



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E049 OF 2020

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

NAIROBI CITY COUNTY.....RESPONDENT

EX PARTE APPLICANT:

ALLIED INVESTMENTS LIMITED

JUDGMENT

The Application

1. The *ex parte* Applicant herein, Allied Investments Limited, filed an application by way of a Notice of Motion application dated 14th August 2020, seeking an order of Mandamus to issue, compelling the Respondent to pay to it the Judgment debt of Kshs. 132,500,000/= awarded to the *ex parte* Applicant in the judgment delivered on 25th November 2015 in **High Court Civil Case No. 1351 of 1996 - Allied Investments Limited vs. City Council of Nairobi & Others**, together with all accrued interest on the decretal sum at the rate of 6% per annum arising from the decree issued on 3rd July 2017 until payment in full. The said order of Mandamus also seeks to compel the Respondent to pay the *ex parte* Applicant Kshs. 2,058,816/=, being the costs awarded in the Certificate of Taxation issued in that suit on 19th March 2019, together with interest thereon with effect from 25th October 2018 until payment in full.
2. The application is supported by facts and grounds set out in a Statutory Statement dated 6th July 2020, and the Verifying Affidavit, Supplementary Affidavit and Further Affidavit all sworn by Ronald Wakhisi Makokha, the *ex parte* Applicant's Advocate, on 6th July 2020, 8th September 2020 and 19th November 2020 respectively.
3. The grounds for the application is that judgment was given in favour of the Applicant herein in **High Court Civil Case No. 1351 of 1996 - Allied Investments Limited vs. City Council of Nairobi & Others** on 24th November 2015, in which the Respondents were directed to pay to the *ex parte* Applicant the sum of Kshs. 132,500,000/= plus costs of the suits to be taxed by the Taxing Master. Further, that the Judgment was followed by a Decree which was issued on 3rd July 2017. The *ex parte* Applicant averred that it subsequently filed its Party and Party Bill of Cost dated 19th October 2017 on 23rd October 2017, which was assessed and taxed on 25th October 2018 by the Taxing Master at Kshs. 2,058,816/=, and a Certificate of Taxation issued therefrom on 19th March 2019.
4. However, that despite the issuance of the said decree and Certificate of Taxation, the Respondent has ignored, neglected, refused and/or otherwise failed to pay the decretal sum and costs awarded together with all accrued interest thereon. According to the *ex parte* Applicant, the Respondent is a government institution and does not have personal property capable of being attached for purposes of execution, and there are no other avenues of execution and enforcement of both the Decree and the Certificate of Taxation other than through these proceedings.
5. The *ex parte* Applicant further averred that after the delivery of the Judgment of 24th November 2015, its advocates engaged the counsel for the Respondents on the issue of the settlement of the sums awarded to the *ex parte* Applicant therein, and that upon lack of consensus, a Certificate of Order of Costs against the Respondent was thereafter issued by the Deputy Registrar of the Civil Division of the High Court of Kenya on 2nd September 2020, which was served on the Respondent, and receipt thereof acknowledged by the Director of Legal Affairs on 7th September 2020. Therefore, that the *ex parte* Applicant has demonstrated its entitlement to the orders sought in these judicial review proceedings, particularly in view of the fact that the subject judgment has not been disputed at all by any of the Respondents by way of review or appeal.

6. The *ex parte* Applicant also detailed its correspondence with the Respondent's advocates, that resulted in the parties recording a consent to the effect that the Respondent's Chief Valuer was to conduct the valuation of the suit property, which was subsequently valued at Kshs. 132,500,000/=. In addition that the said consent was forwarded to the Deputy Registrar of the High Court by the *ex parte* Applicant's advocates by a letter dated 25th October 2016. The *ex parte* Applicant contended that the judgment and decree herein arose from High Court Civil Case No. 1351 of 1996, and not any other suit. Further, that the Respondent through its counsel, participated in the hearing of the said suit, as well as in the hearing of the taxation of *ex parte* Applicant's Bill of Costs dated 19th October 2017.

