



**REPUBLIC OF KENYA**

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

**ELC JR. APPLN. NO. 45 OF 2017**

**EQUILAB TECHNOLOGIES LIMITED ..... APPLICANT**

**VERSUS**

**THE COUNTY SECRETARY,**

**NAIROBI CITY COUNTY ..... 1ST RESPONDENT**

**CHIEF OFFICER FINANCE/COUNTY TREASURER,**

**NAIROBI CITY COUNTY ..... 2ND RESPONDENT**

**NAIROBI CITY COUNTY ..... 3RD RESPONDENT**

**RULING**

1. I have considered the chamber summons application dated 14/11/2017 through which the applicant seeks leave of this court to commence proceedings for an order of mandamus directed at the respondents commanding them to pay the applicant the decretal sum and costs awarded in ELC 252/2015. I have examined the annexures to the verifying affidavit.

2. Grant or refusal of leave is an exercise of judicial discretion. The test to be applied is whether the applicant has made out an arguable case [see: ***UWE MEIXNER & ANOR V ATTORNEY GENERAL, (2005) eKLR***]. Secondly, the purpose of the application for leave is to eliminate applications which are frivolous, vexatious or hopeless and to ensure that only those applications disclosing arguable cases proceed for further consideration.

3. The applicant herein obtained judgment on 26/2/2016. The decree was issued on 16/5/2016. Its bill of costs was taxed in August 2017. It contends that both the decree and the certificate of costs have not been satisfied. It is trite law that normal execution proceedings through attachment and sale of assets would not issue against the government. The one efficacious instrument of execution available to a decree holder such as the applicant herein is the writ of mandamus.

4. Consequently, I am satisfied that the applicant's intended motion is not frivolous, vexatious or hopeless. The applicant has made out an arguable case. I accordingly grant leave in terms of prayer 1 of the chamber summons. The substantive motion shall be filed and served within 21 days. Mention on 25/01/2018 for further directions.

**Dated, signed and delivered at Nairobi on this 15th day of November, 2017.**

**B M EBOSO**

**JUDGE**