



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISCELLANEOUS APPLICATION NO. 1 OF 2018

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW BY WAY OF MANDAMUS

AND

IN THE MATTER OF THE COUNTY GOVERNMENT OF VIHIGA

AND

IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT, CAP 40 LAWS OF KENYA

BETWEEN

TRANS AFRICAN MOTORS LIMITED.....APPLICANT

VERSUS

COUNTY SECRETARY, COUNTY

GOVERNMENT OF VIHIGA.....RESPONDENT

RULING

Introductions

1. By a Notice of Motion dated 29th January, 2018, the ex parte applicant herein, seeks the following orders:

1. That leave be granted to the applicant of Mandamus directed to the respondent to pay to the applicant the sum of Kshs. 15,040,014/- being the decretal amount in Kisumu Chief Magistrate's Court Civil Case No. 32 of 2017 together with Kshs. 550,160/- being the certified costs and interest thereon at 14% per annum from the date of judgment, 20th September, 2017 until payment in full.

2. That costs provided for

Application

2. According to the applicant, he obtained a decree in Kisumu Chief Magistrate's Court Civil Case No. 32 of 2017 on 8th December, 2017 requiring the respondent to pay him Kshs. 15,040,014/- Chassis No. 8FADO 4365, Engine No. 1515 C001286 and Low Loader OLHR048ZE with complete tools, spare tyres, fifth wheel, digital governors fitted winch together with costs taxed at Kshs. 550,160/- and interest thereon at 14% per annum from the date of judgment, 20th September, 2017

3. Moses Munuang'o, advocate for the applicant in his supporting affidavit sworn on 29th January, 2018 avers that despite extracting the decree and certificate of costs and serving the same upon the County Secretary of Vihiga County Government on 13th December, 2017, the respondent has failed to settle the matter

4. The issue for determination is whether this Court ought to grant the order sought herein.

5. Under the County Governments Act No. 17 of 2012, the County Executive in Charge of Finance or by whatever other name the officer may be described, is the one under obligation to pay funds, in the capacity of the accounting officer.

6. It must always be remembered that a judicial review application is neither a criminal case nor a civil suit hence the application ought to be brought against the person who is bound to comply with the orders sought therein (***See Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County Ex Parte Stanley Muturi [2016] eKLR***). In this case the Respondent ought to have been the Accounting Officer.

7. The court record shows that the decree was neither served on the County Executive in Charge of Finance nor has the suit been brought against the said officer.

Order

8. In the result I disallow the Notice of Motion dated 29th January, 2018 with no order for costs.

DATED, DELIVERED AND SIGNED THIS 10TH DAY OF MAY 2018

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Felix

Petitioner - N/A

Respondent - N/A