



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. E1132 OF 2020**

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

**BETWEEN**

**CROWN MOTORS GROUP LIMITED.....APPLICANT**

**VERSUS**

**NAIROBI CITY COUNTY GOVERNMENT.....RESPONDENT**

**RULING**

1. This matter was scheduled for judgment on the Applicant's Notice of Motion dated 20<sup>th</sup> November, 2020. The Applicant is seeking an order of mandamus therein, to compel the Respondent to pay Kshs. 35,644,337.60 together with interest and costs pursuant to the ruling issued on 29<sup>th</sup> April, 2019 in **Nairobi High Court Civil Suit Number 201 of 2017- Crown Motors Group Limited vs Nairobi City County Government**, and that costs of the application be borne by the Respondent.

2. The Applicant relied on its statement dated 11<sup>th</sup> November, 2020, and a verifying affidavit sworn on the same date by Wynand Van Niekerk, its General Manager, to which he annexed the ruling in the said case, and decree issued therein on 15<sup>th</sup> September, 2020 as well as a Certificate of Order against Government issued on 21<sup>st</sup> September, 2020. The Applicant also annexed a copy of the demand letter addressed to the Respondent dated 6<sup>th</sup> May, 2019, and a letter dated 23<sup>rd</sup> September, 2020 forwarding the Certificate of Order against Government to the Respondent.

3. The Respondent opposed the application by way of a replying affidavit sworn on 9<sup>th</sup> December, 2020 by Eric Odhiambo Abwao, the Assistant Director, Legal Affairs for the Respondent. Among the issues that has been raised by the Respondent is that the subject ruling mentioned that Kenya Shillings Eleven Million, Two Hundred and Sixty-Four Thousand, Six Hundred and Sixty-Three Eighty Cents (Kshs. 11,264,663.80/=) was paid by the Respondent after the filing of **Nairobi High Court Civil Suit Number 201 of 2017- Crown Motors Group Limited vs Nairobi City County Government** by the Applicant, but the amount was not deducted from the amount claimed in these proceedings.

4. A perusal of the said ruling that was delivered on 30<sup>th</sup> April, 2019 in **HCCC No. 201 of 2017 - Crown Motors Group Limited vs Nairobi City County Government** does indeed indicate that there was such a payment made. However, the decree issued in **HCCC No. 201 of 2017 - Crown Motors Group Limited vs Nairobi City County Government** on 15<sup>th</sup> September 2020 and the Certificate of Order against Government issued on 21<sup>st</sup> September 2020 indicate the decretal sum to be Kshs 46,909,001.40, with costs and interest. The amount that the Applicant is seeking to be paid as the decretal sum in the instant application is Kshs. 35,644,337.60 with interest and costs.

5. It has therefore become necessary for the Applicant to clarify the position as regards the discrepancy in the decretal sum that is due from the Respondent, before judgment is delivered in this matter. In addition, it is notable that costs were awarded in the said judgment and decree, and are also stated in the Certificate of Order against Government, and the Applicant also needs to clarify if these costs are ascertained.

6. In the premises, I hereby direct and order as follows:

**I. The Applicant is granted leave to file and serve and Amended Notice of Motion, Amended Statutory Statement and supplementary affidavit if need be, within fourteen (14) days of today's date.**

**II. The Respondent is granted corresponding leave to file and serve a supplementary affidavit within fourteen (14) days of service of the Applicant's amended and further pleadings.**

III. A virtual mention of this matter shall be held on 25<sup>th</sup> May 2021 at 3 pm for further directions.

IV. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the Applicant and Respondent by electronic mail by close of business on Friday, 23<sup>rd</sup> April 2021.

V. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for a virtual mention on 25<sup>th</sup> May 2021 at 3 pm, and shall send the parties an electronic link for the mention.

VI. Parties shall be at liberty to apply.

7. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF APRIL 2021

P. NYAMWEYA

JUDGE

**FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS RULING**

In light of the declaration of measures restricting Court operations due to the COVID -19 Pandemic, and following the Practice Directions issued by the Honourable Chief Justice dated 17th March 2020 and published in the Kenya Gazette on 17th April 2020 as Kenya Gazette Notice No. 3137, this ruling will be delivered electronically by transmission to the Applicant's and Respondent's counsels email addresses.

P. NYAMWEYA

JUDGE