



**Republic v Attorney General & another; Onsombi & another (Exparte Applicants)
 (Suing as the Legal Representatives of the Estate of Patrick Onkangi Onsombi) (Judicial
 Review E001 of 2024) [2024] KEHC 15409 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15409 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT NYAMIRA
 JUDICIAL REVIEW E001 OF 2024**

WA OKWANY, J

DECEMBER 5, 2024

**IN THE MATTER OF: AN APPLICATION FOR LEAVE
 TO APPLY FOR JUDICIAL REVIEW (MANDAMUS)**

-AND-

IN THE MATTER OF: THE GOVERNMENT PROCEEDINGS ACT SECTIONS 2 AND 4

AND

IN THE MATTER OF: ORDERS 22 AND 29 OF THE CIVIL PROCEDURE ACT

-AND-

IN THE MATTER OF: ORDER 53 (1) OF THE CIVIL PROCEDURE RULES

BETWEEN

REPUBLIC APPLICANT

AND

THE HON. ATTORNEY GENERAL 1ST RESPONDENT

THE SOLICITOR GENERAL 2ND RESPONDENT

AND

JANE MORAA ONSOMBI EXPARTE APPLICANT

DENNIS ONGARO ONSOMBI EXPARTE APPLICANT

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF PATRICK
 ONKANGI ONSOMBI**



RULING

1. This ruling is in respect to the Chamber Summons Application dated 12th May 2024 wherein the Applicant seeks the following orders: -
 - a. An Order of Mandamus to issue against the Respondents namely the Attorney General and the Solicitor General to compel them to proceed and pay out the Decretal Sum of Kshs. 1,917,143.00 and Kshs. 227,645.00 only, being General Damages and costs in Keroka Principal Magistrate's Court Case No. 173 of 2018, Jane Moraa Onsombi and Dennis Ongaro Onsombi (Suing as the Legal Representatives of the Estate of Patrick Onkangi Onsombi vs. The Hon. Attorney General, whose judgement was delivered on the 28th day of July 2021.
 - b. That the Court be pleased to set a timeline and/or duration within which the Respondents will settle the Decretal sum with interest accruing until the date of payment.
 - c. That the Applicant be at liberty to apply to this Court for all the necessary and/or consequent orders that this Honourable Court may deem fit and just to grant in the circumstances.
 - d. Costs of the Application be provided for.
2. The Application is supported by the Exparte Applicants Verifying Affidavit wherein she avers that Judgment was entered in her favour against the County Government of Kisii on 28th July 2021 and that the Decree, Certificate of Costs and Certificate of Satisfaction Order were served upon the Chief Officer and County Attorney's Offices as required by law but that the Respondents have deliberately refused and/or ignored to settle the same, hence necessitating the filing of the instant Judicial Review Proceedings.
3. The Respondents opposed the application through Grounds of Opposition dated 20th June 2024 wherein they state that the Application is premature and contrary to the relevant legal provisions. They contend that the orders sought should not be issued as they are not supported by factual evidence or the law and that the Application lacks merit and is an abuse of the court process.
4. The Application was canvassed by way of written submissions which I have considered. I note that only the Ex-parte Applicants filed written submissions.
5. The only issue for determination is whether the Ex-Parte Applicant has made out a case for the granting of leave to apply for the orders of mandamus.
6. The Civil Procedure Rules stipulate that a party must seek leave of the court before making an application for Judicial Review for orders of Mandamus. It states thus: -

Applications for mandamus, prohibition and certiorari to be made only with leave [Order 53, rule 1]

 - (1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.
7. Section 21 of the *Government Proceedings Act* also provides for the procedure to be followed when seeking leave, in circumstances such as the present case, as follows:-
 21. Satisfaction of orders against the Government
 1. Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for



costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order: Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

2. A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
3. 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:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.

4. Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.
8. In *Republic vs. Ministry of Interior and Coordination of National Government & another Ex-parte Patrick Mayu Lumbasi; Principal Secretary Ministry of Interior and Co-ordination of National Government (Interested party)* [2021] eKLR the court outlined the procedure to be adopted in judicial review applications thus: -

“Under Order 29 Rule 3, any application under Section 21 for a direction that a separate certificate be issued with respect to costs ordered to be paid to the applicant shall be made to the court. The application may be made ex parte.

The copy of Certificate of Satisfaction Order accompanied by the judgment is served on the Accounting Officer, after endorsement by the Attorney General, by the decree holder. The certificate has to state the amount payable plus interest thereon.

The decree holder could obtain payment by the Attorney General writing to the proper accounts office instructing him to effect payment. Where the official refuses to pay, the judgment debtor can apply for an order of mandamus to the High Court directed to the public officer in question requiring him to do that for which he is under a public duty to do.”

9. In the present case, I find that the Ex- Parte Applicant has presented sufficient evidence to show that a monetary decree was issued in her favour against the Respondent in Keroka Principal Magistrate’s Court Case No. 173 of 2018. She demanded for the settlement of the said decretal sum together with costs from the Respondents without much success. I am satisfied that the Ex Parte Applicant adhered



to the procedures stipulated under the law and is therefore entitled to the leave sought to commence Judicial Review proceedings against the Respondents.

10. I find that the Chamber Summons dated 12th May 2024 is merited and I therefore allow it. The Ex-Parte Applicants are hereby granted leave to apply for an Order of Mandamus to compel the Respondents to satisfy the decretal sum of Kshs. 1,917,143/= together with interests and costs. I direct that the Ex Parte Applicant to file and serve the substantive Application within 21 days from the date of this ruling.
11. The costs of this Application shall abide the outcome of the substantive Motion.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 5TH DAY OF DECEMBER 2024.

W. A. OKWANY

JUDGE

