



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 335 OF 2019

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

BETWEEN

ANTONIE KUBONDO MURUNGA.....APPLICANT

VERSUS

ATTORNEY GENERAL.....1ST RESPONDENT

RULING

The Application

1. The Applicant herein moved this Court in an application brought by way of Chamber Summons dated 18th November 2019, wherein he is seeking leave to apply for an order of Mandamus to compel the Respondent to pay him the decretal amount stated in the decree given by the Environment and Land Court in Nairobi in ELC No. 569 of 2011 together with interest thereon. He also sought an order that the costs of the application be provided for. The said application is supported by a statutory statement dated 18th November 2019, and a verifying affidavit and supplementary affidavit sworn on the same date and on 5th February 2020 respectively by Livingstone Maina Ombete, the Applicant's advocate on record.

2. The main ground for the application is that the Applicant has duly served the Respondent with the decree, certificate of taxation in respect of costs, and an order against Government, arising from the judgement delivered in his favour on 27th September 2017 by the Environment and Land Court in Nairobi in ELC No. 569 of 2011. However, that there has been no response from the Respondent.

3. The Applicant annexed copies of the pleadings filed, and judgment delivered in Nairobi ELC No. 569 of 2011, as well as the decree, certificate of taxation and certificate of order against Government issued consequent to the said judgment. Also annexed was a letter dated 1st October 2019 his advocates wrote to the Respondent seeking payment of the decretal sum.

The Determination

4. I have considered the application dated 18th November 2019 and am alive to the provisions of *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.

5. 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 court and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave.

6. In the present application, the *ex parte* Applicant has provided evidence of a money decree issued in his favour against the Respondent in Nairobi ELC No. 569 of 2011, and of demand of payment of the said sum. To this extent I find that the Applicant has met the threshold of an arguable case, and is therefore entitled to the leave sought to commence judicial review proceedings for mandamus against the Respondent. It is also notable that the Applicant's application was served on the Respondent and was not opposed

The Orders:

7. In the premises I direct and orders as follows:

I. The *ex parte* Applicant is granted leave to apply for an order of Mandamus to compel the Respondent to pay to the Applicant the decretal sum in the sum of Kenya Shillings Twenty One Million, Six Hundred and Seven Thousand, Nine Hundred and Thirty Eight Thousand and Sixty Cents (Kshs 21,607, 938.60) together with interest on the decretal amount at court rates as from 1st October 2019 until payment in full.

II. The costs of the Chamber Summons dated 18th November 2019 shall be in the cause.

III. The Applicant shall file and serve the Respondent with the substantive Notice of Motion and submissions thereon, together with a copy of this ruling, and a mention notice within twenty-one (21) days of today's date.

IV. Upon being served with the said pleadings and documents, the Respondent shall be required to file its responses to, and submissions on the substantive Notice of Motion application within thirty (30) days from the date of service.

V. This matter shall be mentioned on 13th July 2020, for further directions.

VI. 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 *ex parte* Applicant's substantive Notice of Motion on the basis of the electronic copies of the pleadings and the written submissions filed by the parties. In this respect, the Applicant shall avail an electronic copy in word format of his Chamber Summons dated 18th November 2019, and supporting documents thereto within twenty-one (21) days of today's date.

VII. The parties shall file and avail their pleadings, applications and written submissions electronically, by sending them to the Deputy Registrar of the Judicial Review Division at judicialreview48@gmail.com with copies to asunachristine51@gmail.com.

VIII. The electronic copies of pleadings and documents sent by the parties shall be clearly and correctly titled to indicate the J.R Case Number, the name of the Party sending it (that is whether the *Ex Parte* Applicant, Respondent or Interested Party), and the nature of the pleading or document.

IX. 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.

X. 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.

XI. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling and the extracted orders to the Applicant by electronic mail by close of business on Thursday, 14th May 2020.

XII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 13th July 2020, and bring it to the attention of a Judge in the Division on that date for directions.

XIII. Parties shall be at liberty to apply.

8. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF MAY 2020

P. NYAMWEYA

JUDGE