7. The *ex parte* Applicant annexed copies of the judgment delivered in **High Court Civil Case No. 1351 of 1996 - Allied Investments Limited vs. City Council of Nairobi & Others**, and the decree issued pursuant thereto, as well as a certificate of taxation dated 19th March 2019, and the Certificate of Order of Costs dated 2nd September 2020, of letters demanding payment from the Respondent, and of correspondence with the Respondent's counsel.

The Response

8. The Respondent filed a replying affidavit sworn on 13th October 2020 by Erick Odhiambo Abwao, its Deputy Director of Legal Affairs. The Respondent averred that the *ex parte* Applicant has not attached any papers filed at the Chief Magistrate's Court as the subject judgment was *ex-parte*, hence the Respondent does not have the privilege of knowing how the verdict was reached at. Further, that it is not clear where the *ex parte* Applicant got the Kshs.132,500,000/= from, yet the valuation report is not enclosed and the Respondent was not been involved in the process leading to the judgement of the Court. In addition, that the *ex parte* Applicant has not demonstrated service of the notice of entry of judgement, or any court process involving the Respondent at the Chief Magistrate's Court.

9. According to the Respondent, it is not clear whether the *ex parte* Applicant's Bill of Costs was served upon it before taxation and whether it was allowed to participate in the proceedings, and that since the *ex parte* Applicant is asking for a mandatory injunction which can only be issued under the clearest of circumstances, the same should not be granted as this is not a clear case. Lastly, that the judgement herein was entered against the Respondents in the year 2017, but nothing has since been done on the part of the *ex parte* Applicant to call for payment of the amount from the Respondent except these proceedings. Therefore, that the application herein has been brought to this Court prematurely.

The Determination

10. Mohammed Muigai Advocates, the *ex parte* Applicant's Advocates on record, filed two sets of submissions dated 16th September 2020 and 19th November 2020 respectively, wherein they urged that the *ex parte* Applicant is entitled to pursue the payment of the entire decretal sum plus assessed costs against the Respondent only, as held in the case of **Francis L. Ovatsi vs Manani, Lilan Company Advocates & Another [2015] eKLR**. Therefore, that the only issue for determination by this Court is whether an order of mandamus ought to issue against the Respondent to pay the aforesaid decretal sum and costs in **HCCC No. 1351 of 1996**.

11. It is the *ex parte* Applicant's submission that it is necessary for the order of mandamus to be issued, as it has no other avenue for the recovery of the decree against the Respondent. Reliance was placed on the procedure for enforcing an award or a decree against a county government as set out in section 21 of the Government Proceedings Act, and the decision in the case of **Josphat Gatheghe Kibuchi vs Kirinyaga County Council [2015] e KLR**, that a county government is recognized as being a part of the national government for purposes of enforcement decrees and/ or awards. In addition, that the procedure set out in Order 29 of the Civil Procedure Rules, 2010 further limits the modes of enforcement of an award/ decree against a Government.

12. According to the *ex parte* Applicant, it is not in dispute that at all material times following the delivery of the Judgment in **HCCC No. 1351 of 1996**, and the subsequent extraction of the Decree and Certificate of Taxation, the Respondent has always been aware of the payment claimed from it by the *ex parte* Applicant, as confirmed in the correspondence exchanged between the parties. Further, that it is also not in dispute that the Respondent has since been issued with the certificate of costs contemplated under Section 21 of the Government Proceedings Act. As such, the Respondent is now under a statutory duty to pay. In addition, that the procedure set out in Order 29 of the Civil Procedure Rules, 2010 further limits the modes of enforcement of an award/ decree against a Government.

