



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. CIVIL APPLICATION NO. 132 OF 2004
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
BY WAY OF MANDAMUS
AND
REPUBLIC.....APPLICANT
VERSUS
THE TOWN CLERK OF THE CITY COUNCIL
OF NAIROBI.....RESPONDENT
***EX PARTE* MICHAEL SHEPPARD**

JUDGEMENT

This application was commenced by Notice of Motion dated 23rd February, 2004 and filed on the same date. It was brought under the Law Reform Act (Cap.26), Order LIII of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act (Cap.21). The Applicant's prayers were for:

(a) an Order of Mandamus directed at the Town Clerk of the City Council of Nairobi, requiring him to pay to the Applicant the sum of Kshs.500,000/= with accrued interest, arising out of a decree in High Court Civil Case No. 149 of 1999, ***Michael Sheppard v. Nairobi City Council & Two Others***;

(b) any further Orders and Directions such as the Court may deem fit and just;

(c) costs.

The grounds in support of the Judicial Review application were set out as follows:

(i) that, the Applicant had obtained a decree against the Respondent in High Court Civil Case No. 149 of 1999, ***Michael Sheppard v. Nairobi City Council & Two Others***, for payment of Kshs.500,000/=;

(ii) that the Respondent is vested with powers under statute to satisfy the decretal sum of Kshs.500,000/= together with accrued interest and further costs;

(iii) that the Respondent has failed to satisfy the said decretal sum, with prejudice to the Applicant's

rights to enjoy the fruits of his Judgement and decree;

(iv) that the Respondent's conduct lacks a basis in law, and amounts to abuse of office and is prejudicial to the Applicant.

Further grounds are contained in the Statutory Statement filed before the Notice of Motion, on 9th February, 2004 accompanied by the verifying affidavit of Jinaro Kipkemoi Kibet. Relevant elements in the Statutory Statement are as follows:

(a) that, after the Applicant obtained the decree against the Respondent, he requested payment and sent a reminder, but the Respondent refused and neglected to settle the amount;

(b) that, the Applicant is prevented by the Local Government Act (Cap.265) from executing by way of attachment, against the Respondent;

(c) that, the Respondent is a local authority and a statutory body, and hence subject to the Judicial Review jurisdiction of the High Court when it acts unjustly and without due regard to the rights of the Applicant;

(d) that, the Town Clerk is statutorily entrusted with the safeguard of the funds of the City Council of Nairobi, and it is within his duty and power to order release of the decretal amount to the Applicant.

Mr. Kanjama formally presented the application, and correctly stated that the debt in question, falling upon City Hall, is an old one which should have long been cleared.

This is a straightforward case of serious default on the part of the Respondent, in making payment as decreed by this Court. Without hesitation I grant the Orders sought, and specifically make the following Orders:

1. That an Order of Mandamus be and is hereby issued, directed against the Town Clerk of the City Council of Nairobi requiring him to pay to the Applicant the sum of Kshs.500,000/= with accrued interest with effect from the date of the decree, at the rate of 12% per annum.
2. That the Respondent shall bear the Applicant's costs in these proceedings.

DATED and DELIVERED at Nairobi this 30th day of July, 2004.

J.B. OJWANG

Ag. JUDGE

Coram: Ojwang, Ag J

Court clerk: Mwangi

For the Applicant: Mr. C. Kanjama, instructed by M/s. Ochieng, Onyango, Kibet & Ohaga Advocates

Respondent unrepresented.