



Republic v Attorney General & 2 others; Gathari (Exparte Applicant) (Judicial Review Miscellaneous Application 252 of 2015) [2024] KEHC 170 (KLR) (Judicial Review) (17 January 2024) (Ruling)

Neutral citation: [2024] KEHC 170 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 252 OF 2015
JM CHIGITI, J
JANUARY 17, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

THE HON ATTORNEY GENERAL 1ST RESPONDENT

THE SOLICITOR GENERAL 2ND RESPONDENT

THE PERMANENT SECRETARY, MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY 3RD RESPONDENT

AND

LUCY MUTHONI GATHARI EXPARTE APPLICANT

RULING

1. The application before this Court is the 3rd Respondent’s application dated 14th December,2023 and it seeks for orders that:
 1. Spent.
 2. This Honourable Court be pleased to grant a stay of the delivery of judgment scheduled for 20th December,2023 pending the hearing and determination of this application inter-parties.
 3. This Honorable Court be pleased to review and set aside the orders made on the 11th December 2023.



4. That this Honourable Court be pleased to admit the Replying Affidavit of Dr. Belio Kipsang attached herein.
5. Costs of this application be provided for.

The 3rd Respondent's/Applicant's case:

2. It is the 3rd Respondent's/Applicant's case that when this matter came up for mention on 11th December, 2023 counsel had a matter at the Court of Appeal that is Civil Appeal Number 347 of 2017.
3. The 3rd Respondent/Applicant states that this case was mentioned while counsel was on her feet addressing the Court in Nairobi Civil Appeal Number 347 of 2017 which was also set for hearing on the same date and that by the time she logged in, the judge had already issued directions in the matter fixing it for the delivery of Judgment on 20th December, 2023.
4. Counsel is said to have had instructions to seek more time to settle the decretal amount, as the 3rd Respondent is in the process of forwarding funds to the Attorney General's Office for onward transmission to the applicant.
5. The 3rd Respondent's/Applicant's case is also that the Respondents are keen on having the matter settled.

Applicant's/Respondent's case:

6. The Applicant/Respondent opposes the application as the letter seeking allocation from Treasury to pay Court orders is dated 12th September, 2022 which is more than a year ago while the letter from the Civil Litigation Department of the Ministry of Education which is referenced MOE.GEN/3IL/12/VOL.V (22) to the Attorney General is dated 8th December, 2023.
7. It is the Applicant's/Respondent's case that transfer of money is not a process but an action and further that the government officials involved are simply delaying and/or refusing to act and covering up by claiming there are processes.
8. It is stated that the Judgment that is scheduled for 20th December, 2023 ought to have been pronounced as the Attorney General has already been supplied with payment details of the Applicant's/Respondent's advocates on record.
9. Further, that unless the Court acts to tame impunity, Government officials will continue to be reckless in the manner in which they execute their mandate and or duty to the public.

Issues for determination:

10. This Court has considered each party's case and the following issues form for determination;
 - i. Whether the court should arrest its judgment in the current suit slated for delivery on the 20th December, 2023 pending hearing and determination of this application interpartes.
 - ii. Whether the court review and set aside the orders made on the 11th December, 2023 pending the hearing and determination of this application inter-parties.



- iii. Whether the court can admit the Replying Affidavit of Dr. Belio Kipsang attached herein.

Whether the court should arrest its judgment in the current suit slated for delivery on 20th December, 2023 pending hearing and determination of this application interpartes?

11. This matter was due for judgment on 20th December, 2023. Arresting a judgment leads to a delay in Justice. This is not a very desirable approach especially in cases such as the one before this Court where Judgement was issued in favour of the Applicant/Respondent in 2011.
12. However, the matters that are before the Court of Appeal always take precedence over matters that are before the High Court. Counsel for the respondent has satisfied this court that she was attending a matter in the Court of Appeal when the matter before me was proceeding. It is clear that there was no negligence on the part of the Respondents' Counsel.
13. In any event, even if there was, mistake of Counsel the same cannot be visited upon a litigant. The 3rd Respondent/Applicant has expressed a desire to settle the matter.

Disposition

14. The 3rd Respondent/Applicant is entitled to the right to fair hearing under Article 47 of the Constitution.
15. The Applicant/Respondent shall not suffer prejudice if the application is allowed.

Order:

16. The Application dated 14th December, 2023, is allowed in the following terms:
 - i. The orders made on the 11th December 2023 are hereby reviewed and set aside.
 - ii. The Applicant shall file and serve its replying affidavit and submissions within three (3) days of today's date.
 - iii. The 3rd respondent/Applicant shall be at liberty to file a supplementary affidavit or supplementary submissions if any within three (3) days of service.
 - iv. The Judgment shall be delivered on 28th February 2024.
 - v. The 3rd Respondent/ Applicant shall have the costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JANUARY, 2024

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J. CHIGITI (SC)
JUDGE