13. Reliance was also placed on various judicial authorities, including the cases of **Republic vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza (2012) eKLR**, **Republic vs The Principal Secretary, State Department of Interior, Ministry of Interior & Coordination of National Government & Principal Secretary ex parte Salim Awadh Salim & Others, Shah vs. Attorney General (No.3) 1970] EA 543**; **Republic vs The Principal Secretary, State Department of Interior, Ministry of Interior & Coordination of National Government; 2012 e KLR** and **Republic vs The Attorney General & Another ex parte Alfred Koroso** for the submission that the order of mandamus is merited and the *ex parte* Applicant is entitled to enjoy the fruits of the judgment in **HCCC No. 1351 of 1996**, since despite the *ex parte* Applicant's engagements for the payment of the sums awarded to it, no settlement thereon has been made to date.

14. The Respondent's advocates on record, Momanyi & Associates, filed written submissions dated 10th November 2020, wherein it was contended that the judicial review proceedings herein are faulty, baseless and malicious. Further, that the proceedings are as a result of a judgment by Msagha Mbogholi J. against three parties, and there was no apportionment of liability, and no good reason has been advanced for condemning the Respondent to satisfy the decree alone. Therefore, that the execution against the Respondent alone is in bad faith and not warranted.

15. In addition, that the *ex-parte* Applicant has not attached copies of the proceedings or plaint that gave rise to the judgment herein, hence it is not clear what kind of prayers it was asking for. That it is also not clear whether the Respondent was served with the pleadings of the suit giving rise to the judgment being executed, or whether the Respondent participated in the said proceedings, given that the judgment states that the Respondent never called any evidence to revert the allegations against it.

16. The Respondent further submitted that according to the *ex-parte* judgment, parties to the suit were to appoint a valuer to value the property that was the subject matter of the suit, but no valuation report has been attached to the judicial review proceedings herein, hence it is not clear how Kenya Shillings One Hundred and Thirty Two Thousand Five Hundred (Kshs.132,500 ,000/ -) was arrived at. Lastly, that since the judgment was *ex-parte*, the taxation of bills was also *ex-parte*, and that *ex-parte* Applicant has therefore not proved a case against the Respondent to warrant a mandatory order, which can only be issued in clearest of cases and this is not one of such. Reliance was in this respect placed on the decision in **Republic vs. The Commissioner of Lands and Another ex parte Kithinji Murugu M'agere, Nairobi High Court Misc. Application No. 395 of 2012**, on circumstances in which an order of mandamus can issue

17. I have considered the *ex parte* Applicant's and Respondent's pleadings and submissions, and I am in this respect guided by the holding of the Court of Appeal on the nature of the remedy of mandamus in its decision in **Republic vs Kenya National Examinations Council exparte Gathenji and 9 Others, [1997] e KLR**. The said Court held as follows in this regard:

“The next issue we must deal with is this: What is the scope and efficacy of an ORDER OF MANDAMUS? Once again we turn to HALSBURY’S LAW OF ENGLAND, 4th Edition Volume 1 at page 111 FROM PARAGRAPH 89. That learned treatise says:-

“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

At paragraph 90 headed “the mandate” it is stated:

“The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”

What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed....”

18. Section 21 of the Government Proceedings Act in this regard also provides as follows with regards the requirements to be met in the enforcement of orders as against Government organs in civil proceedings:

“(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.”

19. Nairobi City County is one of the Counties established by Article 6 of the Constitution and the First Schedule to the Constitution, and is constitutionally recognized as a distinct government level of government by the said Article. In addition, the definition of “Government” in the Government Proceedings Act refers to the “Government of Kenya”. In this respect I adopt the holding by Odunga J. in **Republic v**

Attorney General & another ex-parte Stephen Wanyee Roki [2016] eKLR as regard the application of the Government Proceedings Act to County Governments:

“20 Although the provisions of the Government Proceedings Act do not expressly refer to County Governments, section 7 of the Sixth Schedule to the Constitution (Transitional And Consequential Provisions) provides that:

All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.

21. It follows that the provisions of the Government Proceedings Act, a legal instrument enacted before the effective date must be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the Constitution. One such construction would be the reality that Government is now at two levels and Article 189(1)(a) of the Constitution requires that the Constitutional status and institutions of government at both the National and County levels be respected. In my view such respect cannot be achieved unless both levels of Government are treated equally and one such area would be with respect to execution proceedings.”

