



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**JUDICIAL REVIEW CASE NO. 2 OF 2019**

**REPUBLIC.....APPLICANT**

**VESUS**

**MERU COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**TITUS NTOCHIU, THE MERU COUNTY**

**EXECUTIVE COMMITTEE (C.E.C)**

**MEMBER OF FINANCE.....2<sup>ND</sup> RESPONDENT**

**RUFUS MIRITI, THE COUNTY SECRETARY.....3<sup>RD</sup> RESPONDENT**

**EXPARTE**

**NICE RICE MILLERS LIMITED**

**RULING**

1. By a Notice of Motion dated 14<sup>th</sup> February, 2019 the *ex parte* applicant, **Nice Rice Millers Limited**, sought the following reliefs:-

***“2. That the applicant be granted leave to apply for:-***

***a) An order of Mandamus compelling the RESPONDENTS herein to pay a sum of Kshs. 134,145,234.70/= plus accrued interest as ordered in MERU HC. CIVIL SUIT NO. 4 of 2015.***

***3. That the court be pleased to issue such further relief as it may deem fit and just to.” (sic)***

2. The *ex-parte* applicant had sued the Meru County Government in **H.C.C No. 14 Of 2015 Nice Rice Millers Limited vs. Meru County Government**. In that suit, the *ex-parte* applicant had claimed compensation for financial loss suffered as a result of unlawful acts on the part of that government against it. Judgment was entered in its favour whereby, as a result of interest and costs, the amount outstanding as at the time of the present application was shown to be Kshs.134,145,234.70 in respect of which, a Certificate of judgment against the County Government of Meru had been issued.

3. The respondents opposed the application vide grounds of opposition dated 28<sup>th</sup> February 2019. They contended that the application was incompetent, bad in law and an abuse of the court process.

4. At the hearing of the application, Mr. Kiunga, Learned Counsel for the respondents submitted that while the applicant had been granted leave on 12<sup>th</sup> February, 2019 and ordered to lodge its Motion within 14 days, no such Motion had been filed. That what was before court was yet another application seeking leave to apply for an order of Mandamus. In the premises, Mr. Kiunga submitted that there was no proper substantive Judicial Review Motion before court for consideration. On his part Mr. Magee learned Counsel for the *ex-parte* applicant submitted that this was a matter of semantics as the respondents knew what orders were being sought against them.

5. I have considered the record and submissions of counsel. The applicant had sought leave to apply for an order of Mandamus on 11<sup>th</sup> February 2018 which was granted on 12<sup>th</sup> February 2019. The substantive Motion was ordered to be filed within 14 days. On 14<sup>th</sup> February,

2019, the applicant filed a Motion on Notice seeking the above noted orders.

6. It is obvious that what the applicant was to seek was an order for Judicial Review order of Mandamus. But in its Motion before court, it sought leave to bring an application for such an order. I am mindful that that might have been an oversight. However, when the respondent raised it both in its Grounds of Opposition and the submission of Mr. Kiunga, there was no application on the part of the applicant to amend the Motion. As it stands, the order sought before me is one for leave to apply for an order of Mandamus.

7. To my mind, that order is not available to the applicant as it had already been granted on 12<sup>th</sup> February, 2019. I am mindful of the provisions of **Article 159 of the Constitution**. I am in doubt if I can exercise that jurisdiction and hold that this is a technicality when the applicant neither invited me to rule as such nor applied for amendment. It is also an equitable remedy to look at the intent rather than the form. But the respondent have already responded to the application on matters of law rather than fact. Ruling otherwise will, in my view, prejudice the respondent.

8. In the circumstances, I find the Notice of Motion dated 14<sup>th</sup> February, 2019 to be fatally defective and it is hereby struck out with costs. The applicant may commence the proceedings in the normal manner.

Orders accordingly.

**DATED** and **DELIVERED** at Meru this 14<sup>th</sup> day of March, 2019.

**A. MABEYA**

**JUDGE**