



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAKURU**

**JUDICIAL REVIEW NO. E6 OF 2021**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO COMMENCE  
JUDICIAL REVIEW ORDERS OF MANDAMUS AND OR MANDATORY ORDER  
UNDER ARTICLE 10 AND 47 OF THE CONSTITUTION, SECTION 11(1)(F) OF THE  
FAIR ADMINISTRATIVE ACTIONS ACT, ORDER T53 OF THE CIVIL PROCEDURE  
RULES AND THE GOVERNMENT PROCEEDINGS ACT.**

**AND**

**IN THE MATTER OF UNSATISFIED JUDGMENT AGAINST THE INSPECTOR GENERAL OF  
POLICE AND THE ATTORNEY GENERAL IN NAKURU ELRC CAUSE NO. 403 OF 2014  
GEOFFREY RONO V THE NAKURU COUNTY AP COMMANDER & 2 OTHERS**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE PRINCIPAL SECRETARY, STATE DEPARTMENT, MINISTRY OF INTERIOR  
AND COORDINATION OF NATIONAL GOVERNMENT.....RESPONDENT**

**AND**

**GEOFFREY RONO.....EX-PARTE APPLICANT**

**RULING**

1. The Application for consideration in this Ruling is the chamber summons dated 21<sup>st</sup> May, 2021. Through the said application, Geoffrey Rono seeks the following orders; -

**1. That the application herein be certified urgent and Ex-parte Orders be issued in terms of prayer 1 hereunder.**

**2. That the ex parte applicant be granted leave to commence Judicial review proceedings for an order of Mandamus against the principal secretary, state department ,ministry of interior and coordination of national government, to settle the decretal; sum together with interest and costs in Nakuru ELRC No. 403 of 2014 as follows;**

**i. Kshs. 2,182,466 inclusive of interest as at 8<sup>th</sup> January, 2021.**

ii. Interest of 14 percent per annum calculated on the principal sum of Kshs. 1,014,9t5t. from 8<sup>th</sup> January, 2021 till payment in full.

3. That he cost of this application to abide the outcome of the substantive application to be filed and argued as the Honourable Court directs.

2. The application is supported by the varying affidavit of the Applicant and a statutory statement. The basis upon which the ex parte Applicant seek for leave is that ex parte applicant filed ELRC Cause Number 403 of 2014 against the Respondent and served the said pleadings upon the respondent who entered appearance but failed to file a response. The matter then proceeded as undefended and judgment was entered in favour of the ex parte Applicant which decree was issued for payment of Kshs. 1,014,955 together with interest and costs of the suit.

3. The Applicant through its advocate on record served the said judgment and decree upon the Respondent to satisfy the same who in turn failed and or refused to pay the decretal sum. Subsequently, the Respondent sought to set aside the said judgment and decree which was disallowed by the Court and the ex parte applicant was awarded further costs of Kshs 25,000.

4. The ex parte applicant then sought for the courts review of its judgment on the computation of interest the decretal sum had earned, which application was allowed and a certificate of Order against the government was issued by this Court on the 14<sup>th</sup> January, 2021 of Kshs 2,182,466. Several demand notices followed thereafter but the Respondent failed to hid the said demand.

5. The ex parte applicant now prayed for leave to institute Judicial review to compel the Respondent to satisfy the said decree.

6. The Respondent through the Attorney General filed grounds of Opposition in answer to the chamber summons on the 14<sup>th</sup> July, 2021, alleging that the chamber Summons is fatally defective since it was filed in this Court, which according to the Respondent this Court lacks jurisdiction to hear and determine the issue, it being a preserve of High Court as per the Constitution.

7. The Respondent stated that the issue at hand is not an employment matter therefore this Court has no power to entertain the same.

8. The Respondent also took issue with the fact that the ex parte applicant named The republic as the applicant in his chamber summons when leave has not yet been granted, and stated that its only when leave is granted that the Republic can be named as the Applicant.

9. The Respondent also denied being served with Certificate of Order issued by this Court, to enable it process payment in satisfaction of the decree. Therefore, blames the delay of payment on the Applicant who allegedly did not serve them with certificate of Order when serving the demand letter on 29<sup>th</sup> April, 2019.

10. The parties were directed to dispose of the Application with written submissions with the ex parte Applicant filing on the 29<sup>th</sup> July, 2021 and the Respondent on the 21<sup>st</sup> September, 2021.

