



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

MISCELLANEOUS CIVIL APPLICATION NO. EO5 OF 2020

BAYLEM LTD.....APPLICANT

VERSUS

THE COUNTY SECRETARY,

COUNTY GOVERNMENT OF HOMA BAY.....1ST RESPONDENT

THE COUNTY EXECUTIVE MEMBER FOR FINANCE,

COUNTY GOVERNMENT OF HOMA BAY.....2ND RESPONDENT

THE COUNTY GOVERNMENT OF HOMA BAY..... 3RD RESPONDENT

RULING

1. The applicant came to court by way of Chamber Summons dated 7th October, 2020 under Order 53 Rule 1 (1), (2) & (3) of the Civil Procedure Rules, 2010. The applicant is seeking the following orders:

a) That leave be granted to the applicant to apply for an order for judicial review by way of mandamus directed to the County Secretary of the County Government of Homa Bay, the County Executive Member for Finance County Government of Homa Bay and the County Government of Homa Bay to pay to the applicant the sum of Kshs.2,146,837.00 being the unpaid balance of the decretal sum in Homa Bay High Court Civil Case No. 4of 2017 between **Baylem Ltd vs. County Government of Homa Bay** with any further costs and interest payable therein.

b) That costs be provided for.

2. The application is premised on the following grounds:

a) That judgment in in Homa Bay High Court Civil Case No. 4 of 2017 **Baylem Ltd vs. County Government of Homa Bay** was entered on 30th October,2019 in favour of the applicant in the sum of Kshs. 14,535,923.63 with interest and costs of which the respondent has remitted Kshs.14,000,000.00 being part payment of the decretal amount.

b) That costs of the suit were subsequently assessed and taxed at Kshs. 790,150.90.

c) That the respondent has failed to settle the decretal sum in spite of reminders.

d) That no explanation or justification for the failure has been tendered.

3. The respondent opposed the application on the following grounds:

a) That the application lacks merit and an abuse of the court process.

b) That the application is mischievous and meant to defeat the course of justice.

c) That it has not been made in good faith.

4. Mandamus is a discretionary remedy which the court must base on evidence and sound legal principles before pronouncing it in favour

of the applicant. The applicant must satisfy some eight conditions that were enumerated in the case of **Republic vs. National Employment Authority & 3 others Ex-Parte Middle East Consultancy Services Limited [2018] eKLR** as follows:

- (i) There must be a public legal duty to act;**
- (ii) The duty must be owed to the Applicants;**
- (iii) There must be a clear right to the performance of that duty, meaning that:**
 - a) The Applicants have satisfied all conditions precedent; and**
 - b) There must have been:**
 - I. A prior demand for performance;**
 - II. A reasonable time to comply with the demand, unless there was outright refusal; and**
 - III. An express refusal, or an implied refusal through unreasonable delay;**
- (iv) No other adequate remedy is available to the Applicants;**
- (v) The Order sought must be of some practical value or effect;**
- (vi) There is no equitable bar to the relief sought;**
- (vii) On a balance of convenience, mandamus should lie.**

5. There was a judgment in favour of the applicant and which the respondent has satisfied partially. The applicant has demonstrated that he has given the respondent reasonable time to comply and which has not been seized. I am satisfied that all the eight conditions have been met by the applicant. I therefore grant the orders sought.

DELIVERED AND SIGNED at HOMA BAY THIS 30TH DAY OF NOVEMBER, 2021

KIARIE WAWERU KIARIE

JUDGE.