



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

JUDICIAL REVIEW NO. 10 OF 2019

REPUBLIC.....APPLICANT

VERSUS

CHIEF OFFICER DEPARTMENT OF TRADE,

INDUSTRY, TOURISM & ENTERPRENEURSHIP

COUNTY GOVERNMENT OF VIHIGA.....1ST RESPONDENT

COUNTY EXECUTIVE COMMITTEE

MEMBER FOR FINANCE

COUNTY GOVERNMENT OF VIHIGA.....2ND RESPONDENT

EXPARTE APPLICANT:

GALEXON KENYA LIMITED

RULING

The application before me is for the cancellation of the Bonds which had been granted to **GILBERT VIDIJA** and **ALFRED INDECHE**, so that Warrants of Arrest should thereafter issue against them.

1. The application is simple and straightforward.
2. If the Respondents had effected payment to the exparte Applicant, they would have purged their contempt; and therefore there would be no reason to cancel their bonds.
3. However, if the Respondents have defaulted in making payment, they would be continuing their contempt of the Court; and the Court would have no option but to cancel the bonds.
4. The 1st Respondent, **GILBERT VIDIJA** swore an affidavit on 24th March 2021, asserting that Kshs 17,000,000/= had been paid to the Law Firm of **KMK LAW ADVOCATES**, who were representing the exparte Applicant herein.
5. However, he further deponed thus;

“4. THAT as County Government funds are usually in the Custody of the Central Bank of Kenya and the Controller of Budget Nairobi, on behalf of the County Government, the Controller of Budget Nairobi has been duly notified to release the funds to the Vihiga Development Fund for transmission to the Ex-Parte Applicant.

5. THAT the County Government of Vihiga including myself have effected payment and once the approval by the Controller of Budget, Central Bank Nairobi is received, the funds will reflect in the account of the Exparte Applicant.”

6. From the contents of the affidavit, it is obvious that by the time it was being sworn, the Respondents had not actualized payment. At best, the Respondents had taken steps which were calculated to result in the payment being made.

7. As it later turned out, (as stated in the written submissions of the 1st Respondent), payment was never made!

8. It does appear that the payment could not be effected because there was a Court Oder, freezing the Bank Account of the Advocates for the Exparte Applicant.

9. Indeed, the Respondents now contend that the duty rests upon the exparte Applicant, to take steps to have the Account unfrozen;

“..... in order for payment to be effected as the funds ought to be accounted for, since the initial transaction failed to go through.”

10. I appreciate that at the time when the bank account of the Applicant's advocates was frozen, the Respondents were unable to make payment into it.

11. However, the Respondents cannot be exonerated from their liability, under the guise of payment, when in real terms they had not paid the exparte Applicant.

12. For as long as payment has not been made, the Respondents remained in contempt of the Court.

13. Accordingly, the Bonds granted to the Respondents herein are hereby cancelled. I order that unless the Respondents present themselves before the Court within the next **10** days, with proof that they had actually made payment to the exparte Applicant, they should be arrested and incarcerated for **THREE (3) MONTHS** each or for such lesser period as they would have utilized to remit payment to the exparte Applicant.

14. I further order that the costs of the application be paid by the Respondents, to the exparte Applicant.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 20TH DAY OF DECEMBER 2021

FRED A. OCHIENG

JUDGE