



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

MISCELLANEOUS CIVIL APPLICATION NO. 65 OF 2020

IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW ORDERS OF MANDAMUS BY ANTAF COMPANY LIMITED

AND

IN THE MATTER OF UNSATISFIED DECREE IN BUSIA CHIEF MAGISTRATE'S COURT CIVIL CASE NO. 14 OF 2009

AND

IN THE MATTER OF CIVIL PROCEDURE ACT

AND

IN THE MATTER OF CIVIL PROCEDURE RULES

AND

IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT

BETWEEN

REPUBLIC.....APPLICANT

TROUGH

ANTAF COMPANY LIMITED.....EX-PARTE APPLICANT

VERSUS

AND

COUNTY GOVERNMENT OF BUSIA.....RESPONDENT

RULING

1. The ex-parte applicant moved the court by way of chamber summons under Order 53 Rules 1 of the Civil Procedure Rules and sections 8 & 9 of the Law Reform Act. He is seeking the following orders:

- a) That this application be certified urgent and service thereof be dispensed with in the first instance as regards prayer (b) hereof. Spent
- b) That this court be pleased to grant leave to the ex-parte applicant herein to make an application for judicial review orders of mandamus directed to the County Secretary- County Government of Busia to satisfy the decree in Busia Chief Magistrate's Court Civil Case No. 14 of 2019 together with costs and interest accruing therefrom.
- c) That costs of this application be provided for.

2. The application is premised on the following grounds:

a) That on 13th February 2019, judgment was entered in favour of the ex-parte applicant herein against the County Government of Busia for Kshs. 2,941,400/= together with costs and interest in Busia Chief Magistrate's Court Civil Suit No. 14 of 2019.

b) That to date, the decree remains unsatisfied despite several demands and requests to the County Government of Busia to satisfy the same an act that is not only illegal but unlawful too.

c) That since there is no stay of execution, appeal and or review application pending seeking to assail the judgment and the decree thereof and since the County Government of Busia has refused, failed and or neglected to settle the decree, the instant application becomes necessary.

d) That it is in the interest of justice and fidelity to the rule of the law that the orders sought be granted.

e) That no prejudice whatsoever will be occasioned to the respondent herein if the orders sought in the instant application are granted but disallowing the same will gravely prejudice the ex-parte applicant as the decree obtained in Busia Chief Magistrate's Court Civil Suit No. 14 of 2019 will remain unsatisfied and the applicant will be denied the fruits of its judgment.

3. The application was opposed by the respondent on the following grounds:

a) That the applicant did not attach a certified copy of the judgment.

b) That the application is therefore prematurely before court.

4. I have perused the record and find the following documents attached:

a) A copy of certificate of order against Government pursuant to order 29 Rule 3 issued by the Chief Magistrate in Busia Chief Magistrate's Court Civil Case No. 14 of 2019. The amount payable is Kshs. 2,941,400/ with costs assessed at Kshs. 194,305/=. The certificate indicates that this amount is payable to Antaf Company Limited by the County Government of Busia.

b) A copy of certificate of costs.

c) Notice of entry of judgment.

5. Though the ex-parte applicant did not attached a certified copy of the judgment, I am satisfied that there is a valid judgment in favour of the ex-parte applicant and against the respondent.

6. The respondent has not claimed to have settled the said decree. The ex-parte applicant cannot executed against the government in the ordinary manner. In **Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza [2012] eKLR** Githua J. stated:

Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act (*hereinafter referred to as the Act*) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General.

7. Though the above decision was in respect of the National Government, the same procedure is applicable to County Governments. The ex-parte applicant has therefore appropriately approached this court so that he can realize the fruits of the judgment in his favour.

8. The application is therefore allowed with costs.

DELIVERED and SIGNED at BUSIA this 6th day of October, 2020

KIARIE WAWERU KIARIE

JUDGE