#### Submissions.

11. The Applicant submitted on two issue; whether this Court has jurisdiction to institute Judicial Review Orders and whether the ex parte applicant has made out a case warranting issuance of of leave to commence Judicial Review proceedings.

12. On the first issue, it was submitted that this Court has jurisdiction to hear and determine this Judicial Review Application, having been granted powers under sections 12(1) and 12(3)(viii) of the Employment and Labour Relations Court Act to determine all matter relating to employment and to grant any other relief appropriate as the court may deem fit to grant. Section 13 of the said Act further provides for enforcement of a judgment, award, order and decree in accordance with the Civil Procedure Act. Accordingly the ex parte applicant submitted that what he is seeking to enforce is a decree of this Court that ought to be satisfied by the Government and the only way to enforce such payment is by obtaining Order of Mandamus through this Judicial Review Application. The ex parte Applicant reinforced his argument by citing the case of **Judicial Service Commission v Gladys Boss Shollei & another [2014]eklr**, where the Court held that this Court has jurisdiction to hear and determine Judicial Review Applications that emanate from Employment matters.

13. On the second issue, the ex parte Applicant submitted that Respondent had not denied the existence of a decree in ELRC Cause number 403 of 2014, neither have they indicated if there is an appeal pending, therefore the Respondent have in essence admitted owing the ex parte applicant, therefore they ought to be compelled to satisfy the said decree. The ex parte Applicant then cited the case of **Njuguna v Minister for Agricltre [2001] 1 EA 184 (CAK)** and argued that he has established a prima facie case to warrant the issuance of leave by this Court.

14. On the issue brought forth by the Respondent that the ex parte applicant has named the Republic as the applicant in chamber summons contrary to the Rules of procedure, the Applicant submitted the naming of the Republic as the Applicant ought not be considered as a fundamental issue capable of affecting the main issue for determination in the chamber Summons. The ex parte Applicant urged this Court to be guided by Article 159(2)(d) and deal with the Application on merit not on the technicality. He then sought to rely on the case of **Republic v Chairman Matungu Land Dispute Tribunal Ex parte Electina Wangona [2012] eklr** where the court faced with a similar issue held that the Error in the way the chamber summons was instituted does not affect the substance of the leave that was granted thereon and went ahead to grant the said leave.

15. The ex aparte applicant further cited the case of **Mwala Land Dispute Tribunal & another v Kiilu Mathuva & 3 Others Ex parte Kyengo Mathuva [2006] Eklr** where the Court dealt in depth on the form Chamber Summons in Judicial Review Applications are drawn where the Court in this case approved that Republic ought to be the Applicant in Judicial Review Application even at leave stage and the Applicant remains the Ex Parte.

16. Accordingly, the Ex parte Applicant submitted that his chamber Summons are in order and the Respondent argument is without any basis in law. He therefore prayed for his application to be allowed as prayed.

17. The Respondent on the other hand maintained that this Court lack jurisdiction to hear and determine this application. It was argued that at this stage the ex parte applicant seeks for Judicial Review Orders to enforce its judgment and decree that emanated from ELRC No. 403 of 2014, therefore the issue for determination is enforcement of decree which has nothing to do with employer-employee relationship therefore ousting this Court' powers from determining this Issue.

18. The Respondent submitted that section 12(1) of the Employment and Labour Relations Court Act gives the parameter within which this Court should draw its jurisdiction from and Judicial Review is not one of the powers given to this Court.

19. The Respondent concluded that since this Court lack jurisdiction it ought to down its tools as was held in the locus classicus case of **Owners of motor vessel "Lilian S" V Clatex Oil Limited.**

20. I have considered the averments of the parties herein. I find that this court has jurisdiction over this application, the same having emanated from a Judgment of this court and this court having jurisdiction to handle matters related to employment and Labor Relations as provided for under Article 162 (2) of the Constitution and Section 12 of the Employment and Labour Relations Act.

21. The applicant is also free to file this application to realize the fruits of the Judgment as provided in law, I find the application for leave to file a JR application is merited and is allowed accordingly.

22. Costs in the application.

**RULING DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF OCTOBER, 2021.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

Kanyi for Ex-parte Applicant – present

Mr. Wanjohi holding brief Cheruiyot for Respondent – present

Court Assistant - Fred