



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. E1092 OF 2020

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND

COORDINATION OF NATIONAL GOVERNMENT.....RESPONDENT

EX PARTE APPLICANT: REGINA NDUKU MUTUA,

The administrator of the estate of MULWA NZIOKA (Deceased)

RULING

1. The *ex parte* Applicant herein was the plaintiff in Milimani CMCC NO. 7775 of 2014, in which the Attorney General of the Republic of Kenya was sued on behalf of the Ministry of Interior and Coordination of National Government. She has filed an application by way of Chamber Summons dated 17<sup>th</sup> January 2020, wherein she is seeking the following orders:

**a. THAT the Court be pleased to grant the applicant leave to apply for an order of mandamus directed to the Principal Secretary, Ministry of Interior and Coordination of National Government for failure to pay a court decree amount of Kshs 2,035,241.27 in Milimani CMCC 7775 of 2014.**

**b. An order that the said the Principal Secretary Ministry of Interior and Coordination of National Government be personally present in court during the hearing of the application.**

**c. Costs of this application be provided for.**

2. The said application is supported by a statutory statement dated 17<sup>th</sup> January 2020, and a supporting affidavit sworn on the same date by the *ex parte* Applicant. The main ground for the application is that on 19<sup>th</sup> December 2017, the court gave judgement in favour of the applicant herein in **Milimani CMCC NO. 7775 of 2014** as against the Attorney General of the Republic of Kenya for and on behalf of the Ministry of Interior and Coordination of National Government, and that the decretal amount owing as at 22.2.2019 is Kshs. 2,035,241.27. Further, that a decree and certificate of costs, and a certificate of order against the Government were extracted and were served upon the Attorney General on behalf of the said Ministry. However, that the decretal sum remains unpaid despite several demands.

3. The *ex parte* Applicant annexed copies of the certified decree resulting from Judgment delivered in **Milimani CMCC NO. 7775 of 2014** and Certificate of Stated Costs issued therein dated 6<sup>th</sup> September 2018, a Certificate of Order against the Government issued therein on 31<sup>st</sup> May 2019, and of a letter dated 28<sup>th</sup> June 2019 forwarding the said decree and order to the Attorney General requesting payment.

4. I note that the *ex parte* Applicant has not annexed a copy of the actual judgment delivered in **Milimani CMCC NO. 7775 of 2014**, which is the main fact that gives rise to the decree and 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 to this extent shown an arguable case.

5. 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 19<sup>th</sup> December 2017 in Milimani CMCC NO. 7775 of 2014, within twenty-one (21) days of today's date.

II. The *ex parte* Applicant shall serve the Respondent with (i) the Chamber Summons dated 17<sup>th</sup> January 2020 and its supporting documents, (ii) its supplementary affidavit, and (iii) a copy of these directions and (iv) a hearing notice with the said twenty-one (21) days .

III. The Respondent is granted leave to file and serve its response to the Chamber Summons dated 17<sup>th</sup> January 2020 within fourteen (14) days of service.

IV. The Chamber Summons dated 17<sup>th</sup> January 2020 shall be heard on 12<sup>th</sup> October 2020.

V. 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 the *ex parte* Applicant's Chamber Summons dated 17<sup>th</sup> January 2020 on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

VI. All the parties shall file their pleadings and submissions electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

VII. 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.

VIII. 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).

IX. The parties shall also be required to file and send to the Deputy Registrar of the Judicial Review Division their respective affidavits of service evidencing personal service, by way of electronic mail to [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

X. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 12<sup>th</sup> October 2020

XI. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the *ex parte* Applicant by electronic mail by close of business on Monday, 7<sup>th</sup> September 2020.

XII. Parties shall be at liberty to apply.

6. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 4<sup>TH</sup> DAY OF SEPTEMBER 2020

P. NYAMWEYA

JUDGE