



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CONSTITUTIONAL & JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW NO. 35 OF 2020**

**IN THE MATTER OF: SECTIONS 8(2) & 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF MANDAMUS TO**

**COMPEL THE RESPONDENTS TO PAY THE APPLICANT THE DECRETAL SUM**

**OF KSHS. 3,308,328.00 WITH ACCRUING INTEREST UNTIL PAYMENT IN FULL**

**ARISING FROM MEDICAL SERVICES RENDERED TO THE RESPONDENTS**

**EMPLOYEE**

**AND**

**IN THE MATTER OF: ARTICLE 19, 20, 22, 41, 47, 48 AND 165 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTIONS ACT**

**AND**

**IN THE MATTER OF: PUBLIC FINANCE MANAGEMENT ACT**

**AND**

**IN THE MATTER OF: THE CIVIL PROCEDURE ACT SECTIONS 1A, 1B, 3 & 3A AND THE**

**GOVERNMENT PROCEEDINGS ACT (and all enabling provisions of the law)**

**AND**

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

**BETWEEN**

**PANDYA MEMORIAL HOSPITAL.....APPLICANT**

**AND**

**1. THE CHIEF OFFICER DEPARTMENT OF FINANCE &**

**ECONOMIC PLANNING TAITA TAVETA COUNTY**

**2. COUNTY GOVERNMENT OF TAITA TAVETA.....RESPONDENTS**

**RULING**

1. The Notice of Motion dated 28/9/2020 prays for the following orders:

(a) That an order of mandamus do issue compelling the County Government of Taita Taveta through its Chief Officer department of Finance & Economic Planning, (the Respondents herein), to pay the Applicant the total sum of Kshs. 3,308,328.00 with interest at the court rates arising from medical services rendered to one ERIMINA MAGHEMA MZAZA who was the 2<sup>nd</sup> Respondent's employee.

(b) That the costs of this application be provided for.

(c) Such further and other relief(s) that the Honourable Court may deem just to grant.

2. The motion is based on grounds set out therein and is supported by affidavit of **Rajesh Shukla** sworn on 28/9/2020.

3. The Applicant's case is that the 2<sup>nd</sup> Respondent on 17/3/2018 requested the Applicant to accord medical services to one ERIMINA MAGHEMA MZAZA who was the 2<sup>nd</sup> Respondent's employee and at the time of discharge on 25/4/2018 the hospitalization bill incurred was Kshs. 4,743,805 which was paid partly leaving an outstanding amount of Kshs. 3,067,961. The Applicant upon presenting the outstanding bill to the 2<sup>nd</sup> Respondent to settle, the 2<sup>nd</sup> Respondent failed and or refused to pay despite several reminders. The Applicant then resorted to legal redress and instituted a suit at the Mombasa Senior Resident Magistrate's Court, Civil Suit No. 589 of 2019, PANDYA MEMORIAL HOSPITAL VS. THE COUNTY GOVERNMENT OF TAITA TAVETA. The 2<sup>nd</sup> Respondent did not enter appearance within the stipulated time in MSA SRMCC NO. 589 of 2019 hence the Applicant herein obtained an interlocutory Judgment in its favour on 4/6/2019 in the sum of Kshs. 3,067,961 together with interests and costs. The 2<sup>nd</sup> Respondent later appointed the firm of MURIMI, NDUMIA, MBAGO & MUCHELA to safeguard its interest in the matter and parties entered into a consent dated 14/11/2019 and filed in Court on 14/1/2019 for the 2<sup>nd</sup> Respondent to pay the Applicant the entire decretal sum of Kshs. 3,308,328 in three equal monthly instalments of Kshs. 1,102,776.00 commencing on 14/12/2019 and thereafter on 14<sup>th</sup> day of each succeeding month until payment in full. The 2<sup>nd</sup> Respondent failed and or refused to honour the terms of the said consent and the said sum of Kshs. 3,308,328.00 is still outstanding to date and continues to accrue interest.

4. Despite having been served with the Decree together with the certificate of order against the Government (issued under Order 29 Rule 3 of the Civil Procedure Rules 2010 and Section 21 (1) of the Government Proceeding Act) directing the Respondents to pay the sum of Kshs. 3,308,328.00 as the decretal sum together with interest accrued, the Respondents have failed, neglected and refused to discharge their duty to pay the Applicant the owing sum.

5. For the above reasons, the Applicant avers that the only option left for it to recover the decretal sum is the grant of this application to compel the Respondents to satisfy the decree.

**The Response**

6. There is no response to the motion. Prima facie the case of the Applicant is not opposed.

**The Determination**

7. I have considered the motion. It is not opposed. Even then the Court must satisfy itself that the application has merit.

8. The application is supported by the following documents:

- Decree in the sum of Kshs. 3,067,961.00 dated 18/2/2020.
- Proof of service of decree vide letter dated 20/2/2020.
- Certificate of order against the Government dated 3/3/2020.
- Proof of service of certificate of order against the Government vide a letter dated 5/3/2020.

9. It is clear to me that the decree sought to be paid was the result of a procedural and lawful process and that the Applicant is entitled to be paid.

10. Mandamus is the process through which a state agency is compelled to pay a debt which has legally accrued. The Court should be satisfied that a duty to pay has arisen, and that the Respondent has ignored or refused to comply thereto.

11. In this case the obligation and duty to settle the debt arose upon the Applicant securing the decree. That decree was served upon the Respondent, together with certificate of order against the Government.

12. The Refusal by the Respondent to pay the debt is therefore unlawful. The Respondent is hereby compelled by an order of mandamus to satisfy that obligation.

13. In the upshot the application herein has merit and is allowed with costs to the Applicant.

**Dated, Signed and Delivered in Mombasa this 5<sup>th</sup> day of February, 2021.**

**E. K. O. OGOLA**

**JUDGE**

Ruling delivered via MS Teams in the presence of:

Ms. Achieng for Applicant

No appearance for Respondent

Ms. Peris Court Assistant