



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**JUDICIAL REVIEW NO. 5 OF 2020**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE CLERK COUNTY ASSEMBLY OF TRANS NZOIA...1<sup>ST</sup> RESPONDENT**

**EXPARTE MANYONGE WANYAMA & ASSOCIATES.....2<sup>ND</sup> RESPONDENT**

**RULING**

The Exparte Applicant, Manyonge Wanyama & Associates Advocates have sought orders of Judicial review to enforce an order that was issued in their favour by this court after the Advocate – Client bill of costs was taxed. According to the Ex-parte Applicant, the respondent was ordered to pay the sum of kshs 2,920,416/-. However, instead of paying the entire sum, the respondent withheld the sum of kshs 620,416/- ostensibly on account of withholding tax payable to the Kenya Revenue Authority. It is the Exparte's assertion that there was no evidence or proof that the Respondent had submitted this sum to Kenya Revenue Authority hence the present application to have the said sum paid to the Exparte Applicant.

Although the Respondent did not file a replying affidavit, a document was presented to Court which established, to the satisfaction of the court that the sum of Kshs 402,816/- was withdrawn from the Respondent's account at the Central Bank of Kenya and transferred to the Kenya Revenue Authority's withholding VAT collection account maintained at the Bank. The Exparte Applicant does not dispute that indeed such payment was made but requests to be availed the withholding tax certificate to enable the firm give account to Kenya Revenue Authority in respect to its tax affairs. Ms Efedha for the Respondent conceded in court that the Exparte Applicant was owed the sum of kshs 217,600/= being the difference between the amount that was paid to Kenya Revenue Authority a withholding tax and the sum of Kshs 920,416/- that the Exparte Applicant claimed. The Respondent undertook to pay the said sum when it is put in funds by the central government. Mr. Gemenet for the Exparte Applicant was not opposed to the concession, but insisting that the court should compel the Respondent to pay the admitted sum.

It is clear from the above submissions that the only issue remaining resolution is the availing of the withholding tax certificate to the Exparte Applicant and the settlement of the admitted balance. That being the case, this court makes the following order:

- i) The Respondent shall avail to the Exparte Applicant the withholding tax certificate for the firm's tax compliance purposes within forty-five (45) days of today's date.**
- ii) The Respondent shall pay the Exparte Applicant the balance of kshs 271,600/= within sixty (60) days of today's date.**
- iii) Either party be at liberty to apply.**
- iv) The Exparte Applicant shall have the costs of kshs 30,000/=.**

**Dated at Kitale this 5th day of May 2021.**

**L. KIMARU**

**JUDGE**