



Republic v County Secretary of Migori County Government & another; Obare (Ex parte Applicant) (Judicial Review E010 of 2023) [2024] KEHC 2312 (KLR) (7 March 2024) (Judgment)

Neutral citation: [2024] KEHC 2312 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
JUDICIAL REVIEW E010 OF 2023**

RPV WENDOH, J

MARCH 7, 2024

**IN THE MATTER OF AN APPLICATION BY DENNIS MUSUNGU
OBARE (SUING AS THE CHAIRPERSON OF SCANIA YOUTH
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 1ST
RESPONDENT**

THE CHIEF OFFICER FINANCE MIGORI GOVERNMENT . 2ND RESPONDENT

AND

DENNIS MUSUNGU OBARE EX PARTE 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. 1,254,004/= together with interest at 14% upto the date of payment, the said sum being the decretal sum in Migori CMCC NO. 21 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 Dennis Musungu Obare dated 30/3/2023.
- 3 According to the *ex-parte* applicant, he obtained judgment against the Migori County Government in Migori CMCC No. 21 of 2020 for now a total of Kshs. 1,254,004/= 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 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 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 DMO1” being the copy of the Certificate of Order against the Government dated 19/1/2022 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. 8 of 2020. The court awarded a total of Kshs. 891,008/= being the decretal sum, interest from 23/2/2021 to the date of the assessment of costs at Kshs. 218,296/= and costs of the suit assessed at Kshs. 144,700/= making a total of Kshs. 1,254,004/=.
- 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. Dudsheath, Ex Parte, Meredith* [1950] 2 ALL E.R. 741, at 743, where Lord Goddard C. J. 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 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 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. 1,254,004/= 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.

