



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE-J)

JUDICIAL REVIEW APPLICATION NO. 18 OF 2019

IN THE MATTER OF AN APPLICATION BY CAROLINE ACHIENG NGARE (suing as the legal representative and administrator of PETER NGARE OTIENO(deceased))

AND

IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW BY WAY OF MANDAMUS

AND

IN THE COUNTY GOVERNMENT OF KISUMU

AND

IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT CAP 41 LAWS OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

AND

CHIEF OFFICER, FINANCE KISUMU

COUNTY GOVERNMENT...RESPONDENT

EXPARTE APPLICANT: CAROLINE ACHIENG NGARE

RULING

1. By a Notice of Motion dated 13th November, 2019 and filed on even date, the ex parte Applicant herein, seeks the following orders:

1. An order of Mandamus be directed at the Chief Officer, Finance, County Government of Kisumu to pay the Applicant Kshs. 2,920,000/- being the decretal sum in KISUMU CHIEF MAGISTRATE'S COURT CASE NO. 154 OF 2017 together with Kshs. 958,231/- being the certified costs and interest thereon until payment in full

2. Costs of the application

2. The Applicant's case is that on 21st June, 2019, she obtained a decree in **KISUMU CHIEF MAGISTRATE'S COURT CASE NO. 154 OF 2017** for Kshs. 2,920,000/- together with Kshs. 958,231/- being the certified costs and interest thereon.

3. The Applicant avers that upon the Respondent being serviced with a certificate of order against the Government, M/S M.J. OKUMU ADVOCATES by a letter dated 21st June, 2018 requested her advocate to quantify costs and disbursement and provide bank details which were subsequently supplied by a letter dated 26th June, 2018 but that the claim remains unsettled to date.

4. The issue for determination is whether this Court ought to grant the order sought herein.

5. It must always be remembered that a judicial review application is neither a criminal case nor a civil suit hence the application ought to be brought against the person who is bound to comply with the orders sought therein (See **Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County Ex Parte Stanley Muturi** (above).

6. The Respondent, though served with the Petition neither filed a response nor attended the hearing. The Respondent who is under an obligation to settle the claim has therefore failed to offer an explanation for its failure to settle the decretal sum.

7. I have considered the case of **Republic v Attorney General & another Ex parte James Alfred Koroso [2013] eKLR** where it was held:

” In the present case the ex parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done he will forever be left baby-sitting 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 judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement 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. To deny a citizen his/her lawful rights which have been decreed by a Court of competent jurisdiction is, in my view, unacceptable in a democratic society.”

8. In seeking an order of *mandamus* the Applicant is seeking, not relief against the County Government of Kisumu, but to compel its officials, and in particular the Respondent who the Chief Officer, Finance in the County Government of Kisumu to do what the County Government, through Parliament, has directed him to do.

Order

9. In view of the foregoing, I am satisfied that the Applicant has demonstrated that she is deserving of the relief sought. Consequently, the Notice of Motion dated 13th November, 2019 and filed on even date, is allowed on the following terms:

1. An order of Mandamus be and is hereby issued directed at the Chief Officer, Finance, County Government of Kisumu to pay the Applicant Kshs. 2,920,000/- being the decretal sum in KISUMU CHIEF MAGISTRATE'S COURT CASE NO. 154 OF 2017 together with Kshs. 958,231/- being the certified costs and interest thereon until payment in full

2. Costs of this application shall be borne by the Respondent

DELIVERED AND SIGNED IN KISUMU THIS 12th DAY OF March, 2020

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Amondi

For Petitioner/Applicant - Ms. Achieng hb for Ms. Kuke

Respondent - N/A