



**Republic v County Secretary of Migori County Government & another; Auma (Exparte Applicant) (Judicial Review E011 of 2023) [2024] KEHC 2330 (KLR) (7 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2330 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
JUDICIAL REVIEW E011 OF 2023**

**RPV WENDOH, J**

**MARCH 7, 2024**

**IN THE MATTER OF AN APPLICATION BY MERCY ODODA  
AUMA (SUING AS THE CHAIRPERSON OF BONDO MOYIE  
WOMEN GROUP) TO APPLY FOR AN ORDER OF MANDAMUS**

**AND**

**IN THE MATTER OF GOVERNMENT PROCEEDINGS ACT, S. 2 (2)**

**AND**

**IN THE MATTER OF ORDER 22 & 29 OF THE CIVIL PROCEDURE RULES, 2010**

**AND**

**IN THE MATTER OF EXECUTION OF A DECREE FOR KSHS. 150,000/=**

**AND**

**IN THE MATTER OF ORDER 53(1) CIVIL PROCEDURE RULES, 2010**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY SECRETARY OF MIGORI COUNTY GOVERNMENT .... 1<sup>ST</sup>  
RESPONDENT**

**THE CHIEF OFFICER FINANCE MIGORI COUNTY GOVERNMENT .... 2<sup>ND</sup>  
RESPONDENT**

**AND**

**MERCY ODODA AUMA ..... EXPARTE APPLICANT**



## JUDGMENT

1. The application for determination is a Notice of Motion dated 8/5/2023 brought under the provisions of order 53 rule 3 (1), (2), (3), 5, and 6 of the Civil Procedure Rules. The *ex-parte* applicant through the firm of Kerario Marwa & Co. Advocates is seeking the following orders: -
  - i. That an order of *mandamus* do issue from this court commanding the respondents to pay the applicant the decretal sum of Kshs. 1, 079,987/= together with interest at 14% upto the date of payment, the said sum being the decretal sum in Migori CMCC No. 23 of 2020.
  - ii. Costs of the application be borne by the respondents.
2. The application is based on grounds appearing on the face thereof and the affidavit in support sworn by Mercy Ododa Auma dated 30/3/2023.
3. According to the *ex-parte* applicant, she obtained judgment against the Migori County Government in Migori CMCC No. 23 of 2020 for now a total of Kshs. 1.079,987/= which amount continues to attract interest at 14% till date of payment.
4. The *ex-parte* applicant stated that the Certificate of Order against the Migori County Government was duly served upon it; that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have refused to pay the decretal sums on the Certificate of Costs as ordered; that the properties of the County Government of Migori are not available for attachment and therefore the recourse available to the *ex-parte* applicant is the order of *mandamus* to be issued.
5. The application is not opposed. Despite numerous service, the respondents chose not to participate in these proceedings. There is an affidavit of service dated 17/11/2023 deponed by Kerario Marwa Counsel, on record. To further support his application, the *ex-parte* applicant filed written submissions dated 17/11/2023 which I have duly considered.
6. The *ex-parte* applicant annexed MOA1 being the copy of the Certificate of Order against the Government dated 17/5/2022 which was also duly received by the office of the County Secretary of the County Government of Migori upon service.
7. It is not in dispute that judgement was delivered in favour of the *ex-parte* applicant in Migori CMCC No. 23 of 2020. The court awarded a total of Kshs. 643,500/= being the decretal sum, interest from 14/1/2020 to the date of the assessment of costs at Kshs. 202, 701/= and costs of the suit assessed at Kshs. 158,710/= which actually makes a total of Kshs. 1,004,911/= contrary to what the *ex-parte* applicant has stated comes to a total of Kshs. 1, 079,987/=.
8. The *ex-parte* applicant is simply seeking an order of *mandamus* to compel the respondents to do their public duty and satisfy the decree which they have failed to do to the detriment of the *ex-parte* applicant.



9. In the case of *Republic vs. Attorney General & Another ex-parte Ongata Works Limited* (2016) eKLR Odunga J (as he was then) referred to the case of *R (Regina) vs. Dudsbeath, Ex Parte, Meredith* [1950] 2 ALL ER 741, at 743, where Lord Goddard CJ held as follows:

" It is important to remember that "*mandamus*" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy... "

10. Before an order of *mandamus* can issue, the ex-parte applicant must comply with Section 21 of the *Government Proceedings Act*. In *Kisya Investments Ltd -vs-The AG* (2005) 1 KLR 74, the Court explained why the strict and elaborate procedure under that section has to be followed, that is to allow the Government time to enable it to make arrangements to satisfy the decree. In this case, the *ex-parte* applicant has satisfied the above requirement under the law and a Certificate of Order of costs dated 19/2/2022 was issued pursuant to Section 21 of the *Government Proceedings Act*.
11. Whether the ex-parte applicant is deserving of the order of *mandamus*: Having found that the *ex-parte* applicant is fully compliant, the court finds that he is deserving of an order of *mandamus*.
12. The application is merited. The respondents are hereby ordered to pay Kshs. 1,004,911/= together with costs of this application assessed at Kshs. 20,000/= in favour of the *ex-parte* applicant.

**DATED, DELIVERED AND SIGNED AT MIGORI THIS 7<sup>TH</sup> DAY OF MARCH, 2024.**

**R. WENDOH**

**JUDGE**

Judgment delivered in the presence of;

Mr. Achola for the Ex-Parte Applicant.

M. Oywer holding brief Mr. Kisera for the Respondents.

Emma & Phelix Court Assistants.

