



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW MISCELLANOUS APPLICATION NO. E 052 OF 2020**

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

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL.....RESPONDENT**

**EX-PARTE APPLICANT:**

**JACQUELINE WANGUI NDIRANGU**

**RULING**

1. This ruling is on an application by way of Chamber Summons dated 22<sup>nd</sup> October 2020, filed by the *ex parte* Applicant herein, who is seeking leave to apply for an order of mandamus to settle the decretal sum of Kenya Shillings Three Hundred and Seventy-Two Thousand Two Hundred and Seventy and Fifty-Four Cents (Kshs.372, 270.54/=) plus costs of the suit and Interest at the rate of 12% p.a. from the date of judgment on 16<sup>th</sup> June 2017, until payment in full.

2. The said application is supported by a statutory statement dated 22<sup>nd</sup> October 2020, and a verifying affidavit sworn on the same date by the *ex parte* Applicant. The main ground for the application is that a judgment was delivered in favour of the *ex parte* Applicant in **CMCC No. 5510 of 2010 - Jacqueline Wangui Ndirangu vs The Honourable Attorney General**, wherein she was awarded the Applicant special damages in the sum of Kshs.183,278/= plus costs of the suit and interest thereon, and a Decree and the Certificate of Order against the Government extracted and served upon Respondent on 24<sup>th</sup> January 2018. However, that despite several requests to the Respondent to settle the decretal sum, he has failed, refused and/ or neglected to pay the same to the *ex parte* Applicant, and the appropriate mode of execution against him is by way of an order of mandamus.

3. The Applicant annexed copies of the certified judgment, decree and Certificate of Taxation issued in **Nairobi CMCC No. 5510 of 2010 - Jacqueline Wangui Ndirangu vs The Honourable Attorney General** on 16<sup>th</sup> June 2017, a Certificate of Order against the Government issued therein on 9<sup>th</sup> November 2017, and of letters to the Respondent requesting payment of the said decretal sum.

**The Determination**

4. I have considered the application dated 22<sup>nd</sup> October 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.

5. 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) I 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.

6. In the present application, the Applicant has provided evidence of the judgment and costs awarded in her favour in **Nairobi CMCC No. 5510 of 2010 - Jacqueline Wangui Ndirangu vs The Honourable Attorney General**, 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.

**The Orders:**

7. In the premises the Chambers Summons application dated 22<sup>nd</sup> October 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 the decretal sum of Kenya Shillings Three Hundred and Seventy-Two Thousand Two Hundred and Seventy and Fifty-Four Cents (Kshs.372, 270.54/=) plus costs of the suit and Interest at the rate of 12% p.a. from the date of judgment on 16<sup>th</sup> June 2017, until payment in full, being the decretal sum awarded to the *ex parte* Applicant in Nairobi CMCC No. 5510 of 2010 - Jacqueline Wangui Ndirangu vs The Honourable Attorney General.

II. The costs of the Chamber Summons dated 22<sup>nd</sup> October 2020 shall be in the cause.

III. The *ex parte* Applicant shall file the substantive Notice of Motion, and shall serve the Respondent with (i) the Chamber Summons application dated 22<sup>nd</sup> October 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.

IV. 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.

V. This matter shall be mentioned on 20<sup>th</sup> January 2021 to confirm compliance and for further directions.

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 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).

IX. 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).

X. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 20<sup>th</sup> January 2021.

XI. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the *ex parte* Applicant by electronic mail by close of business on Thursday, 29<sup>th</sup> October 2020.

XII. Parties shall be at liberty to apply.

8. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 28<sup>th</sup> DAY OF OCTOBER 2020

P. NYAMWEYA

JUDGE