



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. MISC E071 OF 2021

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

BETWEEN

PROF TOM OJIENDA & ASSOCIATES.....APPLICANT

VERSUS

THE COUNTY SECRETARY

NAIROBI CITY COUNTY.....1ST RESPONDENT

CHIEF OFFICER, FINANCE/COUNTY TREASURER

NAIROBI CITY COUNTY.....2ND RESPONDENT

RULING

1. The Applicant herein has moved this Court in an application which is brought by way of Chamber Summons dated 11th May 2021, wherein it is seeking the following orders.

a. THAT leave do be granted to the Applicant to apply for an order of mandamus to issue and remove from this Honourable Court directed at the County Secretary and the Chief Officer, Finance/County Treasurer, Nairobi City County, directing them to pay to the Applicant forthwith and without delay the decretal sum as per the Certificate of Order issued on 30th June 2020 delineated hereunder together with accrued interest until payment in full, that is to say:

Decretal sum	Kshs 87,258,000.00
Interest @ 12% from 15/2/2017- 19/2/2020	Kshs 31,527,630.24
TOTAL	Kshs 118,785,630.24
LESS 30,000,000/- paid	Kshs 30,000,000.00
OUTSTANDING SUMS	Kshs 88.785.630.24

b. THAT the costs of this Application be borne by the Respondents.

2. The said application is supported by a statutory statement dated 11th May 2021, and a verifying affidavit sworn on the same date by the Prof. Tom Odhiambo Ojienda, the Applicant's Managing Partner. The main ground for the application is that the Deputy Registrar of the High Court of Kenya at Nairobi taxed the Applicants' Advocate-Client Bill of Costs dated 22nd December 2015 which arose out of a Court Judgment in the parent file of **Petition No 486 of 2013 - Nairobi Metropolitan PSV SACCOs Union vs Nairobi City County & 3 Others** at Kshs 87,258,000.00/- through the ruling delivered on 5th July 2016.

3. Further, that the Deputy Registrar also issued a Certificate of Taxation of Kshs 87,258,000.00/- against the Respondents on 8th February 2017, and on 28th March 2017 the said Certificate of Taxation was converted into a Judgment and the Decree dated 28th March 2017 issued to that effect. However, that despite the entry of the judgment therein against the Respondents, they have not paid the decretal sum to the Applicant.

4. The Applicant annexed copies of the Deputy Registrar's ruling dated ruling delivered on 5th July 2016, the Certificate of Taxation issued on 8th February 2017, and decree dated 28th March 2017.

5. I have considered the Applicant's application, and note that the applicable law on leave to commence judicial review proceedings is *Order 53 Rule 1* of the Civil Procedure Rules, which provides that no application for judicial review orders should be made unless leave of the court was sought and granted. The main reason for the leave as explained by Waki J. (as he then was), in **Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996**, is to ensure that an applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration.

6. It is also trite that in an application for leave such as the present one, the Court ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before the court, and make a decision as to whether an applicant's case is sufficiently meritorious to justify leave.

7. In the present application, I note that no evidence has been provided by the Applicant as regards compliance with the Government Proceedings Act, and particularly, of the Certificate of Order against Government issued against the Respondent. To this extent I find that the Applicant has not met the threshold of an arguable case, and is therefore entitled to the leave sought to commence judicial review proceedings against the Respondent.

8. In light of the foregoing observations, I accordingly order as follows:

I. The Applicant is granted leave to file a supplementary affidavit annexing evidence of compliance with the provisions of the Government Proceedings Act, within fourteen (14) days of today's date.

II. The Applicant's Chamber Summons dated 11th May 2021 shall be heard by email on 31st May 2021.

III. 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 Applicant's Chamber Summons dated 11th May 2021 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

IV. All the parties shall file their pleadings 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 and asunachristine51@gmail.com.

V. 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 with copies to asunachristine51@gmail.com.

VI. The parties shall also be required to send the respective affidavits of service by way of electronic mail to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

VII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing by email on 31st May 2021.

VIII. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the Applicant by electronic mail by close of business on Monday, 17th May 2021

IX. Parties shall be at liberty to apply.

9. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF MAY 2021

P. NYAMWEYA

JUDGE