



Republic v County Secretary of Migori County Government & another; Mwita (Exparte Applicant) (Judicial Review E009 of 2023) [2024] KEHC 2307 (KLR) (7 March 2024) (Judgment)

Neutral citation: [2024] KEHC 2307 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
JUDICIAL REVIEW E009 OF 2023
RPV WENDOH, J
MARCH 7, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**THE COUNTY SECRETARY OF MIGORI COUNTY GOVERNMENT 1ST
RESPONDENT**

**THE CHIEF OFFICER FINANCE MIGORI COUNTY GOVERNMENT 2ND
RESPONDENT**

AND

KEPHAS OCHIENG MWITA EXPARTE APPLICANT

JUDGMENT

1. The Notice of Motion dated 8/5/2023 is 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 seeks the following orders: -

SUBPARA i.

That an order of Mandamus do issue from this court commanding the respondents to pay the applicant the decretal sum of Kshs. 1,896,296/= together with interest at 14% upto the date of payment, the said sum being the decretal sum in Migori CMCC NO. 6 of 2020.

SUBPARA 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 Saline Adhiambo Onyango dated 30/3/2023.



3. According to the ex-parte applicant, she obtained judgment against the Migori County Government in Migori CMCC No. 6 of 2020 for now a total of Kshs. 1,896,296/= 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 on the Respondent; that the 1st and 2nd 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 services, 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 her application, the ex-parte applicant filed written submissions dated 17/11/2023 which I have duly considered.
6. The ex parte applicant annexed "SAO1" being the copy of the Certificate of Order against the Migori County Government dated 27/2/2023 which was also duly received by 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. 6 of 2020. The court awarded a total of Kshs. 762,300/= being the damages for breach of contract, interest at 14% from February 2014 to January 2023 at Kshs. 960, 498/= and costs of the suit assessed at Kshs. 173,340/= which makes it a total of Kshs. 1,896,138/= but not a total of Kshs. 1,896,296/= as stated by the ex-parte applicant.
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 E.R. 741, AT 743, where Lord Goddard C. J. held as follows:
 19. 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... "
11. 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 A. G. (2005) 1KLR 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 27/2/2023 was issued pursuant to Section 21 of the Government Proceedings Act.
12. 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 she is deserving of an order of Mandamus.
13. The application is merited. An order of mandamus do issue ordering the respondents to pay Kshs. 1,896,138/=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 7th day of March, 2024.

R. WENDOH



JUDGE

Judgment delivered in the presence of;

Mr. Achola for the Ex-Parte Applicant.

Mr. Oywer for the Respondents.

Emma & Phelix Court Assistants.

