



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 1115 OF 2003**

**PATRICK ATENYA ASITIBA.....1<sup>ST</sup> APPLICANT**

**PHANICE ONDECHE ASITIBA.....2<sup>ND</sup> APPLICANT**

**- V E R S U S -**

**CITY COUNTY OF NAIROBI..... RESPONDENT**

**RULING**

1) Upon obtaining leave from this court, Patrick Atenya Asitiba and Phanice Ondече Asitiba, the *exparte* applicants herein took out the motion dated 28.6.2018 whereof they sought for the following orders:

*a) THAT this honourable court do hereby issue an order of mandamus compelling the respondent to pay to the plaintiffs/applicants the sum of ksh.12,000,000 in fulfilment of the court order issued in High Court Civil Suit No. 1115 of 2003.*

*b) THAT honourable court do hereby issue an order of mandamus compelling the respondent to pay the costs in High Court Civil Suit No. 1115 of 2003 to the plaintiffs/applicants as adjudged on 19<sup>th</sup> October 2017.*

The motion is supported by the affidavit of Patrick Atenya Asitiba. When served with the motion, City County of Nairobi, the respondent herein, filed grounds of opposition.

2) I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavit. I have further considered the grounds of opposition together with the rival oral submissions.

It is the submission of the applicants that they obtained a judgment delivered in their favour on 19.10.2017 in the sum of ksh.12,000,000/= and against the respondent.

3) The applicants also stated that despite demanding for payment of the judgment sum, the respondent has neglected to settle the decree. This court was urged to grant the orders sought since the law shields the County Government from attachment in execution of court orders and decrees.

4) The respondent on the other hand have urged this court not to issue the orders sought because the judgment came in the middle of the County's financial year and the debt has to be factored in the County Government's budget in new financial year. It was stated that the respondent is ready to pay the applicants' once money is allocated approved and passed by the County Assembly under Section 125 of the Public Finance Management Act (2012).

5) It is apparent from the arguments presented by both sides that the judgment sum is not disputed. It is also not in dispute that the County Secretary, Nairobi County being the accounting officer hence he is mandated to settle debts and liabilities of the County Government on its behalf.

6) In this case, the respondent has stated that the current debt came to the knowledge of the respondent in the middle of

the financial year. I find the last submission to be incorrect. The record clearly shows that this court delivered its judgment on 19th October 2017, therefore the respondent had ample time to initiate the process of having the decretal sum factored in the 2018/2019 County annual budget. It is a matter of public notoriety that the financial year commences in the month of July every year.

7) Under Section 21(4) of the Government Proceedings Act, no attachment by execution against Government properties is allowed. With respect, I agree that the available remedy at the moment is the order of mandamus directed against the County Secretary.

8) I am satisfied that the applicants are entitled to the orders sought. Consequently, the motion dated 28.6.2018 is allowed in terms of prayers (a) and (b).

**Dated, Signed and Delivered in open court this 7<sup>th</sup> day of December, 2018.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent