



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1129 OF 2020

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

BETWEEN

NYABARO ONDITI.....APPLICANT

VERSUS

INDEPENDENT ELECTORAL AND BOUNDARIES

COMMISSION.....RESPONDENT

RULING

1. Nyabaro Onditi, the Applicant herein, has moved this Court in an application brought by way of Chamber Summons dated 10th November 2020, wherein it is seeking leave to compelling the Respondent to pay and settle the taxed party and party costs of Kenyan Shillings Two Million One Hundred And Twenty Thousand And Forty Six (Kshs 2,120,046/=), awarded to the Applicant on 20th January 2016 by the Court of Appeal in **Kisumu Civil Appeal Number 44 of 2013**.

2. The said application is supported by a statutory statement dated 10th November 2020, and a verifying affidavit sworn on the same date by the Applicant. The main ground for the application is that the Court of Appeal delivered a judgement on 21st February, 2014 wherein it awarded the Applicant the costs of the appeal, and the said costs were taxed by the Deputy Registrar on 26th January 2016 in the sum of Kshs 2,120,046/=. However, that the Respondent has without any lawful authority and justification failed to pay the taxed costs despite requesting for time to settle the same.

3. The applicable law on leave to commence judicial review proceedings is *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.

4. 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.

5. Upon perusal of the instant application, I note that while the Applicant annexed copies of letters written to the Respondent demanding on payment of the taxed costs and of the Certificate of Costs dated 29th January 2020 issued in **Kisumu Civil Appeal Number 44 of 2013**, he has not annexed the judgment of the Court of Appeal in the said appeal, which is the basis for the said costs.

1. In the premises, I find that the threshold of an arguable case has not been met by the Applicant for the grant of leave, and I hereby order as follows:

I. The Applicant is granted leave to file and serve a supplementary affidavit annexing the certified copy of the judgment by the Court of Appeal in Kisumu Civil Appeal Number 44 of 2013.

II. The Chamber Summons dated 10th November 2020 shall be heard on 26th January 2021.

III. 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 Applicant's Chamber Summons dated 10th November 2020 on the basis of

the electronic copies of the pleadings and the written submissions filed by the parties.

IV. 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.

V. 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.

VI. 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.

VII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 26th January 2021.

VIII. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the Applicant by electronic mail by close of business on Thursday, 19th November 2020.

IX. Parties shall be at liberty to apply.

2. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF NOVEMBER 2020

P. NYAMWEYA

JUDGE