



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 116 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR JUDICIAL REVIEW ORDERS OF MANDAMUS

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

COUNTY SECRETARY, NAIROBI CITY COUNTY.....RESPONDENT

EX-PARTE:

THE REGISTERED TRUSTEES OF SIR ALI MUSLIM CLUB

RULING

1. This ruling is on an application by way of Chamber Summons dated 15th May 2020, filed by The Registered Trustees of Sir Ali Muslim Club, the *ex parte* Applicant herein. The *ex parte* Applicant is seeking leave to apply for an order of mandamus to compel the Respondents to pay to it the sum of Kshs. 910,005/= plus interest at 14% per annum from 4th September, 2019 until payment in full. The said sum is the taxed costs awarded to the *ex parte* Applicant in **High Court Judicial Review Application Number 46 of 2017 - Republic vs Nairobi City County and the Registered Trustees of Sir Ali Muslim Club**.

2. The *ex parte* Applicant also sought an order that warrant of arrest do issue to commit the Respondent to civil jail for failure to pay the Applicant the said sum of Kshs 1,022,719/-, which is the amount due inclusive of interest as at the date of filing this application. Further that the costs of the application be paid by the Respondent.

3. The said application is supported by a statutory statement dated 15th May 2020, a supporting affidavit sworn on the same date and a supplementary affidavit sworn on 9th June 2020 by Hilary Mecheo Orina, the *ex parte* Applicant's advocate. The main ground for the application is that the Respondent is under a public duty to make the payment to the *ex parte* Applicant, and is unlawfully neglecting or refusing to do so.

4. The Applicant annexed copies of the certified judgment and decree issued in **High Court Judicial Review Application Number 46 of 2017 - Republic vs Nairobi City County and the Registered Trustees of Sir Ali Muslim Club**, the Certificate of Taxation issued therein dated 4th September 2019, a Certificate of Order against the Government issued therein on 10th January 2020, and of letters to the Respondent requesting payment of the taxed costs.

The Determination

5. I have considered the application dated 15th May 2020 and the applicable law on leave to commence judicial review proceedings, which is *Order 53 Rule 1* of the Civil Procedure Rules. The reasons for the leave was 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 eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless, and to ensure that the 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 into the arguments of the parties, but should make cursory perusal deeply of the evidence before court and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave. It was in this regard explained by Lord Bingham in **Sharma vs Brown Antoine (2007) 1 WLR 780**, that a ground of challenge is arguable if its capable of being the subject of sensible argument in court, in the sense of having a realistic prospect of success, however, that the test is flexible depending on the nature and gravity of the issues.

7. In the present application, the Applicant has provided evidence of costs awarded and certified in its favour in **High Court Judicial Review Application Number 46 of 2017 - Republic vs Nairobi City County and the Registered Trustees of Sir Ali Muslim Club** as against the Respondent, and demands made for payment of the said costs. 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 of mandamus against the Respondent. As regards the prayer for issue of warrant of arrests, the same is premature as the *ex parte* Applicant has not shown evidence of disobedience of this court's order and resultant contempt of court proceedings.

The Orders:

8. In the premises the Chambers Summons application dated 15th May 2020 is allowed to the extent of the following orders:

I. The *ex parte* Applicant is granted leave to apply for an order of Mandamus to compel the Respondent to pay to it Kshs. 910,005/= plus interest at 14% per annum from 4th September, 2019 until payment in full, being the taxed costs awarded to the *ex parte* Applicant in **High Court Judicial Review Application Number 46 of 2017 - Republic vs Nairobi City County and the Registered Trustees of Sir Ali Muslim Club**.

II. The prayer seeking issue of warrants of arrests to commit the Respondent to civil jail is declined.

III. The costs of the Chamber Summons dated 15th May 2020 shall be in the cause.

IV. The *ex parte* Applicant shall file the substantive Notice of Motion, and shall serve the Respondent with (i) the Chamber Summons application dated 15th May 2020, (ii) the substantive Notice of Motion and submissions thereon, (iii) a copy of this ruling, and (iii) a mention notice, within twenty-one (21) days from today's date.

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

VI. This matter shall be mentioned on 16th November 2020 to confirm compliance and for further directions.

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 and 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 with copies to 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 with copies to asunachristine51@gmail.com.

XII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 16th November 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 Thursday, 1st October 2020.

XIV. Parties shall be at liberty to apply.

9. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 29th DAY OF SEPTEMBER 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 email address of the advocates on record for the *ex parte* Applicant.

P. NYAMWEYA

JUDGE