

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 29 OF 2017

IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA

AND

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

REPUBLIC.....APPLICANT

VERSUS

COUNTY SECRETARY, NAIROBI COUNTY GOVERNMENT.....RESPONDENT

SAMUEL MBUGUA GACHUHI.....EXPARTE APPLICANT

JUDGMENT

1. The exparte applicant was on 15th February 2017 granted leave to institute Judicial Review proceedings seeking for mandamus to compel the respondent to settle decree in Nairobi HCC 1595/2002 Samuel Mbugua Gachuhi vs The City Council of Nairobi & 3 others . The main motion was filed on 7th March 2017 within the stipulated 21 days. The motion which is dated 28th February 2017 and unopposed seeks for Judicial Review order of mandamus to compel the City County Secretary of Nairobi County to settle the decree in the sum of the shs 1200,703. 67 as at 31st December 2016 with further interest.

2. The County Government is, under the Government proceedings, like the National Government and as such, no execution can issue against the government. It is for that reason that Judicial Review proceedings are instituted to compel settlement of a decree which is a legal duty of a judgment debtor.

3. I have seen decree of 28th July 2008 issued on 16th September 2008. There has been claims/demands for settlement and the respondent send counsel to this court severally to undertake to settle but todate there has been no settlement of that decree. If mandamus does not issue, the judgment of 28th July 2008 by Angawa J in HCC 1595/2002 shall be a mere paper judgment and the applicant is rendered a mere pious explore in the judicial process. It is for that reason that I find the motion by the applicant for mandamus merited.

4. I grant the Judicial Review order of mandamus as sought in prayer No. 1 of the motion dated 28th February 2017 together with costs of these Judicial Review proceedings. The decree to be settled in the next 45 days and in default the applicant is at liberty to apply.

Dated, signed and delivered in open court at Nairobi this 3rd day of May 2017.

R. E. ABURILI

JUDGE