



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc. Civ. Appli. 82 of 2008

REPUBLIC APPLICANT

-V E R S U S-

THE TOWN CLERK CITY COUNCIL

OF NAIROBI RESPONDENT..... RESPONDENT

EX-PARTE: NJAGI WANJERU practicing as

NJAGI WANJERU & COMPANY ADVOCATES

J U D G M E N T

This is a Notice of Motion dated 11th March, 2008 filed by M/s Njagi Wanjeru & company advocates, on behalf of NJAGI WANJERU practicing as NJAGI WANJERU & COMPANY ADVOCATES.

The respondent is named as the TOWN CLERK, CITY COUNCIL OF NAIROBI. The application was brought under Order 53 rule 3 of the Civil Procedure Rules, and was filed on 12th March, 2008. The orders sought are as follows-

Ø THAT *an order of mandamus do issue directed to the respondent Town Clerk City Council of Nairobi compelling him to forthwith and without delay cause to be paid to the ex-parte applicant the decretal sum of Kshs.4,500,000/= plus the accrued interest of Kshs.577,500.00 thereof as at 1.3.2008 and further accruing interest on the said decretal sum until full and final payment in terms of the court order dated 2nd November, 2007 by Honourable Mr. Justice Azangalala in H.C. Misc. Civil Application No. 1366 of 2006 at Milimani (Njagi Wanjeru & Company advocates -vs- the City Council of Nairobi.)*

Ø THAT *the costs of this application and the Chamber Summons dated 7th March, 2008 be borne by the respondent Town Clerk City Council of Nairobi.*

The application is grounded on the STATEMENT dated 3rd March, 2008, and the VERIFYING AFFIDAVIT sworn on 3rd March, 2008 by NJAGI WANJERU, both filed with the Chamber Summons for leave.

According to the VERIFYING AFFIDAVIT, judgment for costs was entered against the City Council of Nairobi on 2nd November, 2007, following a consent order for taxed costs in Nairobi HC. Miscellaneous

Application No. 1654 of 2004 in the sum of Kshs.4,500,000/-. Though on 28th February, 2007, the Director of the Legal Services of the City Council of Nairobi undertook to liquidate the taxed costs within a year, no payment had so far been made, thus necessitating these proceedings. The ground of suing the Town Clerk was that section 263 (A) of the Local Government Act (**Cap. 265**), put the statutory responsibility on the Town Clerk to settle such court awards.

At the hearing of the application, Mr. Njagi for the Applicant submitted that in 2007 the respondent had asked the applicant not to take execution action for a year, and the applicant did not take any precipitate action. Though several letters were written to the respondent to settle the amount, no payment had been effected. That is the reason why the applicant had come to court through the judicial review process.

Mr. Abwao for the respondent submitted that the amount claimed was truly outstanding and unpaid. However, the City Council of Nairobi had liquidity problems. Therefore, counsel requested for a stay of 30 days if orders are granted, to sort out the issue of payment.

I have considered the application, documents filed and the submissions of counsel for the parties.

Clearly, this application is not opposed. It was filed on 12th March, 2008. When counsel for the respondent came to court for the hearing on 3/10/2008, he admitted that the amount claimed was due. He only asked for time to pay.

Considering the facts before me, I really do not have any reason to decline granting the orders sought.

Consequently, I allow the application and grant the mandamus orders sought, which I have already reproduced earlier in this judgment. I also award costs to the ex-parte applicant as prayed.

It is so ordered.

Dated and delivered at Nairobi this 5th December, 2008.

GEORGE DULU

JUDGE.

In the presence of-

Mr. Njagi for applicant

Mr. Abwao for respondent