



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc. Civ. Appli. 1046 of 2007

REPUBLIC..... APPLICANT

V E R S U S

TOWN CLERK, NAIVASHA MUNICIPAL COUNCIL..... RESPONDENT

EX-PARTE: BENSON MUTURI KAMANDE

J U D G M E N T

Before me is a Notice of Motion dated 21st September, 2007 filed by M/s Muturi Kamande & Company advocates on behalf of the ex-parte applicant BENSON MUTURI KAMANDE. The respondent is named as TOWN CLERK, NAIVASHA MUNICIPAL COUNCIL. The Notice of Motion was filed under Order 53 Rule 3 of the Civil Procedure Rules pursuant to leave which was granted by court on 20th September, 2007. The following orders are sought in the Notice of Motion-

1. THAT *an order of mandamus be issued and the same be directed to the Town Clerk of the Naivasha Municipal Council.*
2. THAT *the Town Clerk shall comply by satisfying the decree costs and interest in NAIVASHA SPMCC NO.913 of 2005 within seven (7) days from the date of service of this order.*
3. THAT *in default notice to show cause do issue against the Town Clerk for him to show cause why he should not be cited for contempt of court.*
4. THAT *the costs of this application be provided for.*

The grounds of the application are on the face of the Notice of Motion. The grounds are that on 22/6/2007 the Chief Magistrate's Court Naivasha issued a monetary decree against the respondent (*Naivasha Municipal Council*) for Kshs.754,000/= inclusive of interest plus costs of Kshs.62,455/= in PMCC No. 913 of 2005; that the respondent is a local authority protected against execution by way of

attachment by virtue of section 263A of the Local Government Act hence these proceedings seeking for orders to compel the Town Clerk to settle the said decree plus costs; and that leave to institute these proceedings was granted by this court. The Notice of Motion is grounded on the STATEMENT filed with the Chamber Summons for leave, as well as the verifying affidavit also filed with the said Chamber Summons.

Though the respondent was represented initially by S.M. Chege & Company Advocates, and later by Momanyi & Company advocates, no response was filed on behalf of the respondent.

On the hearing date, Mr. Muturi appeared for the applicant, while Mr. Mogaka appeared for the respondent. Both Counsel addressed me. Initially Mr. Mogaka submitted that they had filed grounds of objection, but later abandoned that line of argument as it is apparent that no grounds of objection were filed. There does not appear to be any dispute on the decree, except that Counsel for the respondent submitted that the protection against execution under Section 263 (A) of the Local Government Act was absolute and therefore the application should be dismissed.

In my view, the protection against execution under Section 263(A) of the Local Government Act is not as absolute as the Counsel for the respondent suggests. The restriction on execution is on the assets of the local authority. However, the law specifically provides that a certain officer, the Clerk, has a legal obligation to settle court judgements and decrees. That obligation is not shielded by the restriction against execution on the assets of the local authority.

It was the Legal responsibility of the Clerk, once served with the decree, to make arrangements to pay the amount from the funds of the Local authority. Todate he has not paid or indicated how he is going to pay. His failure to do so can be enforced by this court through issuance of orders of mandamus. Therefore this application will succeed.

Consequently, I allow the application and grant orders as requested in prayer 1, 2, and 3 of the Notice of Motion. I award the costs of this application to the applicant.

Dated and delivered at Nairobi this 29th day of July, 2008.

GEORGE DULU

JUDGE.

In the presence of-

Mr. Muturi for the applicant.