



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

Misc. Appli. 1226 of 2007

REPUBLIC..... APPLICANT

V E R S U S

CITY COUNCIL OF NAIROBI..... RESPONDENT

J U D G M E N T

This is a Notice of Motion dated 23rd November, 2007 filed by M/s D. Njogu & Company advocates for the ex-parte applicant named as *DAVID NJOGU t/a D. NJOGU & COMPANY ADVOCATES*. The respondent is named as the Town Clerk, *CITY COUNCIL OF NAIROBI*. The application was said to have been filed pursuant to leave granted on 20th November, 2007. The Notice of Motion application was brought under Order 53 rule 3 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act (*Cap. 21*) and Sections 8 and 9 of the Law Reform Act (*Cap. 26*).

The application seeks for orders of MANDAMUS relating to orders made in several cases with regard to decrees and advocates costs awarded to the ex-parte applicant payable by the City Council of Nairobi. The total amounts of the awarded decrees was said to be Kshs.3,926,038.50= which attracted 14% interest and the certified costs were said to be Kshs.65,270.00/=

The application was filed with a supporting affidavit sworn by the ex-parte applicant on 26th November, 2007 which gives the total amounts of the various decrees as Kshs.3,926,038.50, and the total amount of taxed costs as Kshs.65,270/= . The statement filed with the application for leave, and the verifying affidavit were relied upon.

The respondents appointed N. M. Mugalla advocate to appear for them, who entered appearance on 22nd January, 2008, though they do not appear to have filed any response to the application.

At the hearing of the application Mr. Njenga appeared for the ex-parte applicant. Nobody appeared for the respondent.

Counsel for the applicant made submissions in support of the application. Counsel relied on Section 263(a) of the Local Government Act (*Cap. 265*) which imposed a statutory obligation on the Town Clerk to pay all decrees that were made against the City Council of Nairobi. Counsel submitted that the decrees relied upon were annexed to the supporting affidavit, and that the applicant was seeking for orders of mandamus because the Local Government Act prohibited execution against the City Council of Nairobi. Counsel submitted that the application was not opposed and the orders sought were justified. Counsel cited the case of Nairobi H.C. Misc. Application No. 339 of 2005 David Njogu t/a D. Njogu & Co. advocates –vs- The Town clerk City Council of Nairobi, in which mandamus orders were granted.

I have considered the application, documents filed and the submissions of counsel for the ex-parte applicant. This court has jurisdiction under Section 8 (2) of the Law Reform Act (*Cap. 26*) to grant mandamus orders.

Section 263 (3) of the Local Government Act (*Cap. 265*) provides that a Local Authority is under obligation to pay out of its revenues what is determined to be paid through any action or judgment of any court. Section 363 A (a) prohibits the issuance of any order of execution or attachment or any process in the nature thereof against the Local Authority or its assets but provides that the Town Clerk of the Local Authority should pay the said costs, charges and expenses to which the Local Authority may become liable through the action, from the revenues of the Local Authority.

There is no dispute that amounts were decreed by the court as being payable by the City Council of Nairobi. There is no dispute that costs were awarded and determined (*quantified*) against the City Council of Nairobi. The City Council of Nairobi was served with this application. They appointed counsel who entered appearance, in the name of Mr. Mugalla. They did not appear or send counsel to appear at the hearing of the application. As things stand, the application is unopposed. The orders sought are grantable by this court. The facts before me disclose that the City Council of Nairobi and its Town Clerk are aware of the amounts payable, as ordered by the court, but have failed to discharge their legal duty to pay, and have also not given any reason for the failure to pay. In the above circumstances, I will allow the application.

Consequently, and for the above reasons, I order as follows-

1. *An Order of MANDAMUS be and is hereby issued to compel the TOWN CLERK CITY COUNCIL OF NAIROBI to cause to be paid out of the revenue of the City Council of Nairobi to the ex-parte applicant Kshs.3,926,038.50 with interest at 14% per annum from the respective dates stated in the Notice of Motion with regard to the 8 subject court cases, and also to pay the ex-parte applicant the certified costs in the sum of Kshs.65,270 in respect of the same 8 cases.*
2. *The costs of this application will be to the applicant.*

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

George Dulu

Judge.

In the presence of-

Mr. Njenga for applicant

No Appearance for respondent