



Republic v Attorney General; Bor (Ex parte Applicant) (Judicial Review 2 of 2024) [2025] KEHC 1543 (KLR) (12 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1543 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
JUDICIAL REVIEW 2 OF 2024
TA ODERA, J
FEBRUARY 12, 2025**

**IN THE MATER OF AN APPLICATION BY COSMAS KIBET BOR
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS IN
THE NATURE OF MANDUMUS AND IN THE MATTER OF THE
OGEMBO PRINCIPAL MAGISTRATE’S COURT CASE NO. 6 OF
2017 (COSMAS KIBET VS ATTORNEY GENERAL OF KENYA)**

BETWEEN

REPUBLIC APPLICANT

AND

THE ATTORNEY GENERAL RESPONDENT

AND

COSMAS KIBET BOR EX PARTE APPLICANT

RULING

Introduction

1. The Exparte Applicant herein filed chamber summons Application dated 20th February, 2024 under order 53 rule 1(1)(2) (3 rule 2 and 3(1), (2) (2) (3)(4) and rule 4 of the *Civil Procedure Rules*, 2010 seeking to be granted leave to apply for judicial review orders in the nature of *mandamus* to compel the government of Kenya through the Attorney General, the respondent herein, to pay him the decretal sum of Kshs 4,056,888.80. inclusive of general damages, special damages, interests and costs all as assessed and/or awarded in Ogembo PMCC No 6 of 2017. The Exparte applicant equally sought for orders of cost.
2. In support of his Application, the Exparte Applicant averred that he is a successful litigant who is entitled to a decretal sum of Kshs 4,056,888.80.



3. He narrated that on 10th July, 2017 he obtained a judgment in Ogembo PMCC No 6 of 2017 in his favor for a sum of Kshs 1,762,000.000 as well as special damages of Kshs 262,000,000.00. He stated equally he had the costs of his suit assessed at Kshs 149,900.00. The total which was Kshs 2,218,900.00 attracted an interest at the court rate of 14% which equated to 1,837,988.83.
4. He averred thus the total decretal sum which is Kshs 4,056,888.80 is yet to be paid by the government of Kenya through the Honorable Attorney General despite demand for payment having been made.
5. He revealed that no appeal had been preferred against the judgment and decree of the court. He contended that the Government of Kenya through the Honorable Attorney General should uphold the rule of law and abide by the court by paying the decretal sum.
6. In response the Attorney General through a replying affidavit sworn by Dennis Wabwire, State Counsel argued that the subject matter before court is moot as well as res judicata hence the Honorable court lacks jurisdiction to entertain this matter in view of the Ruling of the court in Kisii High Court Judicial Review Application number 7 of 2021, Cosmas Kibet Bor (exparte applicant) v Attorney General.

Analysis and Determination

7. I have considered the application, affidavit evidence, the Grounds in Opposition and learned submission by counsel. It is not in dispute there is deed a judgement that was delivered in favor of the exparte applicant, it is equally not in dispute that a decretal sum of Kshs 4,056,888.80 inclusive of damages, assessed cost and interests is due and has not been settled by the state.
8. However, the respondent has argued that this application is res-judicata given that the applicant had filed a similar Application that was determined on merit and dismissed for being premature as the demand notice had not been served. While the issue of Res judicata as argued by the respondent herein challenges the jurisdiction of this court in determining the intent and purpose of why the Exparte Applicant approached this court, I find that since the matter was for being dismissed for being premature the applicant can still move the court for the same orders.
9. The Exparte Applicant has sought for leave to commence judicial review proceedings. The applicable law on leave is Order 53 Rule 1 of the Civil Procedure Rules, which provides that no application for judicial review orders should be made unless leave of the court was sought and granted. The main reason for the leave as explained by Waki J. (as he then was), in Republic v County Council of Kwale & another Ex Parte Kondo & 57 others, Mombasa HCMCA No 384 of 1996, is to ensure that an applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. It is also trite that in an application for leave such as the present one, the Court ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before court and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave. As I have observed hereinabove both the respondent confirmed that in deed there exists a decree in favor of the ex-parte Applicant against the government that is yet to be settled by the government. This means that the applicant has established that there is an arguable issue of noncompliance --with a decree that need to be heard substantively.
10. In light of the foregoing observations and findings, the ex parte Applicants' Chamber Summons dated 20th February, 2024 is merited. I accordingly grant the following orders:
 - a. The ex parte Applicant is granted leave to apply for judicial review orders in the nature of *mandamus* to compel the government of Kenya through the Attorney General, the respondent



herein, to pay him the decretal sum of Kshs 4,056,888.80 Inclusive of general damages, special damages, interests and costs all as assessed and/or awarded in Ogembo PMCC No 6 of 2017.

- b. The costs of the Chamber Summons dated 8th May 2020 shall be in the cause.
- c. The ex parte Applicant shall file and serve the Respondent with the substantive Notice of Motion, within twenty one (21) days from today's date.
- d. Upon being served with the said pleadings and documents, the Respondent shall be required to file their responses to the substantive Notice of Motion within fourteen (14) days from the date of service.
- e. This matter shall be mentioned on 11.3.25 for further directions.

11. Orders accordingly.

T.A ODERA

JUDGE

12.2.25

