

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISII

MISC. APPLICATION NO. 76 OF 2018

WILFRED ISABOKE ONDIEKI.....APPLICANT

VERSUS

KISII COUNTY GOVERNMENT.....RESPONDENT

RULING

1. Judgment was entered for the Applicant in Kisii CMCC No. 502 of 2015 for Kshs. 258,000/- on the 24th July 2015. The Applicant subsequently obtained a decree and certificate of costs dated 27th September 2018 and 27th September 2018 respectively. In an application for execution of the decree the applicant sought the sum of Kshs. 546,775/- which comprises, the sum awarded in the decree Kshs. 264,020, interest from 9/11/2015 to date (date of application) Kshs. 156,000/-, further court fees Kshs. 16880/- and costs Kshs. 109875/- totalling Kshs. 546,775.

2. On the 7/12/2018 the Applicant filed an application dated the 7/12/2018 seeking leave to file an application for Mandamus directed against Kisii County Chief in charge of Finance and Economic Planning to compel him to honour the Decree and Certificate of Costs issued on the 27/9/2018 in Kisii CMCC No. 502 of 2015 to pay the exparte applicant a sum of Kshs. 490,775/= together with interest thereon at the rate of 12% till payment in full. Leave was granted and the applicant filed the Notice of Motion dated the 14/12/ 2018 seeking an order of Mandamus to compel the Kisii Chief Officer in charge of Finance and Economic Planning to honor the Decree and Certificate of Costs issued on the 27/9/2018 in Kisii CMCC No. 502 of 2015 and to pay the exparte Applicant herein the sum of Kshs. 490,775/- together with further costs and interest thereon at the rate of 12% till payment in full failing which the said officer aforesaid be committed to civil jail for a term of six months. That costs be borne by the applicant. The application is grounded on the grounds stated on the face of the application and the supporting affidavit of the Applicant.

3. On the 6/3/2019 parties recorded a consent that the Respondent be allowed 14 days to pay the sum owing to the Applicant in default of which the Minister of Finance to be served with the Notice to Show Cause (NTSC) as to why he should not be committed to civil jail. The amount has not been paid to date. In a further affidavit dated the 6/6/2019 Counsel for the Applicant sought to clarify the amount indicated in the NTSC. He avers that the amount was for Kshs. 490,775/- instead of Kshs. 546,775/- from the Lower Court and that he requested the Lower Court to enter the correct amount Kshs. 546,775/-. That he added a sum of Kshs. 105,820/- to make it Kshs. 652595/-. That the sum of Kshs. 105,820/- are the costs of the High Court being; Advocates fees of Kshs. 50,000/-, interest on the sum of Kshs. 546,775.000 from the time of filing the present suit (712/2018) at 16% p. a Kshs. 43,760/- and attendances for 6 days on various dates Kshs. 2300/-, Kshs.15000/- per hour, service of documents Kshs. 6000/- and Court fees Kshs. 3140/-. Counsel claims that the sum of Kshs. 105820/- is reasonable and is even below what is charged. That the amount of Kshs. 546,775/- from the Lower Court plus Kshs. 105,820/- being costs in the High Court totals Kshs. 652595/- all inclusive.

4. On the 10/6/2019 Mr. Mosota for the Respondent indicated that they did not oppose the application and that they had agreed that the Applicant's Counsel would take a sum of Kshs. 50,000/-. He asked the court to look at the element of interest.

5. I have considered the application dated the 14th December 2018, basically it is not opposed by the Respondent. The exparte Applicant seeks orders of Mandamus to compel the Kisii Chief Officer in charge of Finance and Economic planning to honor the Decree and Certificate of Costs issued on the 27.9.2018 in Kisii CMCC No. 502 of 2015. Since the application has not been opposed I grant the order sought by the exparte Applicant of mandamus to compel the Kisii Chief Officer in charge of Finance and Economic Planning to honor the Decree and Certificate of Costs issued on the 27/9/2018 in Kisii CMCC No. 502 of 2015. The amount owing which shall be paid to the exparte Applicant is Kshs. 546,775/- together with interest at court rates at 14% from the date of filing the present suit until payment in full. The Advocates costs are assessed at Kshs. 50,000/-, plus Kshs. 546,775/- the amount the Respondent shall pay is Kshs. 596,775/- within 14 days from date of the ruling in default the accounting officer of the Kisii County Government shall be committed to civil jail for a period of 6 months at the exparte applicant's expense. Cost of the application to the Applicant.

Dated, signed and delivered at **Kisii** on the 12th day of **June 2019**.

R.E.OUGO

JUDGE

In the presence;

Mr. Okenye For the Exparte Applicant

Respondent Absent

Rael Court clerk