



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT KAJIADO

ELC J.R. NO. 95 OF 2019

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF MANDAMUS

AND

IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF SECTION 21 OF THE GOVERNMENT PROCEEDINGS ACT

AND

SECTION 7 AND SECTION 33 OF THE SIXTH SCHEDULE OF THE CONSTITUTION, OF KENYA, 2010

AND

PAMELA WAITHERA MBURU.....APPLICANT

-VERSUS-

THE COUNTY SECRETARY,

COUNTY GOVERNMENT OF KAJIADO COUNTY.....1ST RESPONDENT

CHIEF OFFICER FINANCE/COUNTY TREASURER,

COUNTY GOVERNMENT OF KAJIADO.....2ND RESPONDENT

COUNTY GOVERNMENT OF KAJIADO.....3RD RESPONDENT

JUDGMENT

By a Notice of Motion dated 4th March, 2019, the ex parte applicant Pamela Waithira Mburu, seeks the following orders;

1) THAT an Order of MANDAMUS be directed to the first and second Respondents to implement the Decree emanating from the Judgment of the Environment and Land Court dated 14th March, 2018 in Kajido ELC NO. 620 of 2017 and without delay pay the Applicant a sum of Kshs. 2, 263, 265/= being the decretal amount of Ksh. 2, 110,000/= and costs of Kshs. 153, 265, together with accrued interests.

2) THAT the costs of this application be in the cause.

EX PARTE APPLICANT'S CASE

The motion is based on grounds set out in the Statutory Statement and Verifying Affidavit dated 22/3/2019 while seeking leave to file this motion. In addition, there are two grounds in the Notice of Motion dated 4/4/2019.

In summary, the Ex Parte Applicant's case is that she instituted proceedings in Environment & Land Court Kajiado No. 620/2017 against the third respondent. She succeeded in the suit and was awarded Ksh. 2, 110,000/=.

Executing the decree has not been easy due to noncooperation of the third Respondent who has ignored all the Court process served upon them.

Faced with no other option but the current one to enforce compliance with the decree, the Ex Parte Applicant filed this suit.

The Respondents though duly served did not respond to the suit. It therefore proceeded ex parte.

Counsel for the Ex – Parte Applicant filed written submissions on 14/6/2020 in which he urges that the orders sought issue as the ex parte applicant has no other way of enforcing compliance with the court orders in the earlier suit.

In the submissions Counsel cited and relied on three authorities in which similar orders as those sought herein were issued and the facts were more or less similar. The authorities include

1. Republic –vs- Attorney General and Another, Ex parte James Alfred Koroso (2013) eKLR.

2. The Secretary Ministry of State for Administration and Internal Security Ex Parte Frederick Manoah Egunza Miscellaneous Application 31 of 2012.

3. Republic –vs- Town Clerk of Webuye County Council and Another (2014) eKLR.

DETERMINATION

I have carefully considered the Notice of Motion including the grounds, the statutory statement, the verifying affidavit and annexures together with the submissions and the case law in the attached authorities.

I find that there is only one issue that emerges for determination namely;

1. Should the writ of Mandamus issue or should the ex parte applicant use other methods to enforce compliance with the decree in ELC Kajiado Case Number 620 of 2017.

Firstly, the ex parte Applicant's suit remains totally unchallenged and uncontroverted by any response or denial by the Respondents who were duly served with Notice of Motion dated 4th April, 2019.

Secondly, as has been held previously in a long line of similar cases, ***“whereas Mandamus may be refused where there is another appropriate remedy, there is no discretion to withhold Mandamus if on other remedy remains.....”*** *Shah –vs- AG (NO. 3) KAMPALA HCMC NO. 31 OF 1969 (1970) E.A. 543.*

In this case, the Applicant has tried all avenues to enforce compliance with the decree that she holds, to no avail.

Consequently, I allow the Notice of Motion Dated 4th March, 2019 as prayed.

Dated signed and delivered virtually at Kajiado this 23rd day of November, 2021.

M.N. GICHERU

JUDGE