



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NAKURU

Judicial Review 129 of 2011

REPUBLIC.....APPLICANT

VERSUS

TOWN CLERK, MUNICIPAL COUNCIL OF NAKURU.....1ST RESPONDENT

MUNICIPAL COUNCIL OF NAKURU.....2ND RESPONDENT

EXPARTE:

CHARLES WACHIURI.....1ST SUBJECT

MARGARET MUTHONI THUO.....2ND SUBJECT

DAVID WAWERU.....3RD SUBJECT

HANNAH WAMBUI.....4TH SUBJECT

SIMON MACHARIA.....5TH SUBJECT

SHADRACK WAIGWA.....6TH SUBJECT

PHILIP MAINA.....7TH SUBJECT

LANET HILL CO. LTD.....8TH SUBJECT

JUDGMENT

This is a Judicial Review application in which the 8 ex-parte applicants namely; Charles Wachiuri, Margaret Muthoni Thuo, David Waweru, Hannah Wambui, Simon Macharia, Shadrack Waigwa, Philip Maina, Lanet Hill Co. Ltd. Seek an order of mandamus to issue to compel the Town Clerk, Municipal Council of Nakuru and Municipal Council of Nakuru (1st and 2nd respondents) to pay the applicants a total sum of Kshs.3,485,716/- being damages and costs granted against the 2nd respondent by the High Court of Kenya at Nakuru in Civil Case No. 90/1993, J. Koome gave judgment in favour of the applicants on 9/5/08 together with interest on the said sum at the rate of 14% per annum since the delivery of the judgment. The application is supported by the statement of facts dated 16/11/2011 and the verifying affidavit sworn by David Waweru (3rd applicant) one of the plaintiffs in HCC 90/93. The dispute involved ownership and possession of L.R. 20289 Nakuru Municipality. The 2nd respondent was ordered to compensate each of the applicants in the sum of Kshs.250,000/-, as general damages, which totals

Kshs.2,000,000/-. The costs were taxed at Kshs.1,485,716/-. A decree was issued on 9/9/2011 (DWVI). It is the applicants' contention that the defendants have failed, refused or neglected to pay the said sum. The costs were taxed and certificate of costs and decree was sent to the respondent but the respondents have not paid and that is what has prompted the filing of this application. The respondents were served with this notice of motion but there has been no response thereto or appearance at the hearing.

An order of mandamus lies to compel a public body or public officer to perform its/his statutory duty, or where there is a lawful decree issued against the respondent, the respondent has an obligation to satisfy it. The Town Clerk is the Chief Executive Officer of the 2nd respondent who is bound to ensure that the decree is satisfied. The applicants cannot execute against the respondent directly because **Section 263A of Local Government Act** bars it. The **Section** provides as follows:-

“263A (a) Where any judgment or order has been obtained against a local authority, no execution or attachment or process in the nature hereof shall be issued against the local authority or against the immovable property of the local authority or its vehicle or its other operating equipment, machinery, fixtures or fittings, but the clerk of the local authority shall, without delay, cause to be paid out of the revenue of the local authority such amounts as may, by the judgment or order, be awarded against the local authority to the person entitled thereto.

(b) no immovable property of the local authority or any of its vehicles or its other operating equipment, machinery, fixture or fittings shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the clerk of the local authority.”

The 1st respondent has failed or neglected to perform a duty imposed on him by statute and failed to reply to this application to demonstrate why the respondent cannot pay up.

In the end, I find that the order sought is merited and I hereby grant the order of mandamus as prayed. The sums are payable within 30 days from today's date. Costs of this application be borne by the respondent.

DATED and DELIVERED this 31st day of July, 2012.

R.P.V. WENDOH
JUDGE
PRESENT:

Mr. Kibet holding brief for Mr. Karanja for the applicants

N/A for the respondents

N/A for subjects

Kennedy – Court Clerk