

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW NO. 9 OF 2019

REPUBLIC.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF MERU.....1stRESPONDENT

COUNTY EXECUTIVE COMMITTEE (CEC)....2ndRESPONDENT

COUNTY SECRETARY.....3RD RESPONDENT

RULING

Application dated 28th June 2019 was brought under certificate of urgency seeking that leave be granted to the applicant to apply for an order of Mandamus compelling the Respondents herein to pay a sum of Ksh 1591668 being unpaid balance of decretal amount in Meru HCCC No. 10 of 2015 Jumai Electrical Services Ltd vs County Government of Meru.

The applicant also sought for costs of application. This application was opposed. The application is supported by grounds on its face and statements on facts relied upon as well as affidavit of verification of statement of facts. The application is opposed by the Respondents in Replying Affidavit of Rufus Miriti sworn on 17th July 2019.

Having considered the application, the Replying affidavit and submissions as to whether leave should be granted to the exparte applicants to apply for an order of mandamus. It is noted with gratitude to the Respondent that it paid a substantial part of the decretal sums of Kshs 17,203, 797 and left a balance of Kshs 1,591,668 as withholding tax.

The view of this court is that there is contention as to whether the amount withheld is with holding tax or not and not that Respondents have refused to pay. This is an issue that should be canvassed in the mother suit HCC No. 10 of 2015 and not in Judicial Review proceedings.

The application is therefore dismissed with costs to the Respondents.

HON A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 7TH NOVEMBER 2019.

In the presence of:

CA:- Kinoti

Mr Kithinji Advocate holding brief for J.G. Gitonga Advocate for Exparte Applicant.

Mr Laichena Mugambi Advocate for Respondent – No appearance.

HON. A.ONG'INJO

JUDGE