20. It is not disputed in the present application that a judgment was entered in favour of the *ex parte* Applicant **High Court Civil Case No. 1351 of 1996 - Allied Investments Limited vs. City Council of Nairobi & Others**, The issues that require to be determined are firstly, whether the Respondent is under a public duty and obligation to satisfy the orders issued in favour of the *ex parte* Applicant in the said judgment, and secondly, if so, whether the *ex parte* Applicant is entitled to the relief it seeks.

21. The Respondent in this respect is disputing that it has a duty to pay the decretal sum and costs on account of their non - participation in the ascertainment of the said sums, lack of evidence of the process of any such ascertainment, and uncertainty as regards the portion of the decretal sum and costs it is liable to pay, as there were other defendants also found to be liable in the subject judgment. I have perused the judgment delivered on 24th November 2015 in **High Court Civil Case No. 1351 of 1996 - Allied Investments Limited vs. City Council of Nairobi & Others**, and note that the orders given therein by Mbogholi Msagha J. were that the *ex parte* Applicant was granted the current value of the suit land, which was to be determined after valuation by a registered valuer agreed upon by the parties.

22. It is notable that the Respondent does not in this respect dispute the events that followed the delivery of the said judgment which were deponed to in paragraph 6 of the *ex parte* Applicant's Further Affidavit sworn on 14th November 2020 as follows:

a) Following the delivery of the Judgment in High Court Civil Case No. 1351 of 1996 Allied Investments Limited vs. City Council of Nairobi & Others, the firm of Mohammed Muigai LLP (then trading as Mohammed Muigai Advocates) engaged the Respondent's advocates in that Suit, the firm of Njoroge & Musyoka Advocates, for purposes of the valuation of L.R. No. 209/5853 being the Suit Property in that Suit.

b) In a letter to Njoroge & Musyoka Advocates dated 6th February 2016, the ex parte Applicant's advocates proposed three (3) valuers to undertake the valuation exercise.

c) In the response thereto by Njoroge & Musyoka Advocates dated 23rd February 2016, the advocates informed that they were awaiting instructions from the Respondent for the confirmation of the agreed valuer.

d) No further response was given by Njoroge & Musyoka Advocates which prompted the ex parte Applicant's advocates to send a follow up letter dated 4th April 2016 and another letter dated 24th June 2016 to the Deputy Registrar of the High Court of Kenya, copied to Njoroge & Musyoka Advocates.

e) It was only on 19th September 2016 that Njoroge & Musyoka Advocates responded to the ex parte Applicant's advocates' letter of 24th June 2016. In the said response, it now became disclosed that the Respondent had instructed its Chief Valuer to conduct the valuation of that Suit Property. It is in the Respondent's own Memo dated 30th August 2016 that the Suit Property was valued at Kshs. 132,500,000/=.

f) The ex parte Applicant's advocates wrote a letter dated 27th September 2016 in response to Njoroge & Musyoka Advocates' letter of 19th September 2016 and valuation of the Suit Property in the said Memo of 30th August 2016. In the said letter, the ex parte Applicant's advocates informed that the ex parte Applicant preferred an independent valuation from any of the three (3) proposed valuers listed in the ex parte Applicant's advocates' aforesaid letter of 6th February 2016.

g) However, the ex parte Applicant's advocates in a subsequent letter of 6th October 2016 informed Njoroge & Musyoka Advocates that the Respondent's valuation in the said Memo of 30th August 2016 was agreeable to the ex parte Applicant. As such, the Respondent's valuation was accepted and adopted by the ex parte Applicant and its advocates.

h) Once the Respondent's valuation of the Suit Property was accepted, the parties recorded a consent in the terms of the said valuation. The consent together with Njoroge & Musyoka Advocates' aforesaid letter of 19th September 2016 and the Respondent's Memo of 30th August 2016 were all forwarded to the Deputy Registrar of the High Court in the ex parte Applicant's advocates' letter of 25th October 2016 and received by the Court on even date.

