Parties shall be at liberty to apply.

11. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF MARCH 2021

P. NYAMWEYA

JUDGE