



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. MISC E045 OF 2021**

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

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE COUNTY GOVERNMENT OF KITUI.....RESPONDENT**

**EX PARTE APPLICANT:**

**FAIRPLAN SYSTEMS LIMITED**

**RULING NO 2**

1. This Court delivered a ruling on 30<sup>th</sup> March 2021, in which it granted Fairplan Systems Limited, the *ex parte* Applicant herein, leave to file a supplementary affidavit annexing the certified copy of the arbitral award and ruling thereon delivered in **Nairobi High Court Miscellaneous Civil Application No. 289 of 2017: Fairplan Systems Limited -vs- County Government of Kitui** within fourteen (14) days, in support of its Chamber Summons application dated 29<sup>th</sup> March 2021.

2. The *ex parte* Applicant is seeking leave in the said application to commence judicial review proceedings for an order of mandamus, to compel the Respondent to pay it Kshs.63,301,586.40 and Kshs.93,455/=, being the amounts payable to the Applicant under the Certificate of Order against the Government dated 10<sup>th</sup> March 2021 with respect to **Nairobi High Court Miscellaneous Civil Application No. 289 of 2017: Fairplan Systems Limited -vs- County Government of Kitui**. The *ex parte* Applicant also seeks an order that the costs of this application be in the cause.

3. This Court granted the leave to file a supplementary affidavit after noting that while the *ex parte* Applicant annexed a copy of the Amended decree and the Certificate of Order against Government issued in **Nairobi High Court Miscellaneous Civil Application No. 289 of 2017: Fairplan Systems Limited -vs- County Government of Kitui**, it had not annexed a copy of the arbitral award and ruling delivered thereon in the said case, which are the basis for the said decree and certificate.

4. The *ex parte* Applicant has since then filed a supplementary affidavit sworn on 12<sup>th</sup> April 2021 by Arch. Julius M.F. Mutunga, it Managing Director, to which it annexed copies of the said Final Award of the Arbitral Tribunal, an Addendum to the Final Award, the original Decree and an Amended Decree.

5. In the premises, I find that the threshold of an arguable case has been met by the *ex parte* Applicant for the grant of leave, and I hereby order as follows:

**i. The *ex parte* Applicant is granted leave to apply for an order of Mandamus to command and compel the Respondent to pay it Kshs.63,301,586.40 and Kshs.93,455/=, being the amounts payable to the Applicant under the Certificate of Order against the Government dated 10<sup>th</sup> March 2021 with respect to Nairobi High Court Miscellaneous Civil Application No. 289 of 2017: Fairplan Systems Limited -vs- County Government of Kitui**

**ii. The costs of the Chamber Summons applications dated 29<sup>th</sup> March 2021 shall be in the cause.**

**iii. The *ex parte* Applicant shall file and serve its substantive Notice of Motion within fourteen (14) days of today's date, and shall also serve the Respondent with (i) the Chamber Summons applications dated 29<sup>th</sup> March 2021 and supporting documents, (ii) a copy of this ruling, (iii) the substantive Notice of Motion, and (iv) a mention notice, within the said fourteen**

(14) days.

iv. The Respondent shall file and serve its response to the substantive Notice of Motion within fourteen (14) days of service.

v. This matter shall be mentioned by email on 25<sup>th</sup> May 2021 for further directions.

vi. In view of the Ministry of Health directives on the safeguards to be observed to stem the spread of the current COVID-19 pandemic, this Court shall hear and determine the *ex parte* Applicant's substantive Notice of Motion on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

vii. The parties shall file their pleadings and submissions electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

viii. The service of pleadings and documents directed by the Court shall be by way of personal service and electronic mail, and in the case of service by way of electronic mail, the parties shall also email a copy of the documents so served to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

ix. The parties shall also be required to file their respective affidavits evidencing service in the Judiciary's e-filing system.

x. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention by email on 25<sup>th</sup> May 2021.

xi. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the *ex parte* Applicant by electronic mail by close of business on Thursday, 15<sup>th</sup> April 2021.

xii. Parties shall be at liberty to apply.

6. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 14<sup>TH</sup> DAY OF APRIL 2021

P. NYAMWEYA

JUDGE