23. It is also notable that the *ex parte* Applicant in this respect annexed copies of the said letters referred to in the averments it made hereinabove, as well as a demand for payment dated 25th July 2017, a Certificate of Order for Costs Against the Government issued on 2nd September 2020 in its favour against the Respondent among others, for the sum of Kshs 132,500,000/=, and a letter dated 4th September

2020 forwarding the said Certificate to the Respondent for settlement. In addition, there was a response thereto dated 16th October 2020 by the Respondent's Assistant Director of Legal Affairs inquiring as to the percentage of the decretal sum the Respondent was liable to pay. Similarly, the *ex parte* Applicant also annexed a notice of the taxation of its Bill of Costs that was served on the Respondent's counsel on 1st November 2017, the pleadings filed on behalf of the Respondent during the said taxation, and a copy of the Certificate of Taxation issued on 19th March 2019 in its favour against Respondent for the sum of Kshs 2,058, 816/=.

24. On the argument that the portion of the decretal sum that the Respondent is liable to pay has not been ascertained, this Court held as follows in **Oasis Park Self Help Group petitioning through John Mutinda & 2 others v Joinven Investments Limited & 2 others** [2016] eKLR, where a judgment was silent as regards the apportionment of liability between several defendants:

“The ordinary and natural meaning once judgment for costs is awarded against several defendants in a single cause, is that they are jointly and severally responsible for the costs, unless the Court specifically apportions the costs as between the several defendants. In the case of Kenya Airways Limited vs. Mwaniki Gichohi High Court (Milimani Commercial Courts) Civil Case No. 423 of 2002, Ringera, J (as he then was) stated as follows in this regard:

‘The concept of joint and several liability comprehends one judgement and decree against two or more persons who are liable collectively and individually to the full extent of such decree; however double compensation is not allowed and accordingly whatever portion of the decree is recovered against one of such defendant cannot be recovered from the other defendant(s).’

I also find that the omission by the Court to state the proportion of costs to be paid by the Respondents cannot therefore be said to be an accidental slip or omission, and this is not one of the cases where the Court can amend a judgment in this respect. The Respondents liability to the Petitioner is therefore joint and several in the amount of the decree, and the issue of apportionment can only be as between the Respondents themselves.”

25. **Black's Law Dictionary, Tenth Edition** in this respect defines joint and several liabilities at page 1054 as follows:

“Liability that may be apportioned either among two or more parties or to only one or a few select members of the group at the adversary's discretion. Thus each liable party is individually responsible for the entire obligation, but a paying party may have a right of contribution and indemnity from non-paying parties.”

26. Therefore, where there is joint and several liability in a judgment, there is shared responsibility for judgment debt, and each debtor is responsible for the entire amount of the debt. The person owed money can collect the entire amount from any of the debtors and not be limited to a share from each debtor. It is thus at the discretion of the *ex parte* Applicant to choose against which party to execute the judgment as to costs, and it has chosen to enforce against the Respondent. The Respondent is therefore under a duty in law to pay the entire decretal sum and costs, and seek either contribution or indemnity from the other judgment debtors with whom it was held jointly and severally liable for the said sum and costs.

27. As regards, which specific officer of the Respondent is under the duty to pay the subject decretal sums, execution proceedings against a government or public authority under the Government Proceedings Act can only be as against the accounting officer or chief officer of the said government or authority, who is under a statutory duty to satisfy a judgment made by the Court against that body.

28. This was also the holding in **Republic vs Permanent Secretary Ministry of State for Provincial Administration and Internal Security** (2012) e KLR where Githua J. held as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act (*hereinafter referred to as the Act*) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon.”

29. Section 44 of the County Government Act in this respect establishes the office of the County Secretary who is secretary to the County Executive Committee, and is answerable for the operations of the County Executive, and whose functions include being head of the county public service. Section 103 of the Public Finance Management Act No 18 of 2012 also establishes the County Treasury comprising of the County Executive member of Finance, the Chief Officer and the departments of the County Treasury responsible for finance and fiscal matters. Under section 103(3) of the Act, the County Executive Committee Member for Finance is the head of Treasury, and is thus the responsible for finance matters in the County.

