



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

JUDICIAL REVIEW CASE NO. 2 OF 2019

REPUBLIC APPLICANT

VERSUS

MERU COUNTY GOVERNMENT 1ST RESPONDENT TITUS NTOCHIU (CEC)

MEMBER OF FINANCE 2ND RESPONDENT RUFUS MIRITI

THE COUNTY SECRETARY 3RD RESPONDENT

AND

NICE RICE MILLERS LIMITED EXPARTE APPLICANT

RULING

1. Before me is a Motion on Notice dated 21st March, 2019 by the respondents under ***Order 45 Rules 1 and 2 of the Civil Procedure Rules and Section 3a (sic) of the Civil Procedure Act***. The application seeks that the court does review its decision made on 14th March, 2019 by correcting the title from ‘*Ruling*’ to ‘*Judgment*’ and consequently hold that the application dated 14th February, 2019 was ‘*dismissed*’ and not ‘*struck out*’.

2. The grounds for the application were contained in the body of the Motion and the supporting affidavit of Mutuma Kibanga sworn on 21st March, 2019. It was contended that the decision of this court of 14th March, 2019 (“the impugned decision”), emanated from a substantive Notice of Motion; that it did not emanate from any preliminary objection or interlocutory application from which a ruling could result.

3. That there is therefore an error apparent on the face of the record to entitle the decision a ‘*ruling*’ instead of a ‘*judgment*’. Further, that the conclusion should have therefore been to dismiss the application rather than to have it struck out.

4. The exparte-applicant opposed the application vide a replying affidavit sworn by Charles Njiru Kaburu on 4th April, 2019. He contended that the respondents had argued that the application dated 14th February, 2019 was incompetent as it was seeking leave to apply for mandamus; that the impugned decision therefore dealt with the competency and not the merits of the application dated 14th February, 2019.

5. He further contended that as a result, the court made a ruling finding that there was no substantive Motion before it. He therefore concluded that the application dated 14th February, 2019 was struck off on a legal technicality and was not determined on merit.

6. **Mr. Kibanga**, Learned Counsel for the respondents and **Mr. Magee**, Learned Counsel for the Exparte-applicant appeared at the hearing and made oral submissions which I have carefully considered. The issue before me is whether it was an error apparent on the record, to entitle the impugned decision a ‘***ruling***’ instead of a ‘***judgment***’ and to ‘***strike out***’ That decision rather than ‘***dismissing***’ it.

7. A judgment is the decision that finally determines the rights between the parties while a ruling is a decision that is made in the interim that does not determine with finality the dispute between the disputants. In this regard, a judgment would be rendered after all the issues in the controversy are considered and the controversy or dispute settled.

8. It follows therefore that a judgment determines the controversy with finality while a ruling may partially determine an issue or some issues but does not settle the controversy between the disputants. There remains some other matters to be considered before the controversy can be finally settled.

9. The general rule therefore is that, when a court is not determining the entire subject matter in controversy between those before it, it would

render a ruling. It will not render a judgment if there is anything else left to be considered.

10. The Motion dated 14th February, 2019 sought for “**leave to be granted to the Exparte-applicant to apply for orders of Mandamus to compel the respondents to pay**” to the Exparte-applicant the monies specified therein. The Exparte-applicant did not require such an order as the same had been granted to it on 12th February, 2019.

11. In the impugned decision, the court found that a similar order having been given earlier, the same was not available to it. What the Exparte-applicant was supposed to have filed was a substantive Notice of Motion seeking an order of Mandamus to compel the respondent to pay the subject amount. The court found that to the extent that the application before it was not a substantive Notice of Motion, under judicial review proceedings, there was no proper application so called before it to consider.

12. Accordingly, the court did not address the issues in dispute between the parties, leave alone determine any of them. In this regard, the court could not have delivered a judgment as it had not addressed and determined the dispute between the parties.

13. The court having found that there was no proper or any substantive Notice of Motion before it, it could not dismiss the application. All it had to do was to strike it out. By dismissing the application, the court would have acted so wantonly as to bar the Exparte-applicant from agitating its case with a compliant application. This is so because, by use of the term “**dismissed**”, it would presuppose that the court would have considered the issues on merit and found them unmeritorious, which was not the case. That would lead to the application of the doctrine of **res judicata** yet none of the issues had been considered and determined.

14. Accordingly, I hold that there was no error apparent on the face of the record by the use of the terms **ruling** instead of **judgment** and **struck out** instead of **dismissed** in the decision of 14th March, 2019.

15. In my view, if by use of the aforesaid terms instead of those terms propagated by the respondents amounted to an error, then that must have been an error of law whose remedy is not review but appealing to the Court of Appeal which has the jurisdiction to right such errors.

16. Accordingly, I find the application dated 21st March, 2019 to be without merit and dismiss the same with costs.

DATED and DELIVERED at Meru this 2nd day of May, 2019.

A. MABEYA

JUDGE