



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW NO. 33 OF 2016**

**IN THE MATTER OF AN APPLICATION BY ZEDEKIAH ORIOKO, NORBERT ALATO, MEDO MISEMA, KEVIN OCHELLE, FRANCIS NJOROGI, HARUN KURIA, MARY ALUDO, ZAINAB ALI AND ANDRE OKWOME-MILIMANI PRIMARY SCHOOL COMMITTEE FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF MANDAMUS**

**AND**

**IN THE MATTER OF THE CITY COUNCIL OF NAIROBI ALIAS THE COUNTY GOVERNMENT OF NAIROBI**

**AND**

**IN THE MATTER OF THE LOCAL GOVERNMENT ACT CHAPTER 265 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE EDUCATION ACT CHAPTER 211 LAWS OF KENYA**

**THE MILIMANI PRIMARY SCHOOL COMMITTEE .....APPLICANT**

**VERSUS**

**THE COUNTY GOVERNMENT OF NAIROBI.....RESPONDENT**

**JUDGMENT**

1. On 27<sup>th</sup> July 2016 this court issued Judicial Review orders of mandamus compelling the respondent to pay shs 772,830 to the applicant within 90 days. To date, that order has not been complied with. The respondent has severally appeared in this court through its counsel Mr Murage seeking for more time to settle the amount in compliance with the court order and as at yesterday, 22<sup>nd</sup> March, 2017, he urged the court through his colleague Mr Macharia, for indulgence to give the settlement cheque to the applicant's counsels by end of the day. The court directed that the cheque be issued and in default, the motion for contempt be heard this morning at 9.00a.m.
2. Miss Ameyo counsel for the applicant is in court and the respondents counsel is absent despite this date having been taken by consent yesterday.
3. The application for contempt is not opposed.

4. I have considered the application as filed and as argued by Miss Ameyo. It is not in dispute that the money decreed is due and owing as there is no appeal pending. It is also not in dispute that this court issued mandamus orders on 27<sup>th</sup> January 2017 compelling the respondent to settle the same. There have been promises to settle the money in compliance with the court order but those promises have not been fulfilled.

5. Court orders are never issued in vain. They must be obeyed to the letter and or challenged. Obedience of court orders promotes the rule of law and constitutionalism otherwise this country will be reduced to anarchy.

6. There is evidence that the court order(mandamus) was served upon the respondent on 19<sup>th</sup> September 2016 as shown by the applicant's affidavit of service and the annexure OAWJ annexed to the applicant's affidavit.

7. That order is clear as to what the respondent was being commanded to do within 90 days-to settle the decretal sum, which time lapsed long ago.

8. Failure to comply with court orders has consequences stipulated in law and in this case, I find that the order of 27<sup>th</sup> July 2016 which was served on the respondent for compliance has been brazenly disobeyed by non-settlement of the decretal sum.

9. Accordingly, I find the respondent to be in contempt of court orders of 27<sup>th</sup> July 2016. As the respondent is an abstract entity and as the officer responsible for compliance with the impugned court order is the Executive Committee Member for Finance, Mr Gregory Mwakanongo. I hereby find that the court order of 27<sup>th</sup> July 2016 has been disobeyed by the said CEC Member in his official Capacity. He is found to be in contempt of court and convicted accordingly.

10. As the respondent and the said CEC Member who is convicted for contempt of court are not in court, I hereby direct the Deputy Registrar of this court to issue summons to Mr Gregory Mwakanongo CEC responsible for Finance, Nairobi City County to appear before this court on 11<sup>th</sup> April 2017 at 9.00a.m to mitigate before the court can mete out the appropriate sentence for contempt of court.

11. The applicant shall have costs of the notice of motion dated 26<sup>th</sup> January 2017. This judgment to be typed forthwith.

Dated, signed and delivered in open court at Nairobi this 23rd day of March 2017.

**R. E. ABURILI**

**JUDGE**

**In the presence of:**

Miss Ameyo for the applicant

N/A for respondent

N/A for the Contemnor

CA: George