



IN THE HIGH COURT OF KENYA

AT BUSIA

MISCELLANEOUS CIVIL APPLICATION NO. 106 OF 2017

REPUBLIC.....APPLICANT

VERSUS

JOE KIRWA TANUI T/A ROTALINK

ENGINEERING CO. LTD.....EX-PARTE APPLICANT

AND

COUNTY GOVERNMENT OF BUSIA.....INTERESTED PARTY

RULING

1. The ex-parte applicant moved the court by way of ex-parte chamber summons under Order 53 Rules 1(1), (2) of the Civil Procedure Rules and Article 159 of the Constitution of Kenya. He is seeking the following orders:

a) That leave be granted ex-parte Applicant enabling him to file for a writ of mandamus – compelling the Interested Party – the County Government of Busia, to settle the decretal sum of Ksh.1,739,990/= plus costs and interest thereof within a specified period.

b) That costs of this application and of the main suit be met by the County Government of Busia.

2. The application is premised on the following grounds:

a) That the ex-parte applicant a registered company was contracted by the then Busia Municipal council to renovate their slaughter house after a successful bid and upon a letter of award of tender issued to it.

b) That the ex-parte applicant carried out the works to completion and a certificate of practical completion was issued by the council on 16th April 2012.

c) The Interested Party upon the coming into existence as the County Government of Busia did replace the Municipal Council of Busia, the judgement Debtor in respect of the original suit; it statutorily inherited assets and liabilities of the defendant Busia Municipal Council.

d) That an Order compelling the County Government to pay would be appropriate in the circumstances of this case, as attachment of Government property and or arrest of its officers has been rendered untenable.

3. The application was opposed by the interested party on the following grounds:

a) That the applicant did not attach a certificate of costs.

b) That therefore, the claim has not been ascertained.

4. I have perused the supporting affidavit to the application and the supplementary affidavit sworn by the counsel for the ex-parte applicant and the replying affidavit sworn by Nicodemus Onyango Mulaku for the interested party. The following facts emerge:

a) A copy of certificate of costs is attached to the supplementary affidavit.

b) The interested party had opposed the application for non-availability of the certificate of costs.

5. Since there was no other ground for opposition, and having satisfied myself that the certificate of costs was attached, I will allow the application and grant leave to the ex-parte Applicant to file for a writ of mandamus compelling the Interested Party, to settle the decretal sum of Ksh.1,739,990/= plus costs and interest thereof. The costs of this application and in the main suit be met by the County Government of Busia, the interested party.

DELIVERED and SIGNED at BUSIA this 28th day of February, 2019

KIARIE WAWERU KIARIE

JUDGE