



**Republic v Attorney General; Mwangi (Exparte Applicant) (Judicial Review 24 of 2017) [2024] KEHC 1600 (KLR) (20 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1600 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
JUDICIAL REVIEW 24 OF 2017  
SM MOHOCHI, J  
FEBRUARY 20, 2024  
IN THE MATTER OF AN APPLICATION FOR AN  
ORDER OF PROHIBITION AND MANDUMUS**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE ATTORNEY GENERAL ..... RESPONDENT**

**AND**

**JAMES MACHARIA MWANGI ..... EXPARTE APPLICANT**

**RULING**

1. Judgment was entered in these proceedings on the April 23, 2014 with Justice S. Munyao allowing the Judicial Review Application, granting orders of *mandamus* and *certiorari* against the Registrar of Titles and the *ex-parte Applicant* was granted costs of the suit.
2. It is the failure to pay the costs by the Accounting Officer in the Ministry of Lands and Housing that has given rise to the instant Application.
3. By Notice of Motion Application dated September 6, 2021 under Sections 3, 3A, and 63 (c) of the [Civil Procedure Act](#) and Orders 22 Rule 31, 51 Rule 1 of the [Civil Procedure Rules, 2010](#) where the *ex-parte Applicant* seeks the following orders;
  - i. Spent
  - ii. That, the Court be pleased to issue a notice to the Accounting Officer, Ministry of Lands to show cause why he should not be committed to civil jail



for failure to comply with the judgment of this Court made on October 18, 2018.

- iii. That, this Honourable Court be pleased to order the arrest of the Accounting Officer, Ministry of Lands and committal to civil jail for such period as the Court may deemed fit.
- iv. That, the costs of this application be borne by the Respondents.

### **The Grounds**

4. The grounds relied upon are in the Affidavit of James Macharia Mwangi, the *ex-parte Applicant* herein annexed to the Notice of Motion Application are that:
  - i. The Applicant filed Nakuru ELC (JR) Misc Civil Appl No. 79 of 2012 against the Registrar of Titles and the Respondent seeking various orders with respect to the parcel of land known as Molo Township 533/678 also described as Molo Township Block 2/460.
  - ii. That on April 23, 2015 judgement was entered in favour of the Applicant and the Applicant was also awarded costs of the suit;
  - iii. That a certificate of costs was served upon the Respondent herein who was acting on its behalf and on behalf of the Registrar of Titles for a sum of Kshs. 87,994/=;
  - iv. That despite service of the said certificate of costs and numerous promises to follow-up the matter with the Respondent herein failed to pay the amount owed necessitating the filing of these judicial Review proceedings by way of a notice of motion dated October 3, 2017;
  - v. That on the October 18, 2018, this Honourable Court upon hearing the parties, herein graciously delivered its judgment and allowed the notice of motion as prayed.
  - vi. That the Applicant herein has been following-up on the payment of the costs but to date the Respondent has not honoured the requests and or made any attempts to engage the Applicant on the same.
  - vii. That the Applicant continues to suffer prejudice and is unable to enjoy the fruits of the judgment of this Court yet these proceedings emanated from the arbitrary actions of the Respondent and the Registrar of Titles who occasioned the Applicant immense loss and suffering;
  - viii. That the failure to comply for more than 4 years is a violation of the constitutional right of the Applicant and a disrespect of the jurisdiction of this Court;
  - ix. That the continued disobedience of the Court order is undermining the dignity of the Court as well as infringing the Applicants rights; and
  - x. That in the interest of justice this Honourable Court ought to intervene promptly and allows this application.
5. The Court had on the May 5, 2023 directed that the *ex-parte Applicant* serves the Application upon the Respondent and that the Application was to be heard and disposed-off by way of written submissions.
6. Despite demonstrable service on the Respondent on the July 11, 2023, the Respondent has neither entered appearance, filed response or opposed the motion.
7. Being an undefended motion leaves this Court no option than to allow the application.



8. Accordingly, I allow the *ex-parte Applicant's* Notice of Motion in the following terms:

- a. A notice to show cause is hereby issued against Generali Nixon Korir, the Principal Secretary, Ministry of Lands to appear before Court (physically or virtually) and show cause why he should not be committed to civil jail for failure to comply with the judgment of this Court made on October 18, 2018.
- b. The costs of this Application are awarded to the *ex-parte Applicant*.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 20<sup>TH</sup> DAY OF FEBRUARY 2024.**

**MOHOCHI S.M.**

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**JUDGE**

