



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. 112 OF 2020

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

BETWEEN

REPUBLICAPPLICANT

VERSUS

COUNTY SECRETARY, NAIROBI CITY COUNTY.....RESPONDENT

EX-PARTE: THE REGISTERED TRUSTEES ISLAMIA MADRASSA COMMITTEE

RULING

The Application

1. The Registered Trustees of Islamia Madrassa Committee, the *ex parte* Applicant herein, filed a suit being **Environment and Land Court Suit Number 2388 of 1998 - Registered Trustees Islamia Madrassa Committee versus Joseph Muigai Muroki & Nairobi City County**, wherein judgment was delivered in its favour on 20th July 2017 for costs of the suit. The Bill of Costs was taxed on 26th April 2018 in the sum of Kshs 997,337/=. The *ex parte* Applicant is aggrieved that despite repeated requests from the Respondent, no payment of the taxed costs has been received.
2. The *ex parte* Applicant has consequently moved this Court in an application brought by way of Chamber Summons dated 15th 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. 997,337/= plus interest at 14% per annum from 26th April 2018 until payment in full. The said sum is the taxed costs awarded to the *ex parte* Applicant in **Environment and Land Court Suit Number 2388 of 1998 - Registered Trustees Islamia Madrassa Committee versus Joseph Muigai Muroki & Nairobi City County**.
3. The *ex parte* Applicant also sought an order that warrant of arrest do issue to commit the Respondent to civil jail for failure to pay the Applicant the said sum of Kshs 997,337/-, as decreed by the Court. Further that the costs of the application be paid by the Respondent.
4. The said application is supported by a statutory statement dated 15th May 2020, and an affidavit sworn on the same date by Hilary Mecheo Orina, the *ex parte* Applicant's advocate. The main ground for the application is that the Respondent is under a public duty to make the payment to the *ex parte* Applicant, and is unlawfully neglecting or refusing to do so.
5. The Applicant annexed copies of the certified decree resulting from Judgment delivered in **Environment and Land Court Suit Number 2388 of 1998 - Registered Trustees Islamia Madrassa Committee versus Joseph Muigai Muroki & Nairobi City County**, the Certificate of Taxation issued therein dated 26th April 2018, a Certificate of Order against the Government issued therein on 28th January 2020, and of the letters to the Respondent requesting payment of the taxed costs.
6. However, I note that the *ex parte* Applicant has not annexed a copy of the actual judgment delivered in **Environment and Land Court Suit Number 2388 of 1998 - Registered Trustees Islamia Madrassa Committee versus Joseph Muigai Muroki & Nairobi City County**, which is the main fact that gives rise to the Certificate of Taxation and Certificate of Order against the Government it relies upon, and the orders of mandamus sought. In the circumstances I am unable to grant leave at this stage as the *ex parte* Applicant has not shown an arguable case.
7. In the premises I direct and orders as follows:

I. The *ex parte* Applicant is granted leave to file a supplementary affidavit annexing a certified copy of the judgment delivered on 20th July 2017 in Environment and Land Court Suit Number 2388 of 1998 - Registered Trustees Islamia Madrassa Committee versus Joseph Muigai Muroki & Nairobi City County, within thirty (30) days of today's date.

II. The *ex parte* Applicant shall serve the Respondent with (i) the Chamber Summons dated 15th May 2020 and its supporting documents, (ii) its supplementary affidavit, and (iii) a copy of these directions and (iv) a hearing notice with the said thirty (30) days .

III. The Chamber Summons dated 15th May 2020 shall be heard on 13th July 2020.

IV. 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 Chamber Summons dated 15th May 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

V. 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.

VI. 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 description of the Party sending it (that is whether the *Ex Parte* Applicant, Respondent or Interested Party), and the nature of the pleading or document.

VII. 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.

VIII. 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.

IX. 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 Tuesday, 2nd June 2020.

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

XI. Parties shall be at liberty to apply.

8. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 2nd DAY OF JUNE 2020

P. NYAMWEYA

JUDGE