



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MISC CIVIL APPLICATION NO. 29 OF 2017**

**IN THE MATTER OF: APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF MANDAMUS**

**IN THE MATTER OF: ANAPPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF MANDAMUS TO COMPEL THE RESPONENT TO PAY THE EXPARTE APPLICANTS THE DECRETAL SUM OF KSHS. 2,506,048.92 WITH ACCRUING INTEREST OF 14% UNTIL PAYMENT IN FULL ARSING FROM VARIOUS BILL OF COSTS TAXED.**

**IN THE MATTER OF: ARTICLES 19, 20, 22, 23. 41, 47, 48 AND 165 OF THE CONSTITUTION.**

**IN THE MATER OF: THE FAIR ADMINISTRATIVE ACTIONS ACT**

**IN THE MATTER OF: THE ADVOCATES ACT**

**IN THE MATTER OF: THE CIVIL PROCEDURE ACT AND THE LAW REFORM ACT.**

**PATRICK OCHWA, SAMUEL OUMA & JOB WELOBA**

**T/A COOTOW & ASSOCIATES.....EXPARTE APPLICANTS**

**VERSUS**

**THE COUNTY GOVERNMENT OF MOMBASA**

**FORMERLY MOMBASA MUNICIPAL COUNCIL.....RESPONDENT**

**RULING**

1. The Notice of Motion dated 16<sup>th</sup> June, 2017 is premised on the provisions of Order 53 rules 3 and 4 of the Civil Procedure Rules, Sections 7(1) and (2), 1(1) (e) and (h) of the Fair Administration Action Act 2015, Sections 8 and 9 of the Law Reform Act Cap 26 of the Laws of Kenya, the inherent jurisdiction of the court and all enabling provisions of the law. It seeks the following orders:-

(i) An order of mandamus do issue compelling the County Government of Mombasa, the respondent herein, to pay the *exparte* applicants the total sum of Kshs. 2,506,048.92 with interest at 14% until payment in full arising from bill of costs taxed (sic); and

(ii) Costs of the proceedings.

2. Mr. Wafula, Learned Counsel for the *exparte* applicants relied on the statement of facts and verifying affidavit that had been filed on 8th June, 2017 together with the chamber summons seeking leave to file the present application.

3. Counsel for the *exparte* applicants informed the court that although they effected service of the application dated 16th June, 2017 the respondent had not sent its representative to court for the hearing of the application. An affidavit of service was filed to that effect. Counsel sought an order of mandamus to issue to the respondent to pay the *exparte* applicants Kshs. 2,506,048.92 for legal services rendered in various matters. He submitted that the legal fees payable was taxed and certificates of costs and other documents were attached to the verifying affidavit. Copies of decree for the amounts in issue were also attached to the said affidavit sworn on 9th June, 2017.

4. In **Republic vs Kenya National Examinations Council *exparte* Gathengi and 8 Others**, Civil Appeal No. 234 of 1995, the Court of

Appeal cited with approval Halsbury's laws of England, 4<sup>th</sup> Edition, Vol. 7 P. 111 paragraph 89 thus:-

***“The order of mandamus is of most extensive remedial nature and is in form of a command issuing from the High court of justice, directed to any person, corporation or inferior tribunal, requiring him or them to be do some particular thing specified which appertains to his or their office and is not in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative remedy, yet that mode of redress is less convenient, beneficial and effectual.”***

5. In the present matter, the *ex parte* applicants have gone through all the legal processes required to have the respondent pay money due and owing to them as a result of legal services rendered. The only recourse available to them due to non-payment of the amounts due was to move the court for the judicial review remedy of mandamus. Leave to file the present application had been granted by Judge P.J. Otieno on 9th June, 2017.

6. I am satisfied that the *ex parte* applicants are entitled to the orders sought. I therefore issue an order of mandamus directed to the County Government of Mombasa compelling it to pay the *ex parte* applicants the sum of Kshs. 2,506,048.92 being the certified costs for various civil suits in Mombasa High Court. Interest thereon shall be payable at 14%. Costs of this application are awarded to the *ex parte* applicants.

**DELIVERED, DATED and SIGNED at MOMBASA on this 9<sup>th</sup> day of March, 2018.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of:-**

Mr. Nyabena holding brief for Mr. Wafula for the applicant

No appearance for the respondent

Mr. Oliver Musundi - Court Assistant