



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**MISCELLANEOUS APPLICATION NO. 31 OF 2017**

**(Formerly Machakos Misc. Application No. 334 of 2016)**

**IN THE MATTER OF AN APPLICATION FOR ORDER OF MANDAMUS**

**AND**

**IN THE MATTER OF ARTICLE 23(F) OF THE CONSTITUTION OF KENYA**

**AND**

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

**AND**

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES AND ALL THE OTHER ENABLING PROVISIONS OF THE LAW**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE COUNTY GOVERNMENT OF KAJIADO.....RESPONDENT**

**LILLIAN JAFFREY.....1<sup>ST</sup> EX PARTE APPLICANT**

**LILIAN PRITHPAL SINGH.....2<sup>ND</sup> EX PARTE APPLICANT**

**JUDGMENT**

What is before Court for determination is the Notice of Motion dated the 26<sup>th</sup> April, 2018 brought pursuant to Section 3A of the Civil Procedure Act, Order 53 (3) of the Civil Procedure Rules and all the other enabling provisions of the law.

The Applicant prays for the following orders:

1. The Honourable Court be pleased to issue an order of Mandamus compelling the Respondent to pay Kshs. 96, 971/= to the Ex parte Applicants together with costs and interests, being the decretal sum awarded in Miscellaneous Application No. 102 of 2010.
2. The Costs of this Application be provided for.

The application is premised on the grounds that the Ex parte Applicants filed for Judicial Review Orders of Mandamus, Certiorari and Prohibition against the County Council of Kajiado, in Miscellaneous Application No. 102 of 2010, where Hon. Justice Dulu delivered an order in their favour and awarded them costs. Consequently the Ex parte Applicants filed a party to party Bill of Costs dated the 14<sup>th</sup> September, 2012 and the said Bill of Costs was taxed at Kshs. 96, 971/= with a Certificate of Taxation issued on 24<sup>th</sup> May, 2013. Despite several demands, the Respondent has failed, refused and/or neglected to pay the taxed amount.

The application is supported by the affidavit of LILLIAN JAFFREY who is one of the Ex parte Applicants' herein where she has annexed

the order by Justice Dulu issued on 1<sup>st</sup> August, 2012; Certificate of Taxation dated the 24<sup>th</sup> May, 2013; two demand letters from messrs Kilonzo & Company Advocates dated the 19<sup>th</sup> July, 2016 and 7<sup>th</sup> March, 2016 respectively to the Respondents as well as a Penal Notice.

The Respondent though duly served as evidenced by the affidavit of service filed on 19<sup>th</sup> June, 2018, failed to file a response nor attend court.

### **Analysis and Determination**

Upon consideration of the Notice of Motion dated the 26<sup>th</sup> April, 2018 including the supporting affidavit as well as the annexures therein and arguments from the Counsel for the Ex Parte Applicants', the only issue for determination is whether an order of mandamus should issue to compel the Respondent to pay Kshs. 96, 971/= to the Ex parte Applicants together with costs and interest.

As per the Court records on 30<sup>th</sup> May, 2017, the County Attorney Mr. Kaikai had informed the Court that they had forwarded the Cheque of Kshs. 96, 000/= to their Advocate for onward transmission to the Applicants. He had sought for two weeks to follow up with messrs. Nyandoro & Company Advocates whom they had forwarded the Cheque to. From the Court Order by Justice Dulu and the Certificate of Taxation mentioned above, it is evident that the Applicants were awarded costs of the Judicial Review.

Since the Respondent is the County Government, I note the Government Proceedings Act applies for it. Section 21 (3) of the Government Proceedings Act provides as follows: **"If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:**

In the current scenario the Applicants are seeking for an order of mandamus to compel the Respondent to settle the decretal sum in respect of costs which were awarded in the abovementioned Judicial Review proceeding that was ruled in their favour.

In the case of **Republic v Permanent Secretary Office Of The President Ministry Of Internal Security & another Ex-Parte Nassir Mwandihhi [2014] eKLR, Odunga J** held that insofar execution proceedings were not available against the Government, the accounting officer for the Government department concerned was under a statutory duty to satisfy a judgement made by the Court against it.

In relying on the above cited legal provisions as well as the judicial authority quoted above, and since the Respondent did not oppose the averments of the Ex parte Applicants', I find that the claim herein remains uncontroverted.

It is against the foregoing that I find the application dated the 26<sup>th</sup> April, 2018 merited and allow it. I proceed to make the following orders:

- 1) Judgement be and is hereby entered for the Ex parte Applicants against the Respondent in the sum of Kshs. 96, 971/= including interest at court rates from 24<sup>th</sup> May, 2013 until payment in full;
- 2) The Costs of this suit is awarded to the Applicants.

**Dated signed and delivered in open court at Kajiado this 11th day of December, 2018.**

**CHRISTINE OCHIENG**

**JUDGE**