



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**JUDICIAL REVIEW NO. 2 OF 2019**

**REPUBLIC.....APPLICANT**

**VERSUS**

**JOEL 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 Notice of motion dated 20<sup>th</sup> march, 2019 under sections 1, 1A,1B,3,3A and 63(e) of the Civil Procedure Act, Order 51 Rules 1, 4,6, 10(1)&(2), Order 53Rule 1(1) &(2) of the Civil Procedure Rules, the Constitution of Kenya and all enabling provisions of the law. He is seeking the following orders:

a) That an order for certiorari do issue for calling into the High Court and quash any order and or compelling the interested party, the County Government of Busia, to settle the decretal amount of Kshs.1, 739,990/= plus costs and interest thereof arising out of the claim against the respondent vide Busia CMCC No. 76 of 2013 within a specified period.

b) That subsequently an order of mandamus be issued directing the interested party jointly and severally, their delegates and or all officers working for or under them, police officers working under the express authority and mandate of the interested party, the County Government of Busia, to settle the decretal amount of Kshs. 1,739,990/= plus costs and interest thereof within a specified period.

c) That the costs of this application be borne by the interested party.

2. The application was 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 did carry out costs estimates and did inform the Town Clerk of the financial implications of the project.

c. That the ex-parte applicant after assessing the project, its costs and the duration, drew an invoice and served the same upon the Municipal Council Clerk.

d. That the Council thereafter issued a Local Purchase Order (LPO) to the ex-parte applicant dated 15<sup>th</sup> December 2011.

e. That the ex-parte applicant carried out the works to completion and a certificate of practical completion was issued by the Council on 16<sup>th</sup> April 2012.

f. That the ex-parte applicant made numerous trips to the council for payment to no avail.

g. That the ex-parte applicant filed suit obtained judgment for orders of garnishee against National Bank of Kenya who were bankers

to the Council vide Busia CMCC No. 76of 2013.

h. That the Bank released to the ex-parte applicant Kshs.328, 000/= that went towards settling the decree.

i. That the interested party upon the coming into existence as the county Government of Busia did replace the Municipal Council of Busia, the judgment debtor in respect of the original suit; it statutorily inherited assets and liabilities of Busia Municipal Council.

3. The application was served but the interested party did not file a response.

4. I have perused the affidavit of the ex-parte applicant and the attached documents. I have also had the benefit of perusing Busia High Court Miscellaneous Civil Application 106 of 2017 which involved the same parties. I find that the application is merited.

5. I accordingly make Orders as follows:

a. An order to issue in terms of prayer (a) to be complied with within 90 (ninety) days.

b. an order of mandamus to issue directing the interested party, the County Government of Busia, to settle the decretal amount of Kshs. 1,739,990/= plus costs and interest thereof within a period of 90 (ninety) days.

c. Costs of this application be borne by the interested party.

Orders accordingly.

**DELIVERED and SIGNED at BUSIA this 26<sup>th</sup> day of September, 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**