



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL & JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW NO. 77 OF 2018

IN THE MATTER OF: AN APPLICATION BY ROCHAM ENTERPRISES LIMITED FOR LEAVE TO APPLY FOR JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF MANDAMUS

AND

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF MANDAMUS TO COMPEL THE RESPONDENT TO PAY TO THE APPLICANT THE DECRETAL SUM OF KSHS. 4,479,298/= WITH INTEREST AT 12% PER ANNUM UNTIL PAYMENT IN FULL ARISING FROM THE JUDGMENT DELIVERED MSA CMCC NO. 510 OF 2009

AND

IN THE MATTER OF: SECTION 8 & 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF: THE CIVIL PROCEDURE ACT AND THE LAW REFORM ACT

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

1. MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

2. HON. ATTORNEY GENERAL.....RESPONDENTS

ROCHAM ENTERPRISES LIMITED.....EX PARTE APPLICANT

RULING

1. By a Notice of Motion before the court dated 27/11/2019 the Applicant prays for the following orders:

(i) That the Principal Secretary State Department for Trade, Dr. Chris Kiptoo CBS be committed to civil jail for a period not exceeding 6 months for contempt of court for disobeying the order of this court issued on 2/4/2019 compelling the Respondents to pay the Ex parte Applicant the decretal sum of Kshs. 4,497,298/= plus costs and interest at 12% per annum until payment in full arising from the Judgment delivered in favour of the Ex parte Applicants on 23/5/2018 in MSA CMCC No. 510 of 2009.

(ii) That in the alternative, the court impose such a penalty as the court may deem fit.

(iii) That the costs of this application be borne by the Respondents.

2. The Applicant's case is that pursuant to leave granted by this court on 30/1/2019, the Ex parte Applicant took out a substantive Notice of Motion application dated 5/2/2019 seeking the following Judicial Review orders against the Respondents:

(a) An order of mandamus order do issue compelling the Cabinet Secretary for Ministry of Industry, Trade and Cooperatives the 1st

Respondent and the Hon. Attorney General the 2nd Respondent to pay the Ex parte Applicants the decretal sum of Kshs. 4,497,298/= plus costs and interest at 12% per annum until payment in full arising from the Judgment delivered in favour of the Ex parte Applicants on 23/5/2018 in MSA CMCC No. 510 of 2009.

3. The Applicant states that the said substantive Notice of Motion application was heard and Judgment delivered on 25/3/2019 allowing the prayers sought in the motion; that the order compelling the Respondents to pay the sum of Kshs. 4,497,298/= was served on 2nd Respondent on 5/4/2019; that vide a letter dated 14/5/2019 which enclosed the order dated 2/4/2019, the Ex parte Applicant's advocates Cootow & Associates Advocates wrote to the 1st Respondent demanding payment of the decretal amount of Kshs. 4,497,298/=; that this letter was served on 1st Respondent on 15/5/2019; that the Respondents were statutorily bound pursuant to Section 21 (3) of the Government Proceedings Act Cap 40 of the Laws of Kenya to pay the decretal amount of Kshs. 4,497,298/=; that the Respondents have willfully disobeyed the order of the court issued on 2/4/2019 as they have failed and or neglected to pay the above decretal amount despite being duly served with the order; that the Respondent's conduct defies the authority and dignity of this court and the said conduct has interfered with the administration of justice; that it is a fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a court of law.

The Response

4. The application is not opposed. It was served upon the Respondent and the contemnors thrice. The first service was on 16/12/2019, the second service on 6/1/2020. These first two services were disregarded by the court on 21/01/2020 and the court directed a further service.

5. There is now an affidavit of service sworn on 29/1/2020 by Alfred Soita Paul, the process server, showing that the application was served upon the Office of the Principal Secretary, Ministry of Industry Trade and Cooperative on 27/01/2020. Besides, the advocates on record for the Respondent herein were equally served with the application.

6. I am therefore satisfied that the alleged contemnor was properly served with the application before the court, and is aware of these proceedings but has refused or neglected to perform his statutory duty. The application before the court is therefore unopposed.

7. That notwithstanding this court is still under duty to determine the application on its merits.

8. I have considered the grounds upon which the application is based and the Supporting Affidavit. The Judgment/Decree from which these proceedings arise is a legitimate Judgment of the court. That decree was not satisfied causing the Applicant to apply for mandamus order to compel payment. The application for mandamus was settled by consent of the parties. Therefore, there is no further dispute in the matter. What remains is for the responsible officer to settle the decree.

9. The application before the court is therefore merited and is allowed.

10. However, the contemnor shall be given an opportunity to mitigate before sentence or to show cause why he should not be jailed.

11. This will be done on 30/7/2020.

Dated, Signed and Delivered at Mombasa this 27th day of July, 2020.

HON. E. K. OGOLA

JUDGE

Ruling Delivered via MS Teams in the presence of:

Mr. Wafula for Applicant

M. Makuto holding brief Mr. Mkok for Respondents

Mr. Kaunda Court Assistant