



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW MISCELLANEOUS APPLICATION NO. 14 OF 2020

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF KIAMBU.....RESPONDENT

EX PARTE APPLICANT:

LABAN J. MACHARIA MUIRURI

RULING

1. The *ex parte* Applicant herein, Laban J. Macharia Muiruri filed an application by way of Chamber Summons dated 21<sup>st</sup> January 2020, wherein it is seeking leave to apply for an order of mandamus directed to the Respondent, County Government of Kiambu, to pay him the sum of Kshs. 248,445/=, being the certified costs in **High Court Judicial Review Miscellaneous Application Number 186 of 2018**, together with interest thereon at 12% per annum from 28<sup>th</sup> September 2018. The *ex parte* Applicant also sought an order that the costs of the application be provided for.

2. The said application is supported by a statutory statement dated 21<sup>st</sup> January 2020, and a verifying affidavit sworn on the same date by the *ex parte* Applicant and a further affidavit sworn on 8<sup>th</sup> June 2020 by Evans Umidha Oruenjo, the *ex parte* Applicant's advocate on record. The main ground for the application is that the Respondent is under a duty to make the said payment to the *ex parte* Applicant and despite demand has refused to carry out its public duty to do so.

3. The *ex parte* Applicant annexed the judgment in **Nairobi High Court Judicial Review Miscellaneous Application Number 186 of 2018**, and the decree issued pursuant thereto, as well as a certificate of taxation dated 28<sup>th</sup> September 2019 issued therein in his favour for the sum of Kshs 248, 445/=. Copies of letter forwarding the certificate of taxation to the Respondent and demanding for payment were also annexed. His advocates on record, Oruenjo Kibet & Khalid Advocates also filed submissions dated 22<sup>nd</sup> June 2020.

#### The Determination

4. I have considered the application dated 21<sup>st</sup> January 2020 and am alive to the provisions of *Order 53 Rule 1* of the Civil Procedure Rules, which provides that no application for judicial review orders should be made unless leave of the court was sought and granted. The main reason for the leave as explained by Waki J. (as he then was), in **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996**, is to ensure that an applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration.

5. It is also trite that in an application for leave such as the present one, the Court ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before court and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave.

6. In the present application, the *ex parte* Applicant has provided evidence of costs taxed in his favour against the Respondent, and of demand made of payment of the said sum from the Respondents. Upon perusal of the pleadings filed, I note that the *ex parte* Applicant indicated that he has complied with the provisions of the Government Proceedings Act and relied on the Certificate of Taxation on this regard. He also relied on section 21 of the Government Proceedings Act and various decisions in his submissions, including that in **Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza [2012] e KLR**.

7. I also note that the *ex parte* Applicant did not attach a copy of the Certificate of Costs against Government or evidence of its service on the Respondent as required by the Government Proceedings Act. The issue of the Applicant's compliance with the provisions of the Government Proceedings Act is however one to be decided at a substantive hearing, and not at this stage. To this extent I find that the *ex parte* Applicant has met the threshold of an arguable case, and is therefore entitled to the leave sought to commence judicial review proceedings for mandamus against the Respondent.

**The Orders:**

8. In the premises I direct and orders as follows:

I. The *ex parte* Applicant is granted leave to apply for an order of Mandamus directed to the Respondent, County Government of Kiambu, to pay him the sum of Kshs. 248,445/=, being the certified costs awarded in High Court Judicial Review Miscellaneous Application Number 186 of 2018 , together with interest thereon at 12% per annum from 28<sup>th</sup> September 2018.

II. The costs of the Chamber Summons dated 21<sup>st</sup> January 2020 shall be in the cause.

III. The *ex parte* Applicant shall file and serve the Respondent with (i) the substantive Notice of Motion, (ii) a supplementary affidavit demonstrating compliance with the Government Proceedings Act, (iii) submissions on its substantive Notice of Motion, (iv) a copy of this ruling, and (v) a hearing notice, within twenty-one (21) days of today's date.

IV. Upon being served with the said pleadings and documents, the Respondent shall be required to file its responses to, and submissions on the substantive Notice of Motion application within twenty-one (21) days from the date of service.

V. This *ex parte* Applicant's substantive Notice of Motion shall be heard on 10<sup>th</sup> September 2020.

VI. In view of the Ministry of Health directives on the safeguards to be observed to stem the spread of the current COVID-19 pandemic, this Court shall hear and determine the *ex parte* Applicant's substantive Notice of Motion on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

VII. All the parties shall file their pleadings and submissions electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

VIII. The electronic copies of pleadings and documents sent by the parties shall be clearly and correctly titled to indicate the J.R Case Number, the description of the Party sending it (that is whether the *Ex Parte* Applicant, Respondent or Interested Party), and the nature of the pleading or document.

IX. The service of pleadings and documents directed by the Court shall be by way of personal service and electronic mail, and in the case of service by way of electronic mail, the parties shall also email a copy of the documents so served to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

X. The parties shall also be required to file and send to the Deputy Registrar of the Judicial Review Division their respective affidavits of service evidencing personal service, by way of electronic mail to [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

XI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 10<sup>th</sup> September 2020.

XII. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the *ex parte* Applicant by electronic mail by close of business on Tuesday, 28<sup>th</sup> July 2020.

XIII. Parties shall be at liberty to apply.

9. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 27<sup>th</sup> DAY OF JULY 2020

P. NYAMWEYA

JUDGE

FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS RULING

In light of the declaration of measures restricting Court operations due to the COVID-19 Pandemic, and following the Practice Directions issued by the Honourable Chief Justice dated 17th March 2020 and published in the Kenya Gazette on 17th April 2020 as

**Kenya Gazette Notice No. 3137, this ruling will be delivered electronically by transmission to the ex parte Applicant's advocate's email address, by close of business on 28<sup>th</sup> July 2020.**

**P. NYAMWEYA**

**JUDGE**