



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

MISCELLANEOUS APPLICATION NO. 281 OF 2018

**IN THE MATTER OF: AN APPLICATION BY MIRIAM WAIRIMU WAMBUGU AND ANNE WANJIRA GITHENYA
(PERSONAL REPRESENTATIVES OF THE ESTATE**

AND

**IN THE MATTER OF: THE CONSTITUTION OF KENYA, 2010, THE CIVIL PROCEDURE ACT CAP 21 OF THE LAWS OF
KENYA AND THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

AND

IN THE MATTER OF: THE ESTATE OF JACOB JUMA (DECEASED)

BETWEEN

MIRIAM WAIRIMU WAMBUGU.....1ST APPLICANT

ANNE WANJIRA GITHENYA.....2ND APPLICANT

VERSUS

THE HON. ATTORNEY GENERAL.....RESPONDENT

RULING

INTRODUCTION

1. The Applicant instituted this suit by way of ex parte Chamber Summons dated 13th July, 2018, brought pursuant to the Provisions of Order 53 Rule 1 of the Civil Procedure Rules & Sections 8(2) of the Law Reform Act. The Ex-parte Applicant through that application sought the leave of court to commence Judicial Review proceedings. The leave was granted pursuant to which the ex-parte applicant filed the substantive motion on 11th October, 2018 praying for the following orders :-

- a) An order of Mandamus be issued to compel the Respondent to pay the Estate of Jacob Juma (deceased) the decretal sum together with interest thereon of Kshs. 41, 453, 299.13 which is due to date on account of Judgment entered on 14th January, 2013 against the Respondent herein in HCCC NO. 661 OF 2007.
- b) An Order of Mandamus be issued to compel the Respondent to pay the Estate of Jacob Juma (Deceased), the taxed costs together with interest of Kshs. 1,503, 819.65 which is due to date on account of the certificate of taxation dated 17th July, 2013 in HCCC NO. 661 OF 2007.
- c) The Respondent be ordered to comply by satisfying the Decree, Costs and Interest in HCCC NO. 661 OF 2007 within fourteen days from the date of service of the order of Mandamus.
- d) In default, Notice to Show Cause do issue against the Respondent to show cause why he should not be cited for contempt of Court.
- e) The costs of this Application be borne by the Respondents.

2. The Application was listed for Hearing on 17th October, 2018 when Counsel for the Respondent sought for 14 Days to file a response to the Application which has not been done to date.

3. The Applicants' Application is supported by the Statutory Statement and the Verifying Affidavit sworn on 13th July, 2018 by MIRIAM WAIRIMI WAMBUGU one of the Ex-parte Applicants.

4. The gist of the Application is that on 14th January, 2013 the High Court in HCCC NO. 661 OF 2007 entered Judgment against the Respondent for the sum of Kshs. 24,466,270.00 and that the same remains unpaid and continues to accrue interest to date at the rate of 12% per annum and that the decretal sum outstanding to date with interest thereon as from the date of filing the Application would be Kshs. 41,453, 299.13.

Submissions

5. When the matter came up for hearing of the Applicants' Application on 19th November, 2018, the Respondent was not represented and had still not filed its Response to the Application. Counsel for the Applicants, Mr. Havi prayed for a Ruling date as their application stood unopposed.

The Determination

6. I do note that as much the instant application is unopposed, it is important to look at its merits. Having gone through the Application, the Statutory Statement, Supporting Affidavit sworn by the 1st Applicant as well as the supporting documents thereon, I am guided by the provisions of the Government Proceedings Act which provides the procedure to be observed when it comes to civil proceedings against or by the Government.

7. **Section 21 (1) of the Government Proceedings Act** provides as follows:

Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

8. **Section 21 (3) of the same Act** on the other hand provides:

If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.

9. From the two provisions it is therefore evident that the condition precedent to the satisfaction of monetary decrees against the government is to get A Certificate of Order against the government in the prescribed form and serve it upon the Attorney General.

10. In the instant Application, the Applicants have annexed in the Verifying Affidavit sworn by the 1st Applicant, marked as "MWW-4" a copy of the Certificate of Taxation.

11. It is the finding of this court that the Applicants have not obtained the Certificate of Order Against the Government for the decretal amount. Instead, all that has been attached is a decree and a Certificate of Taxation. To reiterate, the Certificate required under Section 21(1) of the Government Proceedings Act is a Certificate of Order Against the Government not a Certificate of Taxation as has been annexed here. Under section 21(3), the Accounting Officer in a Ministry can only pay "**the amounts indicated in the Certificate of Order Against the Government**"

12. For the above reasons I find that the orders sought cannot be granted because the condition precedent stipulated in section 21(1) of the Government Proceedings Act has not been satisfied. Consequently, the Application dated 11th October, 2018 is premature and is dismissed. The Applicant is at liberty to file fresh proceedings. Parties to bear own costs.

13. Orders Accordingly.

Dated, Signed and Delivered in Nairobi this 11th day of April, 2019.

E. OGOLA

JUDGE

In the presence of:

M/s Gishoya h/b Mr. Havi for Applicant

N/A for Respondent

Mr. Ibrahim-Court Assistant