



**Mbugua & 2 others (Officials of Airport View Neighbours Group) v  
Ministry of Transport, Infrastructure, Housing, Urban Development &  
Public Works & another (Miscellaneous Civil Application 154 of 2014)  
[2024] KEHC 14672 (KLR) (Judicial Review) (4 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 14672 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW**

**MISCELLANEOUS CIVIL APPLICATION 154 OF 2014**

**JM CHIGITI, J**

**OCTOBER 4, 2024**

**BETWEEN**

**GEORGE KIMANI MBUGUA & 2 OTHERS (OFFICIALS OF AIRPORT VIEW  
NEIGHBOURS GROUP) ..... APPLICANT**

**AND**

**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN  
DEVELOPMENT & PUBLIC WORKS ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. What is before this court for hearing and determination is the application dated 15<sup>th</sup> May 2014 wherein the applicant seeks the following orders;
  1. An Order of mandamus be and is hereby issued to compel the 1st and 2nd respondents to pay the Applicant damages of Kshs. 12, 600, 000/= and costs of Kshs. 5,446,949.00/= with interest on both from the 24th September 2013 till payment in full to satisfy the judgment and decree dated 13th June 2012 and the Ruling and Order dated 24<sup>th</sup> September 2013 as reflected in the Certificate of Constitutional Petition No.75 Of 2011.
  2. Costs and interest.
2. It is supported by the Statement dated 15<sup>th</sup> April 2014 and the Verifying. Affidavit of George Kimani Mbugua sworn on 15<sup>th</sup> April 2014



## Background:

3. The Ex parte Applicant filed a Constitutional Petition No. 75 of 2010 against the Respondent.
4. On 13<sup>th</sup> June 2012 Judgment was issued leaving the issue of the mode of compensation or quantum for negotiations by the parties in default agreement which the ex parte applicant would move the Court.
5. On 24<sup>th</sup> September 2013 the exparte applicants herein damages totaling Kshs. 12, 600,000/= plus costs, which was taxed at Kshs. 5, 446, 949/=, and interest on both from the said ruling date, the 24<sup>th</sup> September 2013 till payment in full.
6. That culminated in the filing of the instant suit. Section 21(3) *Government Proceedings Act* Cap 40 provides that if the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon"
7. In this case, the respondents were served on the 5<sup>th</sup> March 2014 with inter alia the certificate of order against the government dated 3<sup>rd</sup> March 2014 vides a letter dated 5th March 2014 and a reminder to pay was made vides a letter dated 4<sup>th</sup> April 2014 and served on 7th April 2014.
8. The respondents are exacerbating the breach to the ex parte applicant's Constitutional rights that they had been compelled to compensate by the judgment in the constitutional petition the subject hereto by violating the ex parte applicant's right to access to justice that is enshrined in Article 48 *Constitution* 2010.
9. They are also failing to appreciate the import of Article 129 *Constitution* 2010 that provides that executive authority derives from the people and ought to be exercised in their interest by, for this case, satisfying the judgment the subject of these proceedings.

## Respondents Case;

10. The Respondents in opposing the application argue that they had lodged two appeals being *Nairobi Civil Appeal No. 244 of 2025* and *Civil Appeal No. 245 of 2015*, challenging the award of the decretal sum herein via a Notice of Appeal dated 26th September, 2013.
11. In the course of prosecuting the Appeals, the parties entered into negotiations where they agreed on the terms as follows-
  - a. That the Respondents would withdraw the two Appeals pending before the Court of Appeal;
  - b. That the interest on the decretal sum be waived;
  - c. That the payment of the decretal sum be expedited.
12. The Respondents also went ahead and withdrew the Appeals on 9<sup>th</sup> February, 2022 as agreed by the parties.
13. Following the agreement by the parties, the Respondents disbursed a sum of KSh. 15,000,000/- to the Applicant herein on 20th September, 2018, with a remaining balance of KSh. 3,046,949/- which as had been communicated to the court and counsel for the Applicants, had been budgeted for and ready for disbursement in the 2023/2024 Financial Year.



14. The Applicants are seeking interest from the date of judgement, which is contrary to the terms of the agreement by the parties previously communicated to the court.
15. Reliance is placed on the on the case of *Windsor Commercial Land Company Ltd & others v Century National Merchant Bank Trust Ltd* SCCA 114/2005, where it was held that-

“The Court will not interfere or disturb a consent order between the parties other than on those grounds in which it would interfere with any other contract. These would include mistake, misrepresentation, duress and undue influence.”
16. This opinion has been upheld by various courts in various decisions including *Flora N. Wasike v Destinno Wamboko* {1988} eKLR; *Frank Phipps & Pearl Phipps v Harold Morrison* SCCA 86 of 2008; and *Cristle v Cristle* {1951} 2 ALL ER 574. Courts have agreed that in order to vacate a consent between parties to a suit, there needs to be circumstances that would justify the court’s interference with a contract.
17. It is not in dispute that there was a consent between the parties. During the court of appeal proceedings, the court was informed that a substantial amount had been paid and the appeals withdrawn pursuant to an agreement by the parties.
18. It argues that if at all, interests can only be considered for the outstanding amount which is yet to be paid. The Applicant cannot seek interest on amounts already paid out more than six years ago.

#### **Analysis And Determination;**

19. This court has looked at the application and the responses by the applicant. The applicant prayed for an Order of mandamus to be issued to compel the 1st and 2nd respondents to pay the Applicant damages of Kshs. 12, 600, 000/= and costs of Kshs. 5,446,949.00/= with interest on both from the 24th September 2013 till payment in full.
20. According to the Respondents, in the course of prosecuting the Appeals that it had filed, the parties entered into negotiation where they agreed on the terms as follows-
  - a. That the Respondents withdraw the two Appeals pending before the Court of Appeal;
  - b. That the interest on the decretal sum be waived;
  - c. That the payment of the decretal sum be expedited.
21. The Applicant does not dispute that there was an agreement and that the Respondents disbursed a sum of KSh. 15,000,000/- to the Applicant herein on 20<sup>th</sup> September, 2018, with a remaining balance of KSh. 3,046,949/-.

#### **Order:**

1. Judgment is entered in favour of the Applicant for Kshs.3,046, 949/- plus costs.
2. Interest shall be payable from 20th September, 2018 to date.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF OCTOBER, 2024.**

.....  
**J. M. CHIGITI (SC)**

**JUDGE**

