



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

JUDICIAL REVIEW MISC APPLICATION NO. 06 OF 2019

IN THE MATTER OF AN APPLICATION BY GALEXON KENYA LIMITED FOR AN ORDER OF MANDAMUS COMPELLING THE CHIEF OFFICER DEPARTMENT OF TRADE, INDUSTRY, TOURISM & ENTERPRENEURSHIP, COUNTY GOVERNMENT OF VIHIGA AND COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE, COUNTY GOVERNMENT OF VIHIGA TO PAY DECRETAL SUM TOGETHER WITH COSTS PURSUANT TO KISUMU HCCC 18 OF 2017

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT, 2012

AND

IN THE MATTER OF THE PUBLIC FINANCE ACT, 2012

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

BETWEEN

REPUBLIC.....APPLICANT

AND

CHIEF OFFICER DEPARTMENT OF TRADE, INDUSTRY,

TOURISM & ENTERPRENEURSHIP COUNTY

GOVERNMENT OF VIHIGA.....1ST RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE

COUNTY GOVERNMENT OF VIHIGA.....2ND RESPONDENT

EXPARTE APPLICANT: GALEXON KENYA LIMITED

RULING

1. By a Notice of Motion dated 02nd May, 2019 and filed on 21st May, 2019, the ex parte applicant herein, seeks the following orders:

1) That leave be granted to the applicant herein to apply for Judicial Review Order to wit, an Order of *Mandamus* commanding Chief Officer Department of Trade, Industry, Tourism & Entrepreneurship, County Government of Vihiga and County Executive Committee Member for Finance, County Government of Vihiga to settle the decretal sum together with costs as awarded in KISUMU HCCC 18 OF 2017

2) That costs provided for

2. According to the Applicant, it obtained a decree in **KISUMU HCCC 18 OF 2017** requiring the County Government of Vihiga to pay it Kshs. 21,798,450/- together with interest and costs.
3. Cyril Mukhunji Makatiani in his verifying affidavit sworn on 02nd May, 2019 and filed on 21st May, 2019 avers that the decree was served upon the respondents who have failed to settle the decretal sum.
4. The issue for determination is whether this Court ought to grant the order sought herein.
5. Under the County Governments Act No. 17 of 2012, the County Executive in Charge of Finance or by whatever other name the officer may be described, is the one under obligation to pay funds, in the capacity of the accounting officer.
6. It must always be remembered that a judicial review application is neither a criminal case nor a civil suit hence the application ought to be brought against the person who is bound to comply with the orders sought therein (**See Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County Ex Parte Stanley Muturi [2016] eKLR**). In this case the 2nd Respondent is the Accounting Officer of the County Government of Vihiga.
7. The Applicant has not demonstrated that the decree was served on the County Executive in Charge of Finance. The contention that the said officer has declined to settle the decretal sum is therefore unsustainable.

Order

8. In the result I disallow the Notice of Motion 02nd May, 2019 and filed on 21st May, 2019 with no order for costs.

DATED, DELIVERED AND SIGNED THIS 27th DAY OF June, 2019

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Felix

For Petitioner/Applicant - Mr. Kaniaru

1st Respondent - N/A

2nd Respondent - N/A