



REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

(CORAM: CHERERE-J)

JUDICIAL REVIEW CAUSE NO. 13 OF 2019

IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW

PROCEEDINGS FOR ORDERS OF MANDAMUS AND PROHIBITION

AND

IN THE MATTER OF JAMES AGGREY MWAMU

AND

IN THE MATTER OF MIGORI COUNTY ASSEMBLY

AND

IN THE MATTER OF THE DECISION BY HON. JUSTICE OCHIENG ON 14TH MARCH, 2019

IN THE MATTER OF MISC APPLICATION NO. 306 OF 2015

AND IN THE MATTER OF COUNTY GOVERNMENT ACT AND THE RULES THEREOF

BETWEEN

REPUBLIC.....APPLICANT

AND

THE SPEAKER MIGORI COUNTY ASSEMBLY.....1ST RESPONDENT

THE CLERK MIGORI COUNTY ASSEMBLY.....2ND RESPONDENT

THE COUNTY ASSEMBLY PUBLIC

SERVICE BOARD, MIGORI.....3RD RESPONDENT

EXPARTE APPLICANT.....JAMES AGGREY MWAMU

JUDGMENT

Background

1. By a Notice of Motion dated 09th October, 2019, the *ex parte* applicant herein, **JAMES AGGREY MWAMU**, seeks the following orders:

- 1) An order of Mandamus compelling the 1st, 2nd and 3rd Respondents to comply with the judgment of Justice Ochieng dated 28th March, 2019 in Misc. 306 Of 2015 James Aggrey Mwamu T/A Mwamu & Co. Advocates V Migori County Assembly

requiring that Applicant be paid Kshs. 1,290,256.96

2) That in the alternative, the 1st and 2nd Respondents be committed to civil jail for six months for failure to pay the aforesaid amount together with interest

3) That in the alternative, the court be pleased to attach account number 1253455813 KCB Migori Branch belonging to the 3rd Respondent

2. The Applicant's bill of costs in Kisumu Judicial Review No. 01 of 2014 Hon Johnson Omollo Owiro v County Assembly of Migori & 4 Others was taxed at Kshs. 1,290,256.96 and a certificate of costs thereof was issued on 23rd August, 2018.

3. By an order dated 28th March, 2019, judgment was issued in Misc. 306 Of 2015 James Aggrey Mwamu T/A Mwamu & Co. Advocates V Migori County Assembly in terms of the certificate of costs hereinabove for the sum of Kshs. 1,290,256.96 together with interest at court rates from 28th March, 2019.

4. The issue for determination is whether this Court ought to grant the orders sought herein.

5. Section 148. of the Public Finance Management Act, 2012 provides as follows:

(1) A County Executive Committee member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation.

(2) Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity.

(3) A County Executive Committee member for finance shall ensure that each county government entity has an accounting officer in accordance with Article 226 of the Constitution.

(4) The Clerk to the county assembly shall be the accounting officer of the county assembly. (emphasis added).

5. It must always be remembered that a judicial review application is neither a criminal case nor a civil suit hence the application ought to be brought against the person who is bound to comply with the orders sought therein (*See Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County Ex Parte Stanley Muturi [2016] eKLR*).

6. Judgment in Misc. 306 Of 2015 James Aggrey Mwamu T/A Mwamu & Co. Advocates V Migori County Assembly was entered against the Migori County Assembly whose accounting officer is the Clerk to the County Assembly who is the proper party to this cause.

7. Migori County Assembly appointed counsel to represent it in this cause. I am therefore persuaded that the decree in Misc. 306 Of 2015 James Aggrey Mwamu T/A Mwamu & Co. Advocates V Migori County Assembly was served on the Clerk to the County Assembly, the 2nd Respondent herein.

8. Obedience of a court order is fundamental to the administration of justice and the rule of law. The 2nd Respondent has not offered any explanation for failure to settle the decretal sum. The fact that the 2nd Respondent intends to challenge the judgment and the decree is not a bar to execution of the same.

9. Accordingly, it is hereby ordered **THAT**:

1) An order of Mandamus be and is hereby issued compelling the 2nd Respondent to comply with the judgment of Justice Ochieng dated 04th June, 2019 in Misc. 108 Of 2018 James Aggrey Mwamu T/A Mwamu & Co. Advocates V Migori County Assembly requiring that Applicant be paid Kshs. 1,365,209,80

2) The 2nd Respondent is directed to comply with Order (1) above within 60 days from the date hereof

3) The prayers for committal to civil jail and attachment of 3rd Respondent's account number [...] KCB Migori Branch cannot be made by way of a judicial review application and are therefore declined

4) 2nd Respondent shall bear the costs of this cause

DATED AND SIGNED THIS 20TH DAY OF FEBRUARY, 2020

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistants - Amondi/Okodoi

For the Applicant - Ms. Adwar

For the Respondents - N/A