



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR CASE NO 540 OF 2006

REPUBLIC.....APPLICANT

VERSUS

INTERIM COUNTRY SECRETARY.....RESPONDENT

Ex-parte

CHARLES MALENYA

RULING

The applicant's amended notice of motion dated 7th May, 2013 is brought pursuant to Section 5 of the Judicature Act (Cap. 8), Order 50 Rules 1 and 3 of the Civil Procedure Rules (CPR) and Order 52 (2) of the Supreme Court Practice 1988 Edition (sic). The initial application is dated 8th December, 2008 but it has been amended four times. In the amended application dated 7th May, 2013 the Interim County Secretary is named as the respondent.

Through the application, the applicant (Charles Malenya) prays for orders that:

“1. AN ORDER OF CERTIORARI be and is hereby issued committing the Town Clerk, Nairobi City Council, to civil jail for six months for disobeying this court's Order of Mandamus issued on 13th day of February, 2007.

2. AN ORDER for cost of this Application.”

The application is supported by the ground that the Town Clerk has disobeyed the Court's Order of Mandamus given on 13th February, 2007 and unless an order of committal is issued, the Town Clerk will continue disobeying the Court's order.

The application is not opposed.

In submissions dated 30th December, 2013 and filed on 8th January, 2014 the applicant informs the Court that on 13th February, 2007 this Court (Wendoh, J) issued an order of mandamus directing the City Council of Nairobi to pay the applicant the sum of Kshs.699,557.60 together with costs. So far the applicant has been paid Kshs.740,286.90 but the outstanding amount of Kshs 104,240.75 as at 31st January, 2012 has not been paid. That is why this application has been filed.

I have closely looked at the application and find that the order sought cannot be granted. The order is sought against the Town Clerk of the City Council of Nairobi. The Town Clerk and the City Council of Nairobi no longer exist. Any order issued cannot be executed. Whereas the applicant amended the name of the respondent, he failed to amend the prayers.

The amended notice of motion dated 7th May, 2013 is therefore dismissed with no order as to costs.

Dated, signed and delivered at Nairobi this 30th day of April, 2014

W. KORIR,

JUDGE OF THE HIGH COURT