



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

JUDICIAL REVIEW APPLICATION NO. 3 OF 2019

IN THE MATTER OF AN APPLICATION TO CITE AND PUNISH THE RESPONDENTS FOR CONTEMPT OF COURT

AND

IN THE MATTER OF ENFORCEMENT OF COURT ORDERS AND DECREE AGAINST THE GOVERNMENT

BETWEEN

HILLARY MAKHULU.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF BUSIA.....1st RESPONDENT

GOVERNOR, COUNTY OF BUSIA.....2nd RESPONDENT

JUDGMENT

1. Before the Court is a Motion dated 19 March 2019 by Hillary Makhulu (the applicant) seeking orders:

(a) ..

(b) The Court be pleased to declare that Nicodemus Mulaku, County Secretary, County Government of Busia, as the Head of the County Public Service and Priscar Omoit, County Finance Officer in charge of Finance, County Government of Busia to be in contempt of court having wilfully disobeyed the order of mandamus issued by this Court on the 21st May 2019 and served on the 27th May 2019.

(c) The Court be pleased to cite for contempt of court, Nicodemus Mulako, County Secretary, County Government of Busia, as the head of the County Public Service and Priscar Omoit, County Executive Committee member in charge of Finance, County Government of Busia.

(d) The Court be pleased to convict, punish and sentence without the option of a fine, Nicodemus Mulako, County Secretary, County Government of Busia as the head of the County Public Service and Priscar Omoit, Finance Officer in charge of Finance, County Government of Busia, to civil jail for a period not exceeding six (6) months or any other period as this Honourable Court may deem fit and appropriate for having wilfully disobeyed and continuing disobedience of the order of mandamus issued by this Court on the 21st May 2019 and served on the 27th May 2019.

(e) Costs of this application be paid by the two Respondents personally.

2. The Court certified the Motion urgent on the same day and directed that it be served upon the Respondents ahead of hearing on 21 April 2020.

3. The County Secretary, County of Busia and the Chief Officer, Public Works and Roads filed replying affidavits in opposition to the Motion on 28 July 2020.

4. When the application was placed before the Court on 5 November 2020, the Respondents sought time to make payments as the supplementary budget was being processed.

5. The applicant did not object, and the Court fixed the application for mention on 7 December 2020 to confirm if the payment had been made.
6. On 7 December 2020, the Respondent informed the Court that the supplementary budget had been approved and that upon the go-ahead of the Controller of Budget, payment would be made by mid-January 2021.
7. The Court indulged the Respondents again and set mention for 21 January 2021 to confirm payment.
8. The Respondents did not attend the Court on 21 January 2021. The Court directed the parties to file and exchange submissions. The applicant was directed to inform the Respondent of the directions.
9. The applicant filed his submissions on 10 March 2021 (should have been filed and served before 21 February 2021).
10. The Respondents filed their submissions and a supplementary affidavit sworn by the 1st Respondent's Chief Officer, Public Works, on 29 March 2021.
11. The Court has considered the Motion, affidavits and the submissions on record.
12. The applicant sought leave to commence judicial review proceedings under Order 53 Rule 1(1), (2) and (3) of the Civil Procedure Rules on 19 March 2019, and the leave was granted on 21 March 2019.
13. When the applicant filed the Motion on 19 March 2020, he did not include or attach to the Motion copies of the Statutory Statement/affidavits which had been attached in support of the application for leave as envisaged under Order 53 Rule 4(1) of the Civil Procedure Rules.
14. Instead, the applicant filed fresh affidavits.
15. In the circumstances, the Court finds the Motion incompetent. It is struck out with no order on costs.

Delivered through Microsoft teams, dated and signed in Nairobi on this 21st day of April 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For applicant	Omondi, Abande & Co. Advocates
For Respondents	Bryan Khaemba, Kamau Kamau & Co. Advocates
Court Assistant	Chrispo Aura