30. This Court therefore finds that arising from these provisions, the Respondent's County Secretary is jointly responsible with the County Executive Committee Member of Finance for the satisfaction of Court orders and decrees on payment of money owed by the Nairobi City County by virtue of their roles and functions. In this regard, I adopt the holding in **Republic vs. Town Clerk of Webuye County Council & Another HCCC 448 of 2006** wherein Majanja J. addressed the importance of the Court in ensuring that the right of a successful litigant to enjoy the fruits of his judgement as follows:

“...a decree holder's right to enjoy fruits of his judgment must not be thwarted. When faced with such a scenario the Court should adopt an interpretation that favours enforcement and as far as possible secures accrued rights. My reasoning is underpinned by the values of the Constitution particularized in Article 10, the obligation of the court to do justice to the parties and to do so without delay under Article 159 (2) (a) & (b) and the Applicant's right of access to justice protected under Article 48 of the Constitution.

31. This Court therefore finds that the *ex parte* Applicant, having brought evidence of a judgment in its favour for which the Respondent is jointly and severally liable; having verified that the sums payable have been ascertained, and through a process in which the Respondent through its counsel participated and was aware; and having demonstrated that it has made several demands and requests for payment, has satisfied the conditions precedent for the grant of an order of mandamus. In addition, this Court finds that there is thereby an implied refusal on the part of the Respondent to pay the demanded sums.

32. Lastly, as to the amount of decretal sum due from the Respondent, I have perused the judgment delivered on 24th November 2015 in **High Court Civil Case No. 1351 of 1996 - Allied Investments Limited vs. City Council of Nairobi & Others**, and the Certificate of Order against the Government issued therein on 2nd September 2020, and I note that there was no award of interest made therein on the decretal sum of Kshs 132,500,000/= and costs of Kshs. 2,058,816/=. Section 26(2) of the Civil Procedure Act in this respect provides that where a decree for the payment of money is silent with respect to the payment of interest on the aggregate sum from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.

The Disposition

33. In the premises, I find that the *ex parte* Applicant's Notice of Motion dated 14th August 2020 is merited to the extent of the following orders:

I. An order of mandamus be and is hereby granted to compel the County Secretary, Nairobi City County and County Executive Committee Member for Finance Nairobi City County, to pay to the *ex parte* Applicant herein the Judgment debt of Kshs. 132,500,000/= awarded to the *ex parte* Applicant in the judgment delivered on 25th November 2015 in High Court Civil Case No. 1351 of 1996 - Allied Investments Limited vs. City Council of Nairobi & Others, together with all accrued interest on the decretal sum at the rate of 6% per annum arising from the decree issued on 3rd July 2017 until payment in full, and to also pay the *ex parte* Applicant Kshs. 2,058,816/ =, being the costs awarded in the Certificate of Taxation issued in that suit on 19th March 2019, together with interest thereon at the rate of 6% per annum with effect from 25th October 2018 until payment in full.

II. The *ex Parte* Applicant shall have the costs of the Notice of Motion dated 26th October 2020 of Kshs 50,000/=.

34. Orders accordingly.

DATED, AND SIGNED THIS 13TH DAY OF MAY 2021

P. NYAMWEYA

JUDGE

FURTHER ORDERS ON THE MODE OF DELIVERY OF THIS JUDGMENT

In light of the declaration of measures restricting Court operations due to the COVID -19 Pandemic, and following the Practice Directions issued by the Honourable Chief Justice dated 17th March 2020 and published in the Kenya Gazette on 17th April 2020 as Kenya Gazette Notice No. 3137, this judgment will be delivered electronically by transmission to the email addresses of the *ex parte* Applicant's and Respondent's Advocates on record.

P. NYAMWEYA

JUDGE