



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

JUDICIAL REVIEW APPLICATION NO. E002 OF 2020

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF MANDAMUS

AND

IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT

AND IN THE MATTER OF ELDORET CHIEF MAGISTRATE'S CIVIL SUIT NO. 197 OF 2013

REPUBLIC.....APPLICANT

-VERSUS-

THE COUNTY GOVERNMENT OF UASIN GISHU.....1ST RESPONDENT

COUNTY SECRETARY, COUNTY

GOVERNMENT OF UASIN GISHU.....2ND RESPONDENT

CHIEF OFFICER FINANCE, COUNTY GOVERNMENT OF

UASIN GISHU.....3RD RESPONDENT

TIMOTHY THUO MWANGI.....EX PARTE APPLICANT

RULING

[1] The Notice of Motion dated **28 October 2020** was filed herein by the *ex parte* applicant, **Timothy Thuo Mwangi** (hereinafter the applicant), pursuant to **Sections 3 and 3A of the Civil Procedure Act, Chapter 21 of the Laws of Kenya; Sections 8 and 9 of the Law Reform Act, Chapter 22 of the Laws of Kenya; and Order 53 of the Civil Procedure Rules** for orders that:

[a] the Court be pleased to grant an Order of Mandamus directed to the Respondents, their agents, servants and officers compelling them to comply by paying the applicant a sum of **Kshs. 804,326/=** currently owed, which arises from **Kshs. 482,653/=** ordered to be paid as from **6 December 2016** at 12% interest per annum together with party to party costs of **Kshs. 90,000/=** till settlement in full; being the amount owed in respect of the judgment and decree in **Eldoret Civil Suit No. 197 of 2013.**

[b] That the costs of the application be borne by the respondent.

[2] The application was premised on the grounds that the applicant and the 1st respondent were the plaintiff and defendant, respectively, in **Eldoret Civil Suit No. 197 of 2013;** and that, on **4 October 2016**, judgment was entered therein against the 1st respondent and 3 others for general damages of **Kshs. 400,000/=**, special damages of **Kshs. 50,000/=** together with interest and costs of the suit. The claim before the lower court was premised on wrongful arrest, false imprisonment and malicious prosecution; and it is the assertion of the applicant that no appeal has ever been lodged against the said judgment.

[3] The applicant further averred that, since the 1st respondent is a public body, its property is immune to execution by way of attachment and

sale; and that, although the County Secretary, as the accounting officer, is bound to settle the sums due, the same remain unsettled despite demand having been made. In the applicant's view, the respondents have declined or refused to pay the judgment debt.

[4] In the Affidavit Verifying the Facts, sworn by applicant, he explained that he filed **Eldoret Chief Magistrate's Civil Suit No. 197 of 2013** on **28 March 2013** claiming general damages for wrongful arrest, false imprisonment and malicious prosecution, as well as the return of his property; and that the case was heard and judgment delivered on **4 October 2016** in which he was awarded **Kshs. 400,000/=** general damages, special damages of **Kshs. 50,000/=** and costs of **Kshs. 90,730/=**. The applicant annexed the decree and certificate of costs to his affidavit as **Annexure TMT 1**.

[5] The applicant further averred that, whereas the respondents severally indicated their willingness to pay the aforementioned sums, they have not done so, even after requesting for and being furnished with his bank details by his advocate on record. He annexed the relevant documents as **Annexures TMT 2(a) and (b)**. He further deposed that there is no pending appeal; that the sums due have since risen to **Kshs. 804,326/=**; and that a Certificate of Order against the County Government dated **6 December 2016** has also been served on the 1st respondent. A copy thereof was exhibited as **Annexure TMT 4(a)** to the Supporting Affidavit. It was therefore the contention of the applicant that, as there is no justification for the failure by the respondents to settle the sums due in respect of the judgment and decree in **Eldoret Chief Magistrate's Civil Case No. 197 of 2013**, he is entitled to an order of Mandamus to compel compliance, to enable him enjoy the fruits of his judgment.

[6] There is on record an Affidavit of Service sworn by **Vincent O. Ogutu** on **21 December 2020**, which shows that the application, along with a Notice to Appear, was duly served on the respondents through the 2nd respondent. There is further proof, vide the Affidavit of Service sworn by **A. Kariuki Mwaniki**, Advocate, on **4 February 2021**, that Hearing Notice for **21 September 2021** was also served on the respondents through the Office of the County Attorney. None of the respondents attended Court to resist the application.

[7] From the material presented before the Court, it is plain that the respondents were, at all material times, aware of the judgment but made no attempt to challenge it by way of review or appeal. Thus, the assertion by the applicant that the respondents have deliberately failed to pay the sums due to it in spite of several promises, remains unrefuted. In the premises, the applicant is entitled to an Order of Mandamus to assert its right to the fruits of its judgment, granted the provisions of **Section 21(4)** of the **Government Proceedings Act**, which shield county governments such as the 1st respondent from execution by way of attachment and sale of its property.

[8] Needless to say that Mandamus is a relief available to litigants under **Article 23(3)(f)** of the Constitution and **Order 53** of the **Civil Procedure Rules**. Its scope was well explicated in **Halsbury's Laws of England, 4th Edition, Volume 1** thus:

"The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual..."

[9] In the premises, I entertain no doubt at all that the remedy sought is warranted; as otherwise, the applicant would be left at the mercy and whims of the respondents as to when and whether his decree would come to fruition. Hence, I entirely agree with the sentiments expressed by **Hon. Odunga, J.** in **Republic vs. the Attorney General & Another, Ex parte James Alfred Keroso** that:

"...Unless something is done, he will forever be left babysitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of the Constitution which enjoins the state to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgments have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgment due to roadblocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya..."

[10] In the light of the foregoing, I find merit in the application dated **28 October 2020**. The same is hereby allowed and orders granted as hereunder:

[a] An Order of Mandamus be and is hereby granted directed to the respondents, their agents, servants and officers compelling them to comply by paying the applicant a sum of **Kshs. 804,326/=** currently owed, which arises from **Kshs. 482,653/=** ordered to be paid as from **6 December 2016** at 12% interest per annum together with party to party costs of **Kshs. 90,000/=** till settlement in full; being the amount owed in respect of the judgment and decree in **Eldoret Civil Suit No. 197 of 2013**.

[b] That the costs of the application be borne by the respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 23RD DAY OF SEPTEMBER 2021

OLGA SEWE

JUDGE