



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. MISC. E066 OF 2021

BETWEEN

CLEMENT MWATSAMA.....APPLICANT

VERSUS

HON ATTORNEY GENERAL.....1ST RESPONDENT

PERMANENT SECRETARY, MINISTRY OF

TOURISM AND WILDLIFE.....2ND RESPONDENT

RULING

1. Clement Mwatsama, the Applicant herein, moved this Court in an application brought by way of Chamber Summons dated 20th April 2021, in which he was seeking the following orders:

a. That this Honourable Court be pleased to grant leave to the ex-parte Applicant to apply for an Order of MANDUMUS, directed through the 1st Respondent to the Ministry of Tourism and Wildlife compelling the Principal Secretary of the Ministry, the 2nd Respondent, to pay to the Ex Parte-Applicant a sum of Kshs. 3,777,675.35 together with further interest thereon at Court rates with effect from 31st March 2021 until payment in full.

b. That costs of this Application be provided for in favour of the ex-parte Applicant.

2. The said application was supported a verifying affidavit deponed to on 20th April 2021 by the Applicant. However, the Applicant had not filed a statement in support thereof as required by Order 53 Rule 1 of the Civil Procedure Rules, and was accordingly granted leave to file a statement, with the said application was coming up for hearing today.

3. In the intervening period the Respondents filed a replying affidavit sworn on 25th May 2021 by Annette Nyakora, a State Counsel at the Office of the Attorney General. For full effect, I will reproduce the material parts of her affidavit verbatim as follows:

5. THAT there is material non-disclosure by the Applicant having filed Nairobi HCJR NO.259 OF 2019- Clement Mwatsama vs The Honourable Attorney General & The Permanent Secretary Ministry of Tourism and Wildlife.

6. THAT the exparte Applicant was granted leave to file his substantive Notice of Motion in Nairobi HCJR NO. 259 OF 2019 on 27th January, 2021.

7. THAT the Exparte Applicant did not file the substantive application within the required timelines as provided for under Order 53 Rule 3(1) and Sections 8 and 9 of the Law Reform Act.

8. THAT the matter came up for Mention for further directions on 3rd March, 2021 whereby Counsel for the Respondents opposed the application on grounds that it was filed out of time hence contravened the mandatory provisions of the law and sought.

9. THAT Counsel for the Respondents informed the court that they would file a Preliminary Objection and the Court granted the Respondents leave to file the P.O within 7 days.

10. THAT when the matter came up for Mention on 15th March, 2021, the Applicant informed the Court he was

withdrawing the entire application and the Court issued directions marking the matter as closed.

4. I have confirmed from the court record of **NRB HCJR 259 of 2019** that this indeed is the position, and this application is thereby in abuse of the process of Court. If so minded the Applicant can move the Court in **NRB HCJR 259 of 2019** for the appropriate orders.

5. In the premises I hereby order as follows:

i. The Chamber Summons dated 20th April 2021 is hereby struck out for being in abuse of the process of Court.

ii. The Deputy Registrar of the Judicial Review Division shall send a copy of these ruling to the Applicant and Respondents by electronic mail by close of business on Thursday, 4th June 2021.

6. Orders accordingly.

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

P. NYAMWEYA

JUDGE