



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. E049 OF 2020**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**NAIROBI CITY COUNTY.....1<sup>ST</sup> RESPONDENT**

**CAPITAL AUCTIONEERS.....2<sup>ND</sup> RESPONDENT**

**FASHION PLAZA LIMITED.....3<sup>RD</sup> RESPONDENT**

**EX PARTE APPLICANT:**

**ALLIED INVESTMENTS LIMITED**

**RULING**

1. The *ex parte* Applicant herein, Allied Investments Limited, filed an application by way of Chamber Summons dated 6<sup>th</sup> July 2020, wherein it is seeking the following orders:

**1. This application be certified as urgent and be heard ex-parte in the first instance.**

**2. The Applicant be and is hereby granted leave to commence proceedings in the nature of Judicial Review against the Respondents for an order of Mandamus to issue compelling the Respondents to jointly and severally pay to the Applicant the Judgment debt herein in the sum of Kshs. 132,500,000/= as awarded in the Judgment of this Court in High Court Civil Case No. 1351 of 1996 Allied Investments Limited vs. City Council of Nairobi & Others delivered on 24<sup>th</sup> November 2015 together with all accrued interest on the decretal sum at the rate of 6% per annum arising from the Decree issued on 3<sup>rd</sup> July 2017 until payment in full and to compel the Respondents to jointly and severally pay the Applicant Kshs. 2,058,816/= being the costs awarded to the Applicant in the Certificate of Taxation issued in High Court Civil Case No. 1351 of 1996 Allied Investments Limited vs. City Council of Nairobi & Others on 19<sup>th</sup> March 2019 together with interest thereon with effect from 25<sup>th</sup> October 2018 until payment in full.**

**3. The costs of this application be bourne by the Respondents.**

2. The said application is supported by a statutory statement dated 6<sup>th</sup> July 2020, and a verifying affidavit sworn on the same date by Ronald Wakhisi Makokha the *ex parte* Applicant's advocate on record. The main ground for the application is that judgment was given in favour of the Applicant herein in High Court Civil Case No. 1351 of 1996 - Allied Investments Limited vs. City Council of Nairobi & Others on 24<sup>th</sup> November 2015 in which the Respondents were directed to pay to the Applicant the sum of Kshs. 132,500,000/= plus costs of the suits to be taxed by the Taxing Master. Further, that the Judgment was followed by a Decree which was issued on 3<sup>rd</sup> July 2017.

3. The Applicant subsequently filed its Party and Party Bill of Cost dated 19<sup>th</sup> October 2017 on 23<sup>rd</sup> October 2017 which was assessed and taxed on 25<sup>th</sup> October 2018 by the Taxing Master at Kshs. 2,058,816/=, and a Certificate of Taxation issued therefrom on 19<sup>th</sup> March 2019. However, that despite the issuance of the said decree and Certificate of Taxation, the Respondents have ignored, neglected, refused and/or otherwise failed to pay the decretal sum and costs awarded together with all accrued interest thereon.

4. The *ex parte* Applicant annexed the judgment in in High Court Civil Case No. 1351 of 1996 - Allied Investments Limited vs. City Council of Nairobi & Others, and the decree issued pursuant thereto, as well as a certificate of taxation dated 19<sup>th</sup> March 2019. Copies of

letters demanding for payment from the 1<sup>st</sup> Respondent were also annexed.

### **The Determination**

5. I have considered the application dated 6<sup>th</sup> July 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.

6. 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.

7. In the present application, the *ex parte* Applicant has provided evidence of a judgement delivered and costs taxed in its favour against the Respondents, and of demand made of payment of the sums awarded to it from the Respondents. 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.

8. Lastly, I note that the *ex parte* Applicant did not attach a copy of the Certificate of Costs against Government issued to it, or evidence of its service on the 1<sup>st</sup> 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.

### **The Orders:**

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

**I. The *ex parte* Applicant's Chamber Summons application dated 6<sup>th</sup> July 2020 be and is hereby certified as urgent and admitted to be heard *ex-parte* in the first instance**

**II. The *ex parte* Applicant is granted leave to commence proceedings in the nature of Judicial Review against the Respondents for an order of Mandamus to issue compelling the Respondents to jointly and severally pay to the Applicant the Judgment debt herein in the sum of Kshs. 132,500,000/= as awarded in the Judgment of this Court in High Court Civil Case No. 1351 of 1996 - Allied Investments Limited vs. City Council of Nairobi & Others delivered on 24<sup>th</sup> November 2015 together with all accrued interest on the decretal sum at the rate of 6% per annum arising from the Decree issued on 3<sup>rd</sup> July 2017 until payment in full, and to compel the Respondents to jointly and severally pay the Applicant Kshs. 2,058,816/= being the costs awarded to the Applicant in the Certificate of Taxation issued in High Court Civil Case No. 1351 of 1996 Allied Investments Limited vs. City Council of Nairobi & Others on 19<sup>th</sup> March 2019 together with interest thereon with effect from 25<sup>th</sup> October 2018 until payment in full**

**III. The costs of the Chamber Summons dated 6<sup>th</sup> July 2020 shall be in the cause.**

**IV. The *ex parte* Applicant shall file and serve the Respondents 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 the Chamber Summons dated 6<sup>th</sup> July 2020 (v) a copy of this ruling, and (vi) a hearing notice, within twenty-one (21) days of today's date.**

**V. Upon being served with the said pleadings and documents, the Respondents 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.**

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

**VII. 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.**

**VIII. 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).**

**IX. 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.**

**X. 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).**

XI. 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).

XII. 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.

XIII. 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 Monday, 27<sup>th</sup> July 2020.

XIV. Parties shall be at liberty to apply.

10. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 24<sup>th</sup> DAY OF JULY 2020

P. NYAMWEYA

JUDGE