



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Judicial Review 194 of 2012

REPUBLIC .....APPLICANT

VERSUS

TOWN CLERK CITY COUNCIL OF NAIROBI .....RESPONDENT

EX-PARTE  
MWANGANGI & COMPANY ADVOCATES

JUDGEMENT

Through the notice of motion dated 14<sup>th</sup> May, 2012 Mwangangi and company advocates who are the ex-parte applicants seek orders that:-

- 1. THAT an Order of MANDAMUS do issue to compel the Town Clerk of the City Council of Nairobi to cause to be paid to the Applicant, out of the revenue of the City Council of Nairobi, the sum of Kshs.405,203.69 together with interest thereon at the rate of 9% per annum from 29-6-2010 until payment in full.**
- 2. THAT the costs of this application be provided for.**

The application is supported by the grounds on its face, a verifying affidavit sworn by advocate Florence Mwangangi on 9<sup>th</sup> May, 2012 and a statutory statement dated 8<sup>th</sup> May, 2012 plus annexures thereto.

Briefly, the ex-parte applicants rendered legal services to the respondents in Nairobi H.C.C.C. No. 1735 of 2005 and Nairobi C.M.C.C. No. 5258 of 2005. The respondent failed to pay for the services and the ex-parte applicants instituted legal action for recovery of the costs vide Nairobi High Court Misc. Application No. 575 of 2011 and Misc. Application No. 52 of 2010 in which they were awarded Kshs. 104,795.60 and Kshs. 300,408.09 respectively. The respondent again failed to pay the taxed costs thereby forcing the ex-parte applicants to institute these proceedings.

The respondent did not file any response despite being served with the court papers.

The issue for determination is whether the ex-parte applicants are entitled to the orders sought. The ex-parte applicants have demonstrated that they rendered legal services to the respondent who failed and or refused to pay for the same. The ex-parte applicants then proceeded to court where the costs were taxed and a total of Kshs.405, 203. 69 awarded to them. The respondent again failed to pay the taxed costs.

The town clerk of a local authority is under a legal duty to pay any amount awarded to a judgement creditor in any judgement or order. The town clerk **“shall, without delay, cause to be paid out of the revenue of the local authority such amounts as may, by the judgement or order, be awarded against the local authority to the person entitled thereto”** – see section 263A of the Local Government Act, Cap 265 Laws of Kenya. The respondent is therefore enjoined by statute to pay the amount awarded to the ex-parte applicants by the court.

After careful consideration of the application, I agree with the ex-parte applicants that an order of mandamus should issue compelling the respondent to pay the decreed amount. The application is

therefore allowed with costs to the ex-parte applicants.

Dated and signed at Nairobi 25th this day October , 2012

**W.K. KORIR**

**JUDGE**