



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW NO. 30 OF 2020**

**REPUBLIC.....APPLICANT**

**VERSUS**

**JACINTA ALUOCH ODHIAMBO, COUNTY**

**SECRETARY, KAKAMEGA COUNTY.....1<sup>ST</sup> RESPONDENT**

**GEOFFREY NAFUKO OMULAYI, FINANCE OFFICER/**

**TREASURER, KAKAMEGA COUNTY.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. What is for determination is the Motion dated 7<sup>th</sup> July 2020, seeking a *mandamus* order against the respondents, with respect to enforcement of an order and a money decree made in Kakamega HC Misc. No. 157 of 2014 and Civil Suit No. 14 of 2017. The same was canvassed by way of written submissions. Both sides filed detailed written submissions, supported by case law.
2. From the filings, both the submissions and the affidavits, it emerged that there is an appeal against the decree in Kakamega HC Misc. No. 157 of 2014 and Civil Suit No. 14 of 2017, being Kisumu CACA No. 54 of 2020. Clearly, therefore, the decree on record is not final.
3. The order of *mandamus* is issued in execution or enforcement of a decree against government. Ideally, where an appeal pends against an order or decree, the same does not operate as a stay of enforcement of the decree or order. However, pendency of an appeal is evidence that the litigation is not yet complete or finalized over the matter in dispute or controversy. A determination of the appeal in favour of the appellant could have serious consequences, where the decree has since been enforced by way of execution.
4. In view of the above, I am of the view that this court should not consider the Motion before it on the *mandamus* order. Let the respondents exhaust the appeal options available to them before the Motion is determined, for the court should not act in vain. Determination of the Motion, dated 7<sup>th</sup> July 2020, is therefore, to be held in abeyance, pending hearing and determination of the appeal in Kisumu CACA No. 54 of 2020.
5. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS.....20<sup>th</sup> .....DAY OF.....November.....2020**

**W MUSYOKA**

**JUDGE**