



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**(CORAM: CHERERE-J)**

**JUDICIAL REVIEW MISC APPLICATION NO. 10 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.....1<sup>ST</sup> RESPONDENT  
COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE COUNTY GOVERNMENT  
OF VIHIGA.....2<sup>ND</sup> RESPONDENT**

**EXPARTE APPLICANT: GALEXON KENYA LIMITED**

**RULING**

1. By a Notice of Motion dated 24<sup>th</sup> July, 2019 and filed on 27<sup>th</sup> September, 2019, the ex parte applicant herein, seeks the following orders:

**1. An order of Mandamus commanding the 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 interest and costs as awarded in KISUMU HCCC 18 OF 2017 as follows:**

**a. Kshs. 20,798,450/- being the contract sum**

**b. Kshs. 6,190,330/- being interest at 14% as at 22<sup>nd</sup> July, 2019**

**c. Kshs. 2,396,554.99 as taxed by the Taxing Master**

**2. Costs**

**3. Any other relief**

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. 20,798,450/- together with interest and costs.
3. Cyril Mukhunji Makatiani, the Applicant's manager in his verifying affidavit sworn on 24<sup>th</sup> September, 2019 avers that the decree was served upon the Respondents on 29<sup>th</sup> March, 2019 but remains unsettled to date.
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 2<sup>nd</sup> 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 02<sup>nd</sup> May, 2019 and filed on 21<sup>st</sup> May, 2019 with no order for costs.

**DATED, DELIVERED AND SIGNED THIS 27<sup>th</sup> DAY OF June 2019**

**T. W. CHERERE**

**JUDGE**

**In the presence of-**

**Court Assistant - Felix**

**For Petitioner/Applicant - Mr. Kaniaru**

**1<sup>st</sup> Respondent - N/A**

**2<sup>nd</sup> Respondent - N/A**