



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW APPLICATION NO. MISC E066 OF 2020

IN THE MATTER OF AN APPLICATION FOR LEAVE

FOR JUDICIAL REVIEW ORDERS OF MANDAMUS

BETWEEN

DANIEL K MWAURA T/A KARURU MWAURA

& COMPANY ADVOCATES.....APPLICANT

VERSUS

COUNTY SECRETARY KIAMBU COUNTY.....1ST RESPONDENT

CHIEF OFFICER, FINANCE/

COUNTY TREASURER.....2ND RESPONDENT

COUNTY GOVERNMENT OF KIAMBU.....3RD RESPONDENT

RULING

1. Daniel K Mwaura T/A Karuru Mwaura & Company Advocates, the Applicant herein, has moved this Court in an application brought by way of Chamber Summons dated 1st December 2020, wherein it is seeking leave to commence proceedings in the nature of judicial review against the Respondents for an order of mandamus to compel the 1st and 2nd Respondents jointly and severally to immediately settle the amount owed to the Applicant of Kshs. 41, 195,392.65/ = arising from Certificates of Costs duly issued and served on Kiambu County Government pursuant to orders given in **Nairobi High Court Civil Suit Number 15 of 2018 - Daniel Karuru Mwaura T/A Karuru Company Advocates vs County Government of Kiambu**. The Applicant also seeks an order that it proceeds to serve the Notice of Motion, and that the costs of this application be provided for.

2. The said application is supported by a statutory statement dated 1st December 2020, and a verifying affidavit sworn on the same date by Daniel Karuru Mwaura, an advocate practicing in the Applicant firm. The deponent explained that since his firm has been rendering legal services to the County Government of Kiambu and its predecessors from 1998, and raised fee notes for the said services, a majority of which remained unsettled. Therefore, that on 15th January 2018, his firm filed HCCC No. 15 of 2018 in Nairobi claiming Kshs. 249,758,359/- in unsettled legal fees, and on 31st May 2018 the Court (Hon. Tuiyott J.) ordered that the Applicant's Bill of Costs be presented for taxation.

3. The Applicant stated that it thereafter presented to court an initial 23 Bills of Costs for taxation in the Commercial Division of the High Court at Milimani Nairobi, and the rulings with respect to the Bills of Costs have all been delivered and Certificates of Costs duly issued and served upon the County Government of Kiambu.

4. The main ground for the application therefore is that there is no justification from the County for not settling the Applicant's unpaid bills, and that the Applicant's rights are being prejudiced by the actions and/or inaction of the Respondents and is being denied the fruits of his judgement and labour.

5. The applicable law on leave to commence judicial review proceedings is *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.

6. 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.

7. In the present application, the Applicant has provided evidence of an order dated 6th July 2018 and a partial decree dated 27th November 2020, both issued in **Nairobi High Court Civil Suit Number 15 of 2018- Daniel Karuru Mwaura T/A Karuru Company Advocates vs County Government Of Kiambu**. He has also annexed copies of the Certificate of Costs issued in **Nairobi High Court Misc. Application 277 of 2018, Misc. Application 278 of 2018, Misc. Application 279 of 2018, Misc. Application 298 of 2018, Misc. Application 300 of 2018, Misc. Application 317 of 2018, Misc. Application 318 of 2018, Misc. Application 319 of 2018, Misc. Application 352 of 2018, Misc. Application 353 of 2018, Misc. Application 354 of 2018, Misc. Application 355 of 2018, Misc. Application 356 of 2018, Misc. Application 358 of 2018, Misc. Application 297 of 2018, and Misc. Application 301 of 2018**.

8. Lastly, the Applicant also annexed various copies of letters demanding the decretal sum from the Respondents, and forwarding the said Certificate of Costs.

9. To this extent I find that the Applicant has met the threshold of an arguable case, and is therefore entitled to the leave sought to commence judicial review proceedings against the Respondent.

10. In light of the foregoing findings, the Applicant's Chamber Summons dated 1st December 2020 is found to be merited. I accordingly grant the following orders:

I. The Applicant is granted leave to commence proceedings in the nature of judicial review against the Respondent for an order of mandamus to compel the 1st and 2nd Respondents jointly and severally to settle the amount owed to the Applicant of Kshs. 41, 195,392.65/ = arising from various Certificates of Costs duly issued in Nairobi High Court Misc. Application 277 of 2018, Misc. Application 278 of 2018, Misc. Application 279 of 2018, Misc. Application 298 of 2018, Misc. Application 300 of 2018, Misc. Application 317 of 2018, Misc. Application 318 of 2018, Misc. Application 319 of 2018, Misc. Application 352 of 2018, Misc. Application 353 of 2018, Misc. Application 354 of 2018, Misc. Application 355 of 2018, Misc. Application 356 of 2018, Misc. Application 358 of 2018, Misc. Application 297 of 2018, and Misc. Application 301 of 2018 pursuant to orders given in Nairobi High Court Civil Suit Number 15 of 2018- Daniel Karuru Mwaura T/A Karuru Company Advocates vs County Government Of Kiambu.

II. The costs of the Chamber Summons dated 1st December 2020 shall be in the cause.

III. The Applicant shall file and serve the Respondents with the substantive Notice of Motion and submissions thereon, and shall also serve the Respondent with the Chamber Summons dated 1st December 2020, a copy of this ruling, and 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 their responses to the substantive Notice of Motion and submissions thereon within twenty-one (21) days from the date of service by the Applicant.

V. This matter shall be mentioned on 2nd February 2021 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 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 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 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.

X. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the Applicant by electronic mail by close of business on Thursday, 3rd December 2020.

XI. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 2nd February 2021.

XII. Parties shall be at liberty to apply.

11. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF DECEMBER 2020

P. NYAMWEYA

JUDGE