

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

MISCELLANEOUS CIVIL APPLICATION NO 317 OF 2014

AKKAD SYSTEMS LIMITED.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF NAIROBI...RESPONDENT

JUDGEMENT

1. Before this Court for determination is the Notice of Motion Application filed on 8th October, 2014 in which the Applicant, Akkad Systems Limited seeks orders that:

“1. AN ORDER of mandamus do issue compelling the Secretary County Government of Nairobi to settle the decretal amount in Chief Magistrate Court Nairobi Milimani Commercial Case Number 484 of 2013 currently outstanding at Ksh.3,510,000/= which decree was issued on 13th day of November 2013 and certificate of order against the County Government of Nairobi issued on 27th June 2014.

2. Costs of this suit be provided for.”

2. The County Government of Nairobi is the Respondent.

3. The Applicant’s case is that judgement was delivered in its favour and against the Respondent on 13th November, 2013 in **Milimani CMCC No. 484 of 2013**. A decree and a certificate of order were later served upon the Respondent but the Respondent has refused and/or neglected to pay the decretal amount.

4. The application is not opposed although the Respondent was represented by counsel in this matter.

5. From the papers filed in court, the facts in this matter are fairly straight forward. The Applicant and the Respondent entered into a contract in January 2013 for supply of goods and services. The Applicant dutifully executed its part of the contract and the Respondent was to pay a sum of Kshs. 4, 358, 685/=.

6. The Respondent failed to pay the contract sum and the Applicant filed **Milimani CMCC No. 484 of 2013** against the Respondent seeking the payment of the contract sum. Subsequently the suit was compromised and the parties to the dispute entered consent which was adopted as judgement of the Court on the 13th November, 2013. A decree was issued on 23rd April, 2013 for the agreed sum of Kshs. 3,510,000/=. The Respondent has not paid the said amount.

7. As was stated by the Court of Appeal in **Kenya National Examination Council v Republic, exparte Geoffrey Gathenji & 9 others, Nairobi Civil Appeal No. 266 of 1996**, “an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed...”

8. The order of mandamus is available where there is a specific right and there is no specific remedy for enforcing that right. Even where there is an alternative remedy, an order of mandamus will issue if it is the most convenient, beneficial and effective remedy.

9. The Respondent herein has a statutory duty imposed by Section 23 of the Government Proceedings Act, Cap 40 to pay without delay the sum indicated in a certificate of order issued against a government department by a competent court. There is no dispute that the Respondent has failed to pay the decretal amount in **Milimani CMCC No. 484 of 2013**.

10. The end result is that the Applicant has satisfied the conditions for the issuance of an order of mandamus. An order of mandamus will thus issue as prayed in the Applicant's Notice of Motion filed in court on 8th October, 2013. The Applicant is awarded the costs of these proceedings against the Respondent.

Dated, signed and delivered at Nairobi this 5th day of Nov., 2015

W. KORIR,

JUDGE OF THE HIGH COURT