



REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISC. APPLICATION NO. 54 OF 2016

BETWEEN

REPUBLIC.....APPLICANT

AND

THE KISUMU COUNTY SECRETARY

KISUMU COUNTY GOVERNMENT.....1ST RESPONDENT

THE COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE & PLANNING

KISUMU COUNTY GOVERNMENT.....2ND RESPONDENT

THE COUNTY CHIEF OFFICER, FINANCE

KISUMU COUNTY GOVERNMENT.....3RD RESPONDENT

EX-PARTE

KEN PUNDO & COMPANY ADVOCATES

RULING

1. The *ex- parte'* applicant, **Ken Pundo & Company Advocates**, filed the Notice of Motion dated 27th April 2017 seeking an order of *mandamus* to compel the respondents to jointly and or singularly comply with the orders of this Court in ***Kisumu High Court Misc Application No. 104 of 2015*** and consolidated with ***Kisumu High Court Misc. Applications 105 -195 of 2015*** to pay fees to the ex-parte applicant.

2. The *ex-parte* applicant has judgment against the County Government that was obtained by consent. When recording the consents, the respondents were aware of the repercussions of such a consent. What is before the court is not a claim against the County Government but a judgment debt and there is no other legal remedy open to the *ex-parte* applicant as **section 21** of the ***Government Proceedings Act (Chapter 40 of the Laws of Kenya)*** prohibits execute by way of attachment and sale against the County Government. The respondents are under a statutory duty to pay debts owed by the County Government once judgment has been passed.

3. The issues raised by in opposition by the respondents is that the *ex-parte* applicant wrongfully retained rates it had been instructed to collect on its behalf, that the Transitional Authority was yet to prepare and validate all existing assets and liabilities of the defunct Kisumu Municipal Council and prepare a status

report which would form a basis for payment of the claims and that the *ex-parte* applicant's claim had several anomalies. The respondents argued that in view of the amount of money in question, about Kshs. 150 million, it was in public interest not to compel them to honour the judgment debt.

4. It is a well-established principle of law that a judicial review is not a substitute for an appellate court (see *Kamani v Kenya Anti-Corruption Commission* [2007] 1 EA 112). It is clear that the issues raised by the respondents are matters which ought to have been raised in appropriate proceedings to set aside or vary the consent judgments. Short of that, this court cannot intervene, at least in these proceedings.

5. In light of what I have stated the result of the application must be obvious. However, an order of judicial review is discretionary and given the fact that the liabilities are inherited by the County Government, I give the respondent **sixty (60) days** to take whatever action it deems before the hammer falls. The order absolute is therefore adjourned.

DATED and DELIVERED at KISUMU this 21st day of December 2017.

D. S. MAJANJA

JUDGE

Mr Ogejo instructed by Ogejo, Olendo and Company Advocates for the *ex-parte* applicant.

Mr Achura instructed Amondi and Company Advocates for the respondents.