

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT CHUKA**  
**JUDICIAL REVIEW NO. E005 OF 2024**

**ALBERT GITARI LUKA T/A HAKIM COMMERCIAL AGENCIES.....APPLICANT**

**VERSUS**

**THE COUNTY SECRETARY, COUNTY GOVERNMENT OF THARAKA NITHI COUNTY .....1ST RESPONDENT**

**FINANCE COUNTY GOVERNMENT OF THARAKA NITHI.....2<sup>ND</sup> RESPONDENT**

**THE CHIEF OFFICER IN CHARGE OF FINANCE COUNTY GOVERNMENT.....3<sup>RD</sup> RESPONDENT**

**THE PRINCIPAL SECRETARY MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVT.....4<sup>TH</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**RULING**

1. The Petitioner filed Chamber Summons dated 2<sup>nd</sup> May 2024 seeking orders:-

(i) That leave be granted to the Applicant to institute Judicial Review proceedings seeking an order of mandamus compelling the Respondents to pay the Applicant forthwith and without delay the decretal sum of Kshs.427,470/- (Four Hundred and Twenty Seven Thousand Four Hundred and Seventy Shillings) in Meru Constitutional Petition No. 4 of 2016 together with the accruing interest until payment in full.

(ii) That costs of the Application be borne by the Respondent.

2. The Application was premised on the grounds that:-

(i) That via a judgement delivered on 9<sup>th</sup> February, 2023 the Honourable Court in Meru

Constitutional Petition No. 4 of 2016 held that both the County Government of Tharaka Nithi and National Government had infringed on the Applicant's constitutional rights in stopping the operation of his business.

- (ii) The court condemned the Respondent to pay the costs of the Petition.
- (iii) The Applicant lodged the bill of costs dated 12<sup>th</sup> June, 2023 and the Deputy Registrar taxed the bill of costs at Khs427,470/- (Four Hundred and Twenty Seven Thousand Four Hundred and Seventy Shillings only.)
- (iv) No reference was preferred challenging the assessed cost and the Applicant was issued with the Certificate of Costs dated 12<sup>th</sup> March, 2024.
- (v) The Applicant duly extracted and served the Certificate of decree against the Government,

the certified copy of judgement and the Certificate of Costs to the Respondents and receipts was acknowledged.

- (vi) The Applicant demands have been met with absolute muteness, leading to conclusion that the Respondents have deliberately failed to satisfy the sum outstanding.
- (vii) The Applicant had duly complied with the provision of section 21 of the Government Proceedings Act and is therefore seeking the leave of this court to file an Application seeking an Order of Mandamus to compel the Respondent to settle the amounts owed.

3. The Summons were first filed in the High Court in Meru as JR No. E004/2024. The same was transferred to this court for disposal by an order of

the court (Cherere J.) dated 13<sup>th</sup> May 2024 on grounds of territorial jurisdiction.

4. The matter came up on 2<sup>nd</sup> October 2024 before Gitari J. who issued directions on its disposal. Parties were required to file responses and submissions within specified time frames. The matter came up several times with the court noting non-attendance of the Respondents who were duly served as evidenced by the affidavits of service on record.

### **The Applicant's case**

5. The Applicant's case is that they obtained judgement and Decree in Meru Constitutional Petition No. 4 of 2016 which the court awarded costs which were subsequently taxed at the sum of Khs.427,470. That they served the Respondents with the judgement and decree. That to date the Respondents have neglected to pay the decretal sum.

6. The Applicant submitted that it had met the threshold for grant of leave under Order 53 Rule 1. That it had established a *prima facie* case to warrant the exercise of the court's discretion in their favour.

### **Analysis and determination**

7. I have considered the Application. I observe from the outset that the Application is unopposed. None of the Respondents filed any responses to the Application.

8. The Applicant has demonstrated that it has a decree in its favour which has neither been challenged nor set aside. It has shown that the said decree remains unsatisfied by the Respondents.

9. The decree annexed to the Application was against the National and County Governments and the present Application for judicial review orders is the

legal pathway to execution of the decree against government.

10. It is my finding that the Applicant has established a *prima facie* case and was deserving of the orders sought.

11. In the end, I grant leave to the Applicants to bring Judicial Review proceedings to compel the Respondents to honour the decree. The substantive Application be served within 21 days.

12. Costs shall abide the outcome of the judgement in the judicial review.

Orders accordingly.

**Ruling delivered, dated and signed at Chuka  
this 17th day of March, 2026.**

.....  
**R. LAGAT-KORIR**

## **JUDGE**

**Ruling delivered in presence of Ms Chisenga for the Applicant and in the absence of the Respondents. (Muluvi Court Assistant.)**

ORIGINAL