



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 691 OF 2017

IN THE MATTER OF: AN APPLICATION TO SEEK LEAVE TO COMMENCE JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF MANDAMUS AGAINST THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

AND

IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT CAP 26 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT NO. 9 OF 2011

AND

IN THE MATTER OF THE HIGH COURT CONSTITUTIONAL AND HUMAN RIGHTS DIVISION PETITION NO. 12 OF 2013

BETWEEN

BISHOP DONALD KISAKA MWANASI.....APPLICANT

-VERSUS-

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....RESPONDENT

JUDGMENT

1. By a notice of motion dated 8th February 2018, the ex parte applicant Bishop Donald Kisaka Mawasi seeks from this court mandamus to compel the respondent Independent Electoral and Boundaries Commission to remit a total of kshs 335,280 as per the ruling and reasons for taxation dated 20th July 2017 in Petition No. 12/2013 and costs of the application .
2. The application is supported by the verifying affidavit of Dr John Khaminwa sworn on 14th December 2017 and statutory statement dated 14th December 2017 accompanying the chamber summons for leave.
3. According to the applicant, vide a judgment in Civil Appeal (Court of Appeal) No 280/2013 arising from High Court Petition No. 12/2013, the respondent was ordered to pay to the applicant herein who was the appellant, costs of the appeal and of the petition .
4. On 20th July 2017 bill of costs was taxed at an all inclusive figure of kshs 335,280 against the respondent but that todate, the respondent has refused failed and or neglected to settle hence these proceedings.
5. Further, that Section 13(2) of the Independent Electoral and Boundaries Commission Act bars execution against the Commission, placing it under Cap 40(Government Proceedings Act hence the applicant has no other means of enforcing the recovery of the taxed costs due to him.
6. The application was not opposed by the respondent whose counsel Mr Karani urged the court to grant mandamus but without costs as the Commission was seeking for funds to settle the taxed costs.

7. Miss Gathua advocate urged the application on behalf of her client reiterating the statutory statement and the verifying affidavit.

8. Having considered the motion for mandamus as argued and as presented, in the absence of any evidence of challenge to the taxed costs and as there is no other alternative remedy for the applicant to resort to, to recover his taxed costs, I am satisfied that the Independent Electoral and Boundaries Commission is under statutory duty to settle the applicant's costs as taxed, being an obligation to obey a court order which remains unchallenged.

9. Accordingly, I find the motion for mandamus merited. I issue mandamus compelling the respondent Independent Electoral and Boundaries Commission to settle the taxed costs in the sum of kshs 335,280 within the next 60 days from the date of this judgment and in default, the notice to show cause why contempt of court order proceedings should not be commenced shall issue as per Section 30 of the Contempt of Court Act and the said NTSC shall be set down for hearing thirty days after service of the notice to show cause on the respondent's Chief Executive Officer/Accounting Officer for the time being, in office, in accordance with Section 21 of the Government Proceedings Act.

10. To avoid escalation of more costs and as the respondents is a public entity which draws its funds from the public coffers, and to avoid over burdening the tax payer, I hereby order that each party shall bear their own costs of these proceedings.

11. Orders accordingly.

Dated, signed and delivered in open court at Nairobi this 27th day of March, 2018.

R.E.ABURILI

JUDGE

In the presence of:

Mr Karani for the respondent

Mr Mc Ronald h/b for Dr Khaminwa for the applicant

CA: Kombo