



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CIVIL APPEAL NO. 18 OF 2014

**SIMON OJIAMBO WAFUHU (*Suing on behalf*
of HILLARY WANJALA OJIAMBO).....APPLICANT**

VERSUS

AGRICULTURAL MACHINERY SERVICES.....1ST RESPONDENT

COUNTY GOVERNMENT OF UASIN GISHU.....2ND RESPONDENT

RULING

The applicant's application is brought by way of notice of motion dated 7th September 2016 under section 1A and 3A of the Civil Procedure Act. The applicant is seeking orders as follows:-

1. That the first and the second respondents be ordered to jointly and severally to settle the amount due in the consent judgment dated 20th November, 2014.
2. That the costs be borne by the respondents.

The application was opposed on grounds that it fatally defective.

At the time of the accident that gave rise to the case that is the subject of the current application, Agricultural Machinery Services was a unit of the Ministry of Agriculture of the National Government of the Republic of Kenya. A judgment was entered for the applicants by the trial court and the respondents appealed. On 20th November 2016, the appeal was compromised and a consent judgment was entered. This consent judgment has not been satisfied, hence this application.

Who has the obligation of satisfying the decree as between the National Government of Kenya and the County Government of Uasin Gishu? This is a question that requires a legal answer. I am not convinced that the application is defective.

Part 2 of the fourth Schedule of the Constitution of Kenya provides the functions of the County Governments inter alia as follows:

The functions and powers of the county are—

1. Agriculture, including—

(a) crop and animal husbandry;

(b) livestock sale yards;

(c) county abattoirs;

(d) plant and animal disease control; and

(e) fisheries.

It is clear that agriculture is a devolved function. This being the position, the respondents cannot be heard to argue that the onus of payment is on the National Government. Their argument would have made sense had they convinced the court that functionally this function has not been devolved. This is not the case, I must allow the application.

DELIVERED and SIGNED at BUSIA this 18th day of October, 2017

KIARIE WAWERU KIARIE

JUDGE