



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MAKUENI

MISCELLANEOUS APPLICATION NO. E006. OF 2021

**IN THE MATTER OF: AN APPLICATION BY JANE WANDERA FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW ORDERS OF MANDAMUS.**

**IN THE MATTER OF: ELC JUDICIAL REVIEW 3 OF 2020-JANE WANDERA VERSUS MAKUENI COUNTY SAND
CONSERVATION AND UTILISATION AUTHORITY**

IN THE MATTER OF: GOVERNMENT PROCEEDINGS ACT,CIVIL PROCEDURE ACT & CIVIL PROCEDURE RULES

**IN THE MATTER OF: THE MAKUENI COUNTY FINANCE ACT, 2019, MAKUENI COUNTY SAND CONSERVATION AND
UTILISATION ACT, 2015**

IN THE MATTER OF: EXECUTION FOR TAXED COSTS OF KSHS. 291,396

BETWEEN

JANE WANDERA.....APPLICANT

AND

MAKUENI COUNTY SAND CONSERVATION

AND UTILIZATION AUTHORITY.....RESPONDENT

RULING

1. Before this court is an ex-parte chamber summons dated 5th July, 2021 brought pursuant to **Sections 1A and 1B** of the **Civil Procedure Act, Order 53 Rule 1 (1) and (2) of the Civil Procedure Rules and Section 8 (2) and 9** of the **Law Reform Act** seeking the following prayers: -

1. That this application be certified urgent and be heard and determined forthwith.

2. That the applicant be granted leave to apply for an order of mandamus compelling the managing director of the respondent to pay the taxed costs in ELC Judicial Review 3 of 2020-Jane Wandera versus Makueni County Sand Conservation and Utilisation Authority amounting to Kshs. 291,396 together with 12% interest calculated from 22/02/2021 until payment in full.

3. That the costs of this application be borne by the respondent and paid together with 2 above.

2. The application is premised on the grounds on the fact of it and more importantly as contained in the statutory statement dated 5th July, 2021.

3. The application is accompanied by an undated verifying affidavit sworn by the applicant herein-Jane Wandera. The basis of the application as stated in the verifying affidavit is that vide a judgment dated 26th November, 2020, the court allowed her judicial review application against the respondent herein in which she was also awarded costs. That she filed a bill of costs dated 30th November, 2020 and that despite service of the bill of costs and taxation notice, the respondents did not participate in the proceedings.

4. The applicant further avers that on 22nd February, 2021 the bill of costs dated 30th November, 2020 was taxed. The same was served upon the respondent via email on the same date and the same did not elicit any response. That a decree was subsequently issued and set out at KShs. 291,396/- and the same was served upon the respondents on 11th March 2021 together with warrants of attachment of movable property.

5. Further, that a certificate of order for costs was served upon the respondent on 31st March, 2021 and an email followed thereafter on 1st April, 2021 as well as a letter dated 6th April, 2021. The applicant is satisfied that she has complied with all the statutory requirements as per the government proceedings act and the civil procedure act and rules.

6. The applicant filed written submissions dated 21st July, 2021. It is the applicant's submission that she has satisfied the circumstances under which judicial review order of mandamus can be granted. She relies on the court of appeal decision in **Kenya National Examination Council versus Republic Ex-parte Geoffrey Gathenji Njoroge & Others, Civil Appeal No. 266 of 1996 [1997] eKLR** which the court observed:-

“The order of mandamus is of a most extensive remedial nature and is in form a command issuing from the high court of justice directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of public duty...The order must command no more than the party against whom the application is legally bound to perform”.

7. The applicant also submits that she has followed the due process in the execution of decree as per **Section 21 of the Government Proceedings Act and Order 29 of the Civil Procedure Rules**. She relies on the case of **Republic versus County Secretary, County Government of Mombasa & 2 Others ex-parte Samuel Mutemi t/a Tudor Paradise [2021] eKLR**.

8. I have considered the application, the undated verifying affidavit, documents in support of the application and the written submissions thereof. I consider the following issue necessary for determination;

a. Whether the applicant has complied with the legal requirements for an issuance of an order of mandamus.

9. **On whether the applicant has complied with the legal requirements for an issuance of an order of mandamus; Section 21 of the Government Proceedings Act states as follows:**

“(1)Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

(2)A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.

(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.

(4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.”

10. In **Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoaah Egunza [2012] eKLR**, Githua, J expressed herself as follows with regard to the above cited provisions of the Government Proceedings Act:-

11. **“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the**

decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon.

12. In the instant application, a decree and certificate of costs in Makueni Judicial Review Number 3 of 2020 was drawn and issued on 24th February, 2021. A certificate of order against the County Government was also drawn and issued on the 30th March, 2021. Service was effected vide email on diverse dates from 22nd February, 2021, 11th March, 2021, 26th March, 2021, 1st April, 2021 and 6th April 2021. Whereas I note that the all the other documents were served via email on various dates, the certificate of order for costs against the county government was the only document that was served physically and the same can be seen by stamp of receipt dated 31st March, 2021. I am satisfied that the applicant's advocate complied with Order 5 Rule 22B of the Civil Procedure Rules.

13. This court is satisfied that service of the relevant documents as per the provisions of Section 21 of the Government Proceedings Act was effected upon the Respondent. Evidence in support of the same has been tendered by the Applicant. I therefore find and hold that indeed the Applicant fully complied with the legal requirements for an order of mandamus to be issued.

14. For the foregoing reasons the ex-parte chamber summons dated 5th July, 2021 is allowed as follows:

1) That this honourable Court be and is hereby pleased to issue a writ of Mandamus against the Managing Director-Makueni County Sand Conservation and Utilisation Authority compelling him forthwith to satisfy the decree of the honourable court in ELC Judicial Review 3 of 2020 together with 12% interest calculated from 22nd February, 2021 until payment.

2) The applicant will have the costs of this application.

DATED, SIGNED and DELIVERED VIA EMAIL on this 8th day of February, 2022.

Mbogo C.G

Judge

8/2/2022

In the presence of: -

CA: T.Chuma