

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC MISC. CASE NO. 191 OF 2017

SHIMONI RESORTS LIMITED APPLICANT

VERSUS

THE PRINCIPAL SECRETARY OF THE

MINISTRY OF LANDS & PHYSICAL PLANNING 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

I have considered the chamber summons application dated 12/10/2017 through which the *ex parte* applicant seeks leave of this court to commence proceedings for an order of mandamus directed at the 1st respondent commanding him to pay the *ex parte* applicant the decretal sum and costs awarded in ELC 961/2012. I have examined the annexures to the verifying affidavit.

Grant or refusal of leave is an exercise of judicial discretion. The test to be applied is whether the *ex parte* applicant has made out an arguable case [see: **UWE MEIXNER & ANOR V ATTORNEY GENERAL, (2005) eKLR**].

Secondly, the purpose of the application for leave is to eliminate applications which are frivolous, vexatious or hopeless and to ensure that only those applications disclosing arguable cases proceed for further consideration.

The *ex parte* applicant herein obtained judgment in April 2016. Its Bill of Costs was taxed in February 2017. It contends that both the decree and certificate of costs have not been satisfied. It is trite law that normal execution proceedings through attachment and sale of assets would not issue against the government. The only efficacious instrument of execution available to a decree holder such as the *ex parte* applicant herein is the writ of mandamus.

Consequently, I am satisfied that the *ex parte* applicant's intended motion is not frivolous, vexatious or hopeless. The *ex parte* applicant has made out an arguable case. I accordingly grant leave in terms of prayer 1 of the chamber summons. The substantive motion shall be filed and served within 21 days. Mention on 21/11/2017 for further directions.

Dated, signed and delivered at Nairobi on this 16th day of October, 2017.

B M EBOSO

JUDGE