



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

JUDICIAL REVIEW NO. 9 OF 2018

REPUBLIC.....APPLICANT

VERSUS

THE PRINCIPAL SECRETARY MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL

GOVERNMENT.....1ST RESPONDENT

THE CHIEF EXECUTIVE OFFICER AND/OR THE CHAIRMAN IEBC.....2ND RESPONDENT

MWIRIGI BENEDDITE NJERI & JOHN MWITUMI MWANIKI.....EX PARTE APPLICANTS

JUDGMENT

1. The *ex parte* applicants seek an order of *mandamus* to compel *each* of the respondents to pay a sum of Kshs 4,487,273.50 being *half* of the decretal sum awarded in Murang'a Chief Magistrates Court Civil case No. 12 of 2017. They also pray for *costs*.
2. On 19th September 2018, the *ex parte* applicants obtained *leave* to a writ of *mandamus*. The substantive *notice of motion* was filed on 20th September 2018.
3. It is instructive that whereas the *statement* in support of the notice of motion refers to *two* additional reliefs (an order for accrued interest; and, an order for arrest or committal of the respondents in default) no such reliefs are sought in the notice of motion.
4. I accordingly decline to grant an order for payment of accrued interest or for warrants of arrest against the respondents or their committal to civil jail in default of payment of the above sums.
5. The *ex parte* applicants initially sued the respondents in the High Court at Murang'a in Civil Suit No. 53 of 2013. The suit was later transferred to the Murang'a Chief Magistrates Court as Civil case No. 12 of 2017. That suit was brought on behalf of the estate of Waithanji Mwaniki (hereafter *the deceased*)
6. The deceased was employed by the 2nd respondent as a Returning Officer. On 4th March 2013, he was transporting ballot boxes from Kiruri Polling Station to the Kangema Tallying Centre when he was shot dead by an Administration Police Officer guarding the vehicle.
7. I am satisfied that a final decree was issued on 26th April 2018 for the principal sum of Kshs 8,412,032 to be shared equally between the two respondents. After adding interest and costs, each of the respondents was required to pay Kshs 4,487,273.50. I have also seen the *certificate of order against the government* issued on 18th July 2018 under Order 29 Rule 3 of the **Civil Procedure Rules**. I have also seen the two demands for payment dated 19th July 2018 addressed to the Attorney General on behalf of the 1st respondent; and, to J. K. Kibicho Advocates, counsel on record for the 2nd respondent.
8. The respondents did not reply to the motion. They did not also appear at the hearing on 27th January 2020. I was satisfied that they were served from the affidavit of service filed on even date. The averments by the *ex parte* applicants are thus uncontroverted.
9. Regarding the claim against the 2nd respondent, I note that the Independent Electoral and Boundaries Commission (IEBC) is an *independent constitutional commission* created by **Article 88** of the **Constitution**. By dint of **Article 253** the Commission is a *body corporate* with perpetual succession; and, capable of suing and being sued in its corporate name.

10. Section 13 (2) of the **Independent Electoral and Boundaries Act** on the other hand provides that any legal proceedings for execution of judgments against the Commission shall be subject to the **Government Proceedings Act**.

11. I thus order that *mandamus* shall issue against the 1st respondent (The *Principal Secretary* Ministry of Interior And Coordination of National Government); and, also to the *Chief Executive Officer* of the 2nd respondent to each pay to the *ex parte* applicants Kshs 4,487,273.50 being *half* of the decree issued in Murang'a Chief Magistrates Court Civil case No. 12 of 2017.

12. For the reasons outlined in paragraphs 3 and 4 of this judgment, I *decline* to order for payment of accrued interest; or, for warrants of arrest against the respondents; or, for their committal to civil jail in default of payment of the above sums.

13. I make no order on costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 18th day of February 2020.

KANYI KIMONDO

JUDGE

Judgment read in open Court in the presence of:-

No appearance by counsel for the *ex-parte* applicants.

No appearance by counsel for the for the 1st respondent.

Ms. Jayo holding brief for Mr. Kibicho for the 2nd respondent.

Ms. Dorcas & Ms. Elizabeth, Court Assistants.