



Republic v County Government of Garissa (Miscellaneous Application E011 of 2019) [2023] KEHC 17795 (KLR) (19 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17795 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS APPLICATION E011 OF 2019**

JN ONYIEGO, J

MAY 19, 2023

**IN THE MATTER OF AN APPLICATION BY PAUL MWANGI & COMPANY
ADVOCATES FOR JUDICIAL REVIEW ORDER OF MANADAMUS**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF GARISSA RESPONDENT

RULING

1. By Notice of Motion dated 26-7-2022, the applicant herein sought for orders that:
 - i. The consent order made on 17th March, 2022 before Honorable Lady Justice A. Aroni be reviewed, set aside or varied.
 - ii. That the applicant’s application dated 27th April, 2021 be listed for hearing on priority basis.
 - iii. That costs of the application be paid for by the Respondent in any event.
2. The application herein is premised upon grounds set out on the face of it and further amplified by averments contained in the affidavit in support sworn by Winfred Makaba an advocate who is conversant with this case.
3. It is the applicant’s case that by a consent order mutually entered by both parties on 17-3-2022, the respondent herein agreed to pay the applicant the outstanding decretal sum in instalments of Kshs; 2,294,641/= with effect from 5.3.2022 up to June, 2022. That as a condition to honoring the consent, the applicant agreed to waive the accrued interest. That the respondent has since defaulted in honoring the consent order by paying kshs 1, 100,000/-only.



4. She deponed that in view of that breach, the consent order is no longer tenable hence it be set aside or reviewed so as to allow the applicant to proceed with execution proceedings to recover the decretal sum now standing at Kshs; 13,517,887.62/=. Despite service of the application upon the respondent, the respondent did not file any response.
5. During the hearing, counsel for the applicant adopted the particulars of the application and content of the affidavit in support. The court was urged to grant the prayers sought so as to enable the applicant to prosecute the application dated 27-4-2021 as a mode of execution.
6. I have considered the application herein and the affidavit in support. The applicant is seeking an order to prosecute the contempt application dated 27-4-2021. The genesis of these proceedings, is the order of this court made in its ruling dated 10-3-2022 in which the court issued a mandamus order directing the respondent to pay the ex-parte applicant a sum of Kshs; 9,178,563/= with interest at 12%.
7. Having defaulted, the applicant filed contempt application dated 27-4-2021 which was compromised by entry of consent order of 17-3-2022 on the mode of payment by instalment which order was not honoured hence the current application.
8. As stated earlier, this application is not opposed. However, that does not mean that the application will automatically succeed. See: [Gideon Sitelu Konchellah -vs- Julius Lekakeny Ole Sunkuli and 2 Others](#) (2018) eKLR where the court stated that;

“...it is not automatic that for any unopposed application, the court will as a matter of cause grant the sought orders. It behooves the court to be satisfied that *prima facie*, with no objection, the application is meritorious and the prayers may be granted...”
9. The application herein has been brought under Order 45 (1) of the [Civil Procedure Rules](#) which provides for review of a court order on grounds of discovery of new matter or evidence which with due diligence was not within his knowledge or could not be produced by him at the time when the decree or order was made or on account of mistake or error apparent on the face of the record or for any other sufficient cause: See; [Francis Njoroge -vs- Stephen Maina Kamore](#) (2018) eKLR where the court emphasized on proof of the elements set out under Order 45 (1) of the [Civil Procedure Rules](#).
10. In the circumstances of this case, there is no discovery of new evidence or matter nor is there mistake or error apparent. The only ground for review is that of any other sufficient cause which will then mean that the consent order must be set aside to enable the applicant prosecute the contempt application for execution purposes.
11. For the above reason stated, the application is allowed as prayed and the consent order entered on 17-3-2022 set aside and consequently the applicant allowed to prosecute the application dated 27-4-2021.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF MAY, 2023

J. N. ONYIEGO

JUDGE

