Summ v County Government of Nakuru & 3 others (Judicial Review E002 of 2024) [2024] KEELRC 1817 (KLR) (11 July 2024) (Ruling)

Neutral citation: [2024] KEELRC 1817 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

JUDICIAL REVIEW E002 OF 2024

DN NDERITU, J

JULY 11, 2024

BETWEEN

JUDITH C. RUTO SUMM ..... APPLICANT

AND

COUNTY GOVERNMENT OF NAKURU ..... 1ST RESPONDENT

COUNTY SECRETARY, COUNTY GOVERNMENT OF NAKURU .... 2ND RESPONDENT

CHIEF OFFICER FINANCE, COUNTRY GOVERNMENT OF NAKURU ..... 3RD RESPONDENT

CECM FINANCE, COUNTY GOVERNMENT OF NAKURU 4TH RESPONDENT

RULING

I. Introduction

1. By way of a notice of motion (the application) dated 28th February, 2024 filed through Magatta & Associates, Advocates, the applicant is seeking the following –

    1. That an order of *mandamus* do issue compelling the 1st Respondent accounting officers viz, the 2nd – 4th Respondents, to pay the *ex-parte* Applicant the judgment debt in the sum of Kshs6,324,082.70/= together with costs which have been assessed and certified by Honourable Magistrate at Kshs216,602/= together with all accrued interest on the costs at 14% per annum from the 16th August 2023 until the date of payment arising from the decree made on 27th July 2023 in Nakuru Cmcc Misc. Civil App. No. E094 Of 2023 *Judith C. Ruto Summi -v- County Government Of Nakuru*.

    2. That the respondent pays the *ex-parte* applicant's costs of this application.

2. The application is expressed to be filed pursuant to Order 53 Rule 3(1) of the *Civil Procedure Rules* and based on the grounds on the face of it and supported with the filed statutory statement of facts and the verifying affidavit of the applicant sworn on 16th February, 2024 with several annexures thereto.

3. Upon service, the respondents did not respond to the application and this ruling is based on the *ex parte* presentations by the applicant.

II.Evidence/affidavits

4. The court granted leave to the applicant on 16th February, 2024 to file judicial review proceedings against the respondents for an order of *mandamus* within 14 days of that order. The order of *mandamus* is intended to compel the respondents to pay to the applicant a sum of Kshs6,324,082/= together with costs of Kshs216,602/= and interest on the two sums of money at 14% per annum from 16th August, 2023 until payment in full.

5. The application is founded on the judgment and the decree of 27th July, 2023 rendered in Nakuru CMCC Misc. Civil Application No. E094 of 2023 – *Judith C. Ruto Summ V County Government of Nakuru.*

6. Upon service, as per the affidavit of service on record, the respondents did not react to the application and on 4th April, 2024, Mr. Magatta for the applicant submitted that the application be allowed as prayed.

7. Essentially, the application is seeking for an order of *mandamus* compelling the respondents to settle the decretal sum plus the assessed costs as awarded in the above-mentioned cause.

8. In the statutory statement of facts and the verifying affidavit in support it is stated that in a ruling delivered on 20th July, 2023 the applicant was awarded a sum of Kshs6,324,082.70/= plus costs which costs were subsequently assessed at Kshs216,602/= and a decree accordingly issued on 27th July, 2023 in Nakuru CMCC Misc. Civil Application No. E094 of 2023 cited above. A certificate of an order against a county government was issued on 27th July, 2023.

9. The applicant has exhibited copies of documents in support of the contents in the foregoing paragraph. The orders sought in the application are thus sought to enforce payment and settlement of the decretal sum plus costs and interest thereon.

III. Determination

10. Upon careful and thorough reading of the application, the statement of facts, the verifying affidavit in support, and the annexures thereto, the court is satisfied that the application has merits and the same is allowed as prayed with costs.

IV. Orders

11. For all the foregoing reasons, the application is allowed and the following orders issued –

    a. An order of *mandamus* be and is hereby issued compelling the respondents to pay to the *ex-parte* applicant the sum of Kshs6,324,082.70/= plus costs of Kshs216,602/=, together with interest @ 14% per annum on both sums of money from July, 2023 till payment in full.

    b. The applicant is granted the costs of the application which are hereby assessed at Kshs20,000/=.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT NAKURU THIS 11TH DAY OF JULY, 2024.

.....

DAVID NDERITU

JUDGE