



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

MISCELLANEOUS CIVIL APPLICATION NO. 187 OF 2018.

REPUBLIC.....APPLICANT

VERSUS

FO (Minor suing through his mother and next friend

(LOP) AND 27 OTHERSEX-PARTE APPLICANT

AND

COUNTY CHIEF OFFICER, FINANCE & ECONOMIC

PLANNING COUNTY GOVERNMENT OF BUSIARESPONDENT

RULING

1. The ex-parte applicants herein moved the court by way of Notice of Motion under sections 8 &9 of the Law Reform Act Cap 26 Laws of Kenya, Order 53 Rules 3(1)&(3) of the Civil Procedure Rules and Article 47 of the Constitution of Kenya. They are seeking the following orders:

- a) That an order of mandamus do issue to compel the County Chief Executive Officer, Finance & Economic Planning to pay to the ex-parte applicants the cumulative sum of Ksh.47,372,206/= being the decretal amount owed to them arising from the judgments and decrees obtained in the Chief Magistrate's Court at Busia in Busia CMCC Nos: 438 of 2015, 439 of 2015, 440 of 2015, 441 of 2015, 442 of 2015, 443 of 2015, 444 of 2015, 445 of 2015, 446 of 2015, 447 of 2015, 448 of 2015, 449 of 2015, 450 of 2015, 451 of 2015, 452 of 2015, 453 of 2015, 454 of 2015, 455 of 2015, 456 of 2015 457 of 2015, 458 of 2015, 459 of 2015, 460 of 2015, 58 of 2016, 59 of 2016, 60 of 2016, 61 of 2016 and 62 of 2016 together with interest occurring thereon at the rate of 14% per annum as at from the time of each decree until payment in full.
- b) That the respondent shall comply by satisfying the said decrees and interests on the amount cited hereinabove within fourteen (14) days from the date of service of the order.
- c) That in default, Notice to show cause do issue against the persons occupying the office of the respondent for him/her to show cause why he/she should not be cited for contempt of court and committal to civil jail.
- d) That costs of this application be provided for.

2. The application is premised on the following grounds:

- a) That the ex-parte applicants had instituted various claims on behalf of the minors against the respondent herein.
- b) That the ex-parte applicants had sought compensation for the minors as a result of medical negligence on the part of the respondent, its agents, servants and/or employees.
- c) That a judgment was delivered on 19th December 2017 in favour of the applicants but the respondent has failed to satisfy the same.
- d) That the respondent be compelled to pay.

3. The respondent did not file any grounds of opposition but instead filed a proposal for payment.

3. I have perused the supporting affidavit to the application and the supplementary affidavit sworn by Mathew Edejai on behalf of the ex-parte applicants and the replying affidavit sworn by Dr. Isaac Omeri for the respondent.

4. It is not tenable for the respondent to propose how the ex-parte applicants will apply the money paid as damages. The respondent's duty is to ensure the decrees have been satisfied.

5. Since there were no grounds for opposition, and having satisfied myself that the application is merited, I will allow the application with costs on the following terms:

- a) The respondent to satisfy the decrees herein within sixty (60) days of this ruling.
- b) Failure to satisfy the decree, the ex-parte applicants be at liberty to move the court for other appropriate orders.

DELIVERED and **SIGNED** at **BUSIA** this **28th** day of January, 2020

KIARIE WAWERU KIARIE

JUDGE