



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC APPL NO. 3 OF 2012 (JR)

IN THE MATTER OF AN APPLICATION BY SILVERSPREAD HARDWARES LTD

FOR LEAVE TO APPLY FOR ORDERS OF MANDAMUS

-AND-

IN THE MATTER OF THE COUNTY SECRETARY MURANG'A

COUNTY GOVERNMENT AND MURANG'A COUNTY GOVERNMENT

-AND-

IN THE MATTER OF URBAN AREAS AND CITIES ACT

-AND-

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT, CIVIL

PROCEDURE ACT, GOVERNMENT PROCEEDINGS ACT

BETWEEN

REPUBLIC.....APPLICANT

-V-

THE COUNTY SECRETARY MURANG'A

COUNTY GOVERNMENT.....1ST RESPONDENT

COUNTY GOVERNMENT OF MURANG'A.....2ND RESPONDENT

SILVERSPREAD HARDWARES LIMITED.....EX-PARTE APPLICANT

JUDGMENT

[1] Before me is a Notice of Motion brought under Sections 8 and 9 of the Law Reform Act and Order 53 Subsections 1, 2 and 3 of the Civil Procedure Rules, in which the Ex parte Applicant seeks an order of Mandamus to compel the Respondents to pay the sum of Kshs 4,371,248/= being the decretal amount together with costs and interests in MERU CMCC NO. 295 OF 2016, SILVERSPREAD HARDWARES VERSUS COUNTY GOVERNMENT OF MURANG'A together with costs and interests of this application.

[2] The Application is supported by the grounds on the face of it and an affidavit sworn by Ramesh Hirani. They argued inter alia that the Applicant was the decree holder in MERU CHIEF MAGISTRATE CIVIL SUIT NO. 295 OF 2016, arising from a contractual relationship. This was as a result of a consent judgment. The Respondents made a partial payment of Kshs 2,556,618 and refused to pay the balance. As a consequent, the Applicant has wrongfully been deprived of the fruit of its judgment. The Applicant further contended that it was aware that it could not execute against County Government and the only remedy was an application of judicial review proceedings.

[3] When the matter came up for hearing on 23rd May 2018, the court directed the Applicant to file and serve submissions in 14 days, and the Respondent to file theirs within 14 days of service. On 19th July 2018, Mr. Muriuki for the Applicant intimated to court that that they had served submissions as ordered. The Respondent however did not file submissions as directed.

[4] Briefly it was submitted for the Applicant that it was trite law that the only way to enforce a money decree against a County Government was by institution of judicial review proceedings and seeking a writ of mandamus and for this proposition reliance was placed on the case of **DANSON MWANGI KIAWANO V COUNTY SECRETARY, NAIROBI CITY COUNTY** where it was inter alia held as follows:-

“In the present case the ex parte applicant has no other option of realizing the fruits of his judgment since he is barred from executing against the government. Apart from mandamus he has no option of ensuring that judgment he has been awarded is realized.”

ANALYSIS AND DETERMINATION

[5] I have carefully considered the instant motion and the submissions by the Applicant. It is not in dispute that a consent judgment was entered for the Applicant in the sum of Kshs 6,024,214/= together with agreed interest of Kshs 240, 968/= and costs of Kshs 312,900/=. The Applicant contended that it had made several attempts to have the balance settled but in vain and all this averments remained unconverted.

[6] In **Republic vs. Kenya National Examinations Council ex parte Gathengi & 8 Others Civil Appeal No 234 of 1996**, the Court of Appeal cited, with approval, *Halsbury’s Law of England, 4th Edn. Vol. 7 p. 111 para 89* thus:

“The order of mandamus is of most extensive remedial nature and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.

[7] More judicial pronouncements; In **Republic vs. Permanent Secretary Ministry of State for Provincial Administration and Internal Security & Another ex parte Fredrick Manoah Egungza** Githua J stated thus;

“The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issues against the Government is found in section 21(1) and (2) of the Government Proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon. Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon. Attorney General, Section 21(3) imposes a statutory duty on the accounting officer to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues. The Respondent’s claim that the Applicant should have waited until the start of the next financial year to enforce payment of the decree issued in his favour cannot be sustained firstly because it has no legal basis and secondly because it is the responsibility of the Government to make contingency provisions for its liabilities in tort in each financial year so that successful litigants who obtain decrees against the Government are not left without remedy at any time of the year.”

[8] I follow after the postulation of law expressed by the Learned Judge in the above cited case. In the circumstances of this case, I find the Applicants application dated 7th May 2018, to be merited and I accordingly allow it with no order as to costs.

Dated, signed and delivered in open court at Meru this 1st day of November 2018

F. GIKONYO

JUDGE

In presence of

Muriuki for ex-parte applicants

N/a for respondent

F. GIKONYO

JUDGE