



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**JUDICIAL REVIEW NO.7 OF 2019**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF MANDAMUS UNDER ARTICLE 47 OF THE CONSTITUTION, SECTION 8 & 9 OF THE LAW REFORM ACT (CAP 26) AND ORDER 53 OF THE CIVIL PROCEDURE RULES**

**AND**

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

**AND**

**IN THE MATTER OF: GOVERNMENT PROCEEDINGS ACT**

**AND**

**IN THE MATTER OF: UNSATISFIED JUDGEMENT DEBT AGAINST THE COUNTY GOVERNMENT OF KERICHO IN THE SUM AT 14% P.A AND COST OF THE SUIT ARISING FROM JUDGEMENTS OF THE CHIEF MAGISTRATE'S COURT IN:**

**KERICHO CHIEF MAGISTRATE'S COURT CASE NUMBERS.301 OF 2015.**

**WHICH JUDGEMENT WAS DELIVERED ON THE 7<sup>TH</sup> FEBRUARY, 2018 AND SUBSEQUENT FINAL DEGREE AND CERTIFICATE OF ORDER AGAINST THE COUNTY GOVERNMENT ISSUED THEREON**

**BETWEEN**

**JOSPHAT KIPKORIR TOO AND 6 OTHERS.....APPLICANT**

**VERSUS**

**THE COUNTY SECRETARY, KERICHO COUNTY GOVERNMENT.....1<sup>ST</sup>RESPONDENT**

**CHIEF OFFICER FINANCE, COUNTY GOVERNMENT OF KERICHO.....2<sup>ND</sup>RESPONDENT**

**RULING**

1. The Exparte Applicants filed the Application dated 21/7/2020 seeking the following orders;

i. An order of Mandamus directing the Respondents to pay the Exparte Applicant the judgment sum amounting to Kshs.457,247 arising from Kericho CMCC numbers 301 of 2015, 302 of 2015, 304 of 2015, 305 of 2015, 306 of 2015 and 307 of 2015.

ii. That the Respondent be compelled to pay costs of the said suits plus interest from 12/4/2018 being the date of the decree until payment in full.

iii. That in default of payment to show cause to issue against the chief secretary and the chief officer, Finance at Kericho to show cause why they should not be commuted to civil jail for failure to pay the said sum.

**iv. That the costs of the Application to be paid by the Respondents.**

2. The Application is supported by the Affidavit of Nathan Kipngetich Rotich, one to the Ex parte Applicants in which he has stated that the County Government of Kericho was found vicariously liable for injuries sustained by the Ex parte Applicants who were employees of the County Government for an accident that occurred on 17/7/2015 while the Ex parte Applicants were travelling in motor vehicle Reg No.KBZ 974X.

3. The Ex parte Applicant further stated that despite express and unequivocal court order against the County Government, the Respondents have refused to satisfy the judgment and the decree hence this suit.

4. The Respondent opposed the Application and filed a Replying Affidavit sworn on 9/9/2020 by the County Attorney in which it is deposed that the decretal sum is a public debt that legally be settled using public funds and further that, public finances are governed by the Public Finance Management Act.

5. The Respondents further stated that section 123 (1) of the Public Finance Management Act provides that on or before the 28<sup>th</sup> February each year, the County Treasury shall submit to the County Assembly a statement setting out the debt management strategy of the county for purposes of dealing with those liabilities.

6. Further that the subject debt herein was not submitted to the County Assembly in the statement of February 2020 the same will be submitted in the next statement.

7. The parties filed written submissions which I have duly considered.

8. I find that the debt is not denied and the only issue is compliance with the public Finance Management Act.

9. In **Republic versus Attorney General & another ex parte Stephen Wanyee Roki (2016) eKLR**, the court stated as follows;

**“... the court only compels the satisfaction of a duty that has become due. In other words, where there is a condition precedent necessary for the duty to accrue, an order of mandamus will not be granted until that condition precedent comes to pass.”**

10. I find that the Application is premature as it has not been demonstrated that the Respondents failed to make the payments.

11. The Application dated 21/7/2020 be and is hereby dismissed and the Respondents directed to comply with section 123 (1) of the Public Finance Management Act in order to settle the decretal sum.

12. Each party to bear its own costs of this Application.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 9<sup>TH</sup> JULY, 2021**

**A. N. ONGERI**

**JUDGE**