



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.480 OF 2017

(Before D.K.N.Marete)

DUNCAN MUGANE.....CLAIMANT

VERSUS

COUNTY GOVERNMENT OF EMBU.....DEFENDANT

R U L I N G

This is an application by way of Notice of motion dated 21st January, 2022. It comprises.

The application seeks that a certificate under Section 21 of the Government Proceedings Act, Chapter 40, Laws of Kenya be issued against the Respondent, ostensibly for execution of his judgment of 14th September, 2020.

He also prays that the costs of this application be provided for.

Section 21 Provides thus;

“... (1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of 21 days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the latter, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney General.

(3) 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 therein:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or part thereof, shall be suspended, and if the certificate has not been issued may order such direction to be inserted therein.”

Section 21 of the Civil Procedure Act provides for the methodology of execution of decrees against the government. In the instant case, the Ex-Parte applicant invokes it to obtain orders for execution of his decree in this cause. This is all too permissible.

I am inclined to allow the application with orders that costs shall be borne by the Respondent.

The penultimate orders of court therefore shall be;

i) That the decree holder be and is hereby authorised to execute his judgment against the Respondent.

ii) The costs of this application shall be borne by the Respondent.

iii) The costs of the application be and are hereby assessed at Kshs.12,000.00

DATED AND DELIVERED AT NYERI THIS 21ST DAY OF FEBRUARY, 2022.

D.K.Njagi Marete

JUDGE

Appearances

1. Miss Nyawira holding brief for Eddie Njiru instructed by Eddie Njiru & Company Advocates for the Claimant/Applicant.