



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

JUDICIAL REVIEW APPLICATION NO.59 OF 2020

REPUBLIC.....APPLICANT

-VERSUS-

COUNTY SECRETARY NAIROBI CITY COUNTY.....1ST RESPONDENT

COUNTY EXECUTIVE MEMBER IN CHARGE OF

FINANCE NAIROBI CITY COUNTY.....2ND RESPONDENT

THE CHIEF OFFICER IN CHARGE OF

FINANCE NAIROBI CITY COUNTY.....3RD RESPONDENT

EX PARTE: KOCEYO & COMPANY ADVOCATES

JUDGMENT

The application before court is the applicant's motion dated 8 February 2021 brought under Order 53 Rule 1 (1), (2) and (3) of the Civil Procedure Rules, Section 8 (2) and 9 of the Law Reform Act Cap 26 and Section 103 and 104 of the Public Finance Management Act cap. 412C.

The main prayer in the motion is stated as follows:

“1. THAT an order of Mandamus be issued to compel the County Secretary Nairobi City County, the County executive member in charge of Finance Nairobi City County and the Chief Officer in charge of Finance Nairobi City County to satisfy the decretal sum of Kshs. 2,503,711.66 together with interest and Costs thereon as awarded by this Court in: -

- | | |
|-----------------------------------|-------------------|
| (a) JR. MISC. APPL NO. 7 OF 2018 | KSHS. 388, 662.50 |
| (b) PT. MISC. APPL NO. 4 OF 2015 | KSHS. 243, 356.20 |
| (c) JR. MISC. APPL NO. 45 OF 2018 | KSHS. 365, 547.90 |
| (d) JR. APPLI NO. 17 OF 2018 | KSHS. 595, 451.06 |
| (e) MISC. APP. NO. 21 OF 2018 | KSHS. 369, 620.00 |
| (f) JR MISC APP. NO. 1 OF 2015 | KSHS. 207,720.00 |
| (g) MISC. APPL NO. 24 OF 2018 | KSHS. 220, 980.00 |

Total Decretal Sum

KSHS. 2,503,711.66”

The applicant also asked for costs of the application.

According to Titus Koceyo esq., an advocate of this Honourable Court, his firm of advocates rendered legal services to the County Government of Nairobi in various matters for which the latter failed to pay. The applicant had his bills of cost in these matters taxed. He obtained certificates of costs and subsequently judgment was entered in all those matters to the tune of Kshs. 2,503, 711.66.

The respondent has opposed the application and in an affidavit sworn by Erick Odhiambo Abwao in response to the application, it has been deposed that there is no evidence that the applicant ever complied with section 21 of the Government Proceedings cap. 40 and obtained a certificate of order or a certificate of order for costs against the County Government of Nairobi City County.

This point turns out to be main issue on which the applicant’s application turns because if it is true that the applicant did not obtain the certificate or certificates and serve the upon the County Government then the application falls *in limine* and there would be no point in interrogating it any further. Section 21 of the Government reads as follows:

21. Satisfaction of orders against the Government

(1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

The applicant has not disputed the respondent’s contention that the applicant did not obtain the certificate or order against the County Government of Nairobi City; indeed, the only way this contention could be rebutted is by exhibiting a copy thereof to the affidavit in support of the motion. But none has been given in which event it is safe to conclude that the certificate or certificate were never obtained.

The manner in which this provision of the law has been framed suggests that the certificate of order or the certificate of order for costs against the government must be obtained and served before enforcement of payment.

Perhaps to underscore the importance attached to this document, Order 29 Rule 3 of the Civil Procedure Rules, 2010 specifically make reference to section 21 of the Government Proceedings Act and prescribes to whom the application for the certificate should be made. It says that the application for any of the two certificates should be made to a registrar or to the court itself if the case is in a subordinate court.

It follows that an application for mandamus order to enforce payment from the government is premature and certainly misconceived if it is made before the relevant certificate under section 21 of the Government Proceedings Act is issued and served.

The applicant’s motion is one such motion that has fallen afoul of section 21 of the Government Proceedings Act in this regard and for this reason it is struck out with costs. It is so ordered.

SIGNED, DATED AND DELIVERED ON 25TH JUNE 2021

NGAAH JAIRUS

JUDGE