



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW MISC APPLICATION NO. E055 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE FOR

JUDICIAL REVIEW ORDERS OF MANDAMUS

BETWEEN

REV. SIMON NDUNGU MUNGAI.....1ST APPLICANT

PASTOR VINCENT MUNGAI NDUNGU.....2ND APPLICANT

TRADING AS OVERCOMERS CHRISTIAN MISSIONS & LIVELINK COMMUNICATIONS

VERSUS

COUNTY GOVERNMENT OF KIAMBU.....1ST RESPONDENT

COUNTY FINANCE OFFICER KIAMBU COUNTY GOVERNMENT.....2ND RESPONDENT

COUNTY SECRETARY KIAMBU COUNTY GOVERNMENT.....3RD RESPONDENT

RULING

The Application

1. Rev. Simon Ndungu Mungai and Pastor Vincent Ndungu Mungai the Applicants herein, describe themselves as Kenyan adults of sound mind residing and working for Overcomers Christian Missions & Livelink Communications in Kiambu County and beyond. The said Applicants have moved this Court in an application against the Respondents herein, brought by way of Chamber Summons dated 12th October 2020.
2. The Applicants application is for leave to apply for an order of mandamus directed to the County Finance Officer Kiambu County Government and County Secretary Kiambu County Government to compel them to honor the decree dated 31st January 2011 by paying the decretal amount and interests as per Certificate of order dated 27th July 2020 amounting to Ksh 4,460.292.
3. The said application is supported by a statutory statement dated 12th October 2020, and an affidavit sworn on the same date by the Applicants. A perusal of the pleadings indicate that the leave is being sought in relation to a ruling given in **Nairobi HCCC No 67 of 2008** which awarded the Applicants damages, and that the said Applicants had made a similar application against the Respondents herein in Nairobi JR Misc Application 137 of 2020 , and were directed by Hon. Mr. Justice Mativo to provide evidence of the Certificate of Order against Government in addition to the a copy of the ruling and decree relied upon, and make a fresh application once there was compliance.
4. I note that the copies of the Certificate of Order Against Government dated 27th July 2020, and of the rulings dated 31st January 2011 and decree dated 2nd February 2012 that were issued in **Nairobi HCCC No 67 of 2008** have now been availed by the Applicants. The Applicants have therefore met the threshold of an arguable case that is required for leave to be granted.
5. It is in this respect trite that in an application for leave such as the present one, the Court ought not to delve into the arguments of the parties, but should make cursory perusal deeply of the evidence before court and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave. It was explained by Lord Bingham in **Sharma vs Brown Antoine (2007) I WLR 780**, that a ground

of challenge is arguable if its capable of being the subject of sensible argument in court, in the sense of having a realistic prospect of success, however, that the test is flexible depending on the nature and gravity of the issues.

The Orders:

6. In the premises the Chambers Summons application dated 12th October 2020 is allowed to the extent of the following orders:

i. The *ex parte* Applicant is granted leave to apply for an order of Mandamus directed to the County Finance Officer Kiambu County Government and County Secretary Kiambu County Government to compel them to honor the decree dated 31st January 2011 in Nairobi HCCC No 67 of 2008 by paying the decretal amount and interests as per Certificate of order dated 27th July 2020 amounting to Ksh 4,460.292.

ii. The costs of the Chamber Summons dated 12th October 2020 shall be in the cause.

iii. The Applicants shall file the substantive Notice of Motion, and shall serve the Respondent with (i) the Chamber Summons application dated 12th October 2020, (ii) the substantive Notice of Motion and submissions thereon, (iii) a copy of this ruling, and (iii) a mention notice, within twenty-one (21) days from today's date.

iv. Upon being served with the said pleadings and documents, the Respondents shall be required to file its response to, and submissions on the substantive Notice of Motion within twenty-one (21) days from the date of service.

v. This matter shall be mentioned on 20th January 2021 to confirm compliance and 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. 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 and asunachristine51@gmail.com.

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 with copies to 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 with copies to asunachristine51@gmail.com.

x. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 20th January 2021.

xi. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the Applicants by electronic mail by close of business on Thursday, 5th November 2020.

xii. Parties shall be at liberty to apply.

7. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 2ND DAY OF NOVEMBER 2020

P. NYAMWEYA

JUDGE