



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. 108 OF 2020**

**IN THE MATTER OF AN APPLICATION FOR LEAVE FOR**

**JUDICIAL REVIEW ORDERS OF MANDAMUS**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**HON. MOSES AKARANGA.....1<sup>ST</sup> RESPONDENT**

**VIHIGA COUNTY GOVERNMENT.....2<sup>ND</sup> RESPONDENT**

**CHIEF OFFICER FINANCE, VIHIGA COUNTY GOVERNMENT.....3<sup>RD</sup> RESPONDENT**

**COUNTY EXECUTIVE MEMBER FINANCE**

**VIHIGA COUNTY GOVERNMENT.....4<sup>TH</sup> RESPONDENT**

**EX-PARTE : AGN KAMAU ADVOCATES**

**RULING**

**The Application**

1. AGN Kamau Advocates, the *ex parte* Applicant herein, has moved this Court in an application brought by way of Chamber Summons dated 19<sup>th</sup> May 2020, wherein it is seeking leave to apply for an order of mandamus to compel the Respondents to pay to it the sum of Kshs. 1,119,506.05/=, being payment for the Advocate-Client Bill of Costs as taxed by the Deputy Registrar, Nairobi Judicial Review Division on the 27<sup>th</sup> November, 2019 in respect of **Nairobi Judicial Review Misc. No. 35 of 2019** (formerly **Nairobi Judicial Review No. 513 of 2016**). The *ex parte* Applicant also sought an order that the costs of the application be provided for.

2. The said application is supported by a statutory statement dated 19<sup>th</sup> May 2020, and a verifying affidavit sworn on the same date by Allan George Njogu Kamau, the *ex parte* Applicant's proprietor. The main ground for the application is that the Applicant offered his legal services to the 1<sup>st</sup> Respondent in being **Nairobi Judicial Review Case No. 513 of 2016**, when the 1<sup>st</sup> Respondent was Governor of Vihiga County, in relation to proceedings relation to summons issued to him by Senate. However, that during the pendency of the matter in court the 1<sup>st</sup> Respondent ceased to occupy the position of the Governor of Vihiga County, and the said Judicial Review proceedings was marked as withdrawn

3. The *ex parte* Applicant states that 1<sup>st</sup> Respondent thereafter failed to pay its legal fees, necessitating the filing of a Bill of Costs which was taxed on the 27<sup>th</sup> November, 2019 at a sum of Kshs. 1,119,506.05/= and a certificate of taxation issued on the 4<sup>th</sup> December, 2019. That when warrants of sale and attachment were issued as against the 1<sup>st</sup> Respondent, he directed the *ex-parte* Applicant to demand payment of the said sum from the 2<sup>nd</sup> Respondent as it exists in perpetuity and he had been sued as the County Chief Executive arising out of a chain of events commenced and executed by the 2<sup>nd</sup> Respondent.

4. Accordingly, that the said Certificate of taxation was therefore forwarded to the 2<sup>nd</sup> Respondent who has failed to settle the taxed sum. The *ex parte* Applicant further states that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents as the accounting officers of the 2<sup>nd</sup> Respondent are under a public duty to ensure that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents fulfill their legal obligations without fail.

5. The *ex parte* Applicant annexed copies of the pleadings filed and orders issued in **Nairobi Judicial Review Case No. 513 of 2016**, as well as the Advocates-Clients Bill of Costs and Certificate of Taxation issued to it against the 1<sup>st</sup> Respondent in **Nairobi Judicial Review Misc Appl. No. 35 of 2019**. Copies of letter forwarding the certificate of taxation to the Respondents for purposes of payment were also annexed.

### **The Determination**

6. I have considered the application dated 19<sup>th</sup> May 2020 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.

7. 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.

8. In the present application, the *ex parte* Applicant has provided evidence of a costs taxed in his favour against the 1<sup>st</sup> Respondent, and of demand made of payment of the said sum from the Respondents. I note that the said order of payment of costs is made against the 1<sup>st</sup> Respondent, who is no longer a Governor, and that the *ex parte* Applicant has averred to, and provided evidence of attempts to execute the order against the 1<sup>st</sup> Respondent personally. The *ex parte* Applicant has also made arguments as to why the 2<sup>nd</sup> to 4<sup>th</sup> Respondents are under a duty to pay the said costs in the order issued against the 1<sup>st</sup> Respondent.

9. In this regard, the issue of the 2<sup>nd</sup> to 4<sup>th</sup> Respondents' duty and liability to pay the costs is one to be decided at a substantive hearing, and not at this stage. To this extent I find that the *ex parte* 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.

### **The Orders:**

10. 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 Respondents to pay to the *ex parte* Applicant the sum of Kshs. 1,119,506.05/= being payment for the Advocate-Client Bill of Costs as taxed by the Deputy Registrar, Nairobi Judicial Review Division on the 27<sup>th</sup> November, 2019 in Nairobi Judicial Review Misc. No. 35 of 2019 .**

**II. The costs of the Chamber Summons dated 19<sup>th</sup> May 2020 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 Respondents 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 15<sup>th</sup> 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..**

**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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com)., and shall also provide electronic copies thereof in **word format**.**

**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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto: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](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto: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 *ex parte* Applicant by electronic mail by close of business on Friday, 22<sup>nd</sup> May 2020.**

**XII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 15<sup>th</sup> 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.**

11. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 22<sup>nd</sup> DAY OF MAY 2020**

**P. NYAMWEYA**

**JUDGE**