



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

JUDICIAL REVIEW APPLICATION NO. 5 OF 2020

REPUBLIC.....APPLICANT

VERSES

THE CLERK COUNTY ASSEMBLY OF TRANSNZOIA.....RESPONDENT

EX- PARTE.....PETER MANYONGE WANYAMA & ASSOCIATES

RULING

1. The Applicants Chamber Summons dated 8th June 2020 prays among others for orders that it be granted the leave of this court to apply for the writ of *mandamus* to compel the respondent to pay the sum of Kshs.2,920,416 which was the taxed costs in case No. **KITALE PETITION NO. 11 OF 2017**.
2. The Applicant has equally prayed that the Respondent alternatively be summoned to explain why it has failed to pay the aforesaid sum of money. It has also prayed for any further orders of this court as it deems appropriate.
3. The application is supported by the grounds thereof as well as the sworn affidavit of **PETER MANYONGE WANYAMA** sworn on the even date.
4. The issues herein are clear and straight forward. The relationship between the Applicant and the Respondent was that of a client and an advocate. The Counsel acted for the Respondent in the **PETITION NO. 11 OF 2017 WILLIAM KIPRUKO ANDIEMA & ANOTHER VERSES COUNTY ASSEMBLY OF TRANS-NZOIA AND ANOTHER**. Subsequently the Applicant filed its costs before the Deputy Registrar of this court and the same was taxed at 2,920,416. A certificate to that effect was issued.
5. As per the said deponent the amount was not settled which necessitated him to file this application. He said that his law firm was denied the fruits of the judgement hence the need to compel the Respondent to pay.
6. The Respondent vide the Replying Affidavit of **AINEA. O. INDAKWA** dated 23rd June 2020 did not deny the averments by the Applicant especially on the certificate of costs by the Deputy Registrar of this court. He however stated that the Respondent had already paid the entire sum by way of instalments and he exhibited the relevant evidence from the Central Bank less the withholding tax of Kshs.344,800 although the actual amount should be Kshs. 217,600.
7. He went ahead to accuse the Applicant of not being candid enough by denying the fact that he had already been paid and that what remained was the statutory tax. He therefore argued that the application was misconceived and should not be allowed.
8. In his further supporting affidavit **PETER MANYONGE WANYAMA** Advocate has conceded though vainly that the Respondent has paid the total sum less the withholding tax of Kshs. 620,416 and not Kshs. 402 816. He said that there was no evidence that the said tax was remitted to KRA by the Respondent.
9. The court has perused the application as well as the rival affidavits and the submissions by the Respondent. The issues to be determined herein are what is the amount withheld by the Respondent as withholding tax and whether or not it has remitted the same to KRA on behalf of the Applicant.
10. Once the two issues are answered then there shall be no cause why this matter should not be concluded. The proviso to Order 53 Rule one of the Civil Procedure Rules states that;

“Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days”.

11. The said portion grants this court the discretionary powers to grant leave to the Applicant in the first instant or to have the same argued first. In this case this court deemed it necessary to have the leave argued first. As seen from the above facts this is not a complex matter which in reality needs the orders of mandamus for the Respondent to comply.

12. In my view the parties are at cross purpose on the total amount withheld by the Respondent as withholding tax and whether the Respondent has remitted to KRA as statutorily expected.

13. In the premises, this court for now shall not issue the orders as prayed by the Respondent. The alternative orders which it shall sought out the impasse is to refer this matter to the Deputy Registrar of this court to determine the following issues;

(a) What is the total withholding tax expected to be paid by the Applicant to KRA based on the original certificate of Kshs. 2,920,416.

(b) Has the respondent remitted the said amount if any to KRA.? If so when?

14. Once the two questions are answered satisfactorily the matter should be closed. The parties are nevertheless granted leave to make any relevant application to this court in any event.

15. Costs of this application shall be in the cause.

Dated, signed and delivered at Kitale this 30th day of July 2020.

H. K. CHEMITEI

JUDGE

30/7/2020

In the presence of:-

Ms Wanjala holding brief for Manyonge Wanyonyi for

Applicant

Ifedha for the respondent Present

Court Assistant – Kirong

Ruling read out in chambers