



3. Further, that the Deputy Registrar also issued a Certificate of Taxation of Kshs 87,258,000.00/- against the Respondents on 8th February 2017, and on 28th March 2017 the said Certificate of Taxation was converted into a Judgment and the Decree dated 28th March 2017 issued to that effect. However, that despite the entry of the judgment therein against the Respondents, they have not paid the decretal sum to the Applicant.

4. The Applicant annexed copies of the Deputy Registrar's ruling dated ruling delivered on 5th July 2016, the Certificate of Taxation issued on 8th February 2017, and decree dated 28<sup>th</sup> March 2017.

5. The Applicant also filed submissions dated 25<sup>th</sup> May 2021 and referred the Court to a Certificate of Order Against Government dated 30<sup>th</sup> June 2020, and demands for payment made to the Respondents, which were part of its annexures.

6. I have considered the Applicant's application, and note that 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.

7. 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.

8. In the present application, I note that the Applicant has provided evidence of the judgment on costs entered in its favour against the Respondents, and has provided evidence of taxation of the said costs and compliance with the Government Proceedings Act in this regard. 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 Respondents.

9. In light of the foregoing observations, I accordingly order as follows:

**I. The Applicant is granted leave to apply for an order of mandamus directed at the County Secretary and the Chief Officer, Finance/County Treasurer, Nairobi City County, directing them to pay to the Applicant forthwith and without delay the decretal sum as per the Certificate of Order issued on 30th June 2020 delineated hereunder together with accrued interest until payment in full, that is to say:**

Decretal sum Kshs 87,258,000.00

Interest @ 12% from

15/2/2017- 19/2/2020 Kshs 31,527,630.24

TOTAL Kshs 118,785,630.24

LESS 30,000,000/- paid Kshs 30,000,000.00

OUTSTANDING SUMS Kshs 88,785,630.24.

**II. The costs of the Applicant's Chamber Summons dated 11<sup>th</sup> May 2021 shall be in the cause.**

**III. 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 11<sup>th</sup> May 2021, a copy of this ruling, and a mention notice, within twenty (21) days from today's date.**

**IV. Upon being served with the said pleadings and documents, the Respondents shall be required to file their responses to the substantive Notice of Motion and submissions thereon within twenty-one (21) days from the date of service by the Applicant.**

**V. A virtual hearing of the Applicant's substantive Notice of Motion shall be held on 21<sup>st</sup> July 2021 at 3.00pm, when a judgment date will also be reserved.**

**VI. 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.**

**VII. All 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](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com). in word format.**

**VIII. 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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

IX. The parties shall also be required to file their respective affidavits evidencing service in the Judiciary's e-filing system

X. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for a virtual hearing on 21<sup>st</sup> July 2021 at 3.00pm and shall send the parties an electronic link for the mention.

XI. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the *ex parte* Applicant by electronic mail by close of business on Thursday, 4<sup>th</sup> June 2021.

XII. Parties shall be at liberty to apply.

10. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 31<sup>ST</sup> DAY OF MAY 2021

P. NYAMWEYA

JUDGE