



Digitron (K) Limited v Migori County Assembly Service Board & 3 others (Judicial Review 14 of 2023) [2024] KEHC 12845 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12845 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW 14 OF 2023
MS SHARIFF, J
OCTOBER 17, 2024**

BETWEEN

DIGITRON (K) LIMITED APPLICANT

AND

MIGORI COUNTY ASSEMBLY SERVICE BOARD 1ST RESPONDENT

CLERK, MIGORI COUNTY ASSEMBLY 2ND RESPONDENT

**COUNTY ATTORNEY MIGORI COUNTY GOVERNMENT 3RD
RESPONDENT**

VINCENTIA AWINO KIONGE 4TH RESPONDENT

RULING

1. On 17.9.2024 this court had directed the Applicant to re-serve his notice of motion dated 16.9.2024 upon all the Respondents. The court further directed the Respondents to comply with the consent order file don 4.4.2024.
2. Whereas the Applicant duly complied and service has been acknowledged by all Respondents save for the 5th Respondent, who Mr. Ouma Counsel for the 1st, 2nd and 5th Respondents has now opted to abandon, the Respondents have neither responded to the notice of motion dated 16.9.2024 nor complied with the terms of the consent order, dated 3.4.2024.
3. The 1st, 2nd and 5th Respondents' Counsel Mr. Ouma has submitted that it is within public knowledge that county governments are yet to get money from the national government thus his clients' failure to pay. He further submits that the 1st Respondent was disbanded wherefore there is no one to swear a replying affidavit. He submits that he misled this court on 17.9.2024 when he introduced himself as acting for the 5th Respondent and that he wishes to withdraw from acting for the 5th Respondent. He



- wishes to withdraw that statement and now maintain that he does not represent the 5th Respondent and that the Applicant must adduce evidence of proof of service upon the 5th Respondent.
4. The 3rd Respondent's Counsel Ms. Imali has submitted that her client needs time to get money from the exchequer and that her client will not oppose the notice of motion dated 16.9.2024.
 5. Mr. Obiero for the 4th Respondent has maintained that there is need to remove his client from these proceedings as she no longer holds the office of the Clerk of the County Assembly of Migori.
 6. Mr. Nyamori submits that given that the notice of motion dated 16.9.2024 stands unopposed, the same ought to be allowed. Further that the 4th Respondent is still a necessary party as the consent order of the 3.4.2024 was entered into during her tenure, and that there has been non compliance by the respondents with order No. 4 of the consent which provided that the balance of the judgment sum plus interest was to be paid on or before 30th July, 2024. He posits that the 5th Respondent is the accounting officer of the 1st and 2nd Respondents wherefore Mr. Ouma cannot now purport to abandon him yet all his instructions emanate from the 5th Respondent.
 7. I have considered the above rival submissions of parties' advocates and what emerges for determination is;
 1. Whether the 1st and 2nd Respondents ought to be given more time to oppose the notice of motion dated 16.9.2024;
 2. Whether there was proper service upon the 5th Respondent;
 3. Whether the 4th Respondent ought to continue as a party in these proceedings;
 4. Whether the notice of motion dated 16.9.2024 should be allowed un opposed.
 8. On whether the 1st and 2nd Respondents ought to be given time to respond I do note that no evidence by way of an affidavit has been placed before the court to demonstrate and prove that indeed the 1st Respondent was disbanded. The submissions of Mr. Ouma from the bar have no probative value. Nothing would have been easier than to file an affidavit to that effect. I am therefore not inclined to allow the 1st and 2nd Respondent any extension of time.
 9. As regards service upon the 5th Respondent my record shows that Mr. Ouma had on 17.9.2024 introduced himself as appearing for him. He is thus duly represented by Mr. Ouma and the findings hereinabove in regard to the 1st and 2nd Respondents apply to him too.
 10. As to whether the 4th Respondent is a necessary party, I do find that there is still no evidence placed before this court by her to prove that she is no longer the holder of the office of the clerk of the County Assembly of Migori. This notwithstanding the Applicant has in his application pleaded knowledge of the fact that she is no longer the Clerk of the County Assembly of Migori and as such I do find that her presence herein is no longer relevant. As it were, she was duly sentenced on 4.4.2024 while she was the holder of the office of the Clerk and this court will not drag her presently when she is no longer in office. The 4th Respondent's name is thus expunged from these proceedings from the date hereof.
 11. As to whether the notice of motion dated 16.9.2024 ought to be allowed, I note that there has been noncompliance with the consent order dated 3.4.2024 and recorded on 4.4.2024. I thus find that the Respondents are still in contempt and given that the 2nd and 5th Respondents are the accounting officer(s) of the Respondents I do find that they are in contempt of the said consent order. I thus allow prayer No. 5 of the application.



13. The Applicant is awarded costs of this application assessed at Kshs.10,000/=. Sentencing of the 2nd and/or 5th Respondent shall be on 31.10.24.

DELIVERED, DATED AND SIGNED AT KISUMU THIS 17TH DAY OF OCTOBER, 2024.

M. S. SHARIFF

JUDGE

