



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

JUDICIAL REVIEW NO. E001 OF 2020

REPUBLIC.....APPLICANT

VERSUS

THE COUNTY GOVERNMENT OF NAKURU.1ST RESPONDENT

COUNTY EXECUTIVE OFFICER IN CHARGE OF FINANCE

NAKURU COUNTY GOVERNMENT..... 2ND RESPONDENT

AND

JAMES MWANGI MURAYA.....EX-PARTE APPLICANT

JUDGMENT

1. The Ex-parte Applicant herein filed a Notice of Motion application dated 12th November, 2020 on 17th November, 2020 through the firm of Elizabeth Wangare and company advocates seeking the following orders; -

a) That an Order of MANDAMUS be directed against the Respondents compelling the 2nd Respondent to fully comply with the decree issued by Hon. Radido (J) in Nakuru ELRC Cause No. 124 of 2016 on the 28th February, 2018, together with certificate of costs against the agreement and certificate of Order for costs Against the Government Issued on 27th May, 2020.

b) That the Respondent cater for the costs of this Application.

c) That any further and other reliefs be granted to the Ex-parte Applicants as this Court deems fit.

2. The Judicial review is premised on the following grounds: -

a) That the Ex-parte Applicant sued the respondent in Nakuru ELRC Cause No. 124 of 2016 and obtained a Judgment of Kshs. 617,432.60 together with costs of suit and interest therein on the 7th December, 2017.

b) The ex-parte applicant through his advocates served the Respondent with the decree on the 28th February, 2018 which was received on 20th March, 2018.

c) Efforts were taken by the Ex parte Applicant to have the decree satisfied but since they had not extracted and served the certificate of Order of costs against the Government their efforts were thwarted.

d) Subsequently the Ex-parte Applicant extracted a certificate of Order against the Government and a certificate of Order for costs against the Government on the 27th May, 2020 and served upon the Respondent on the 28th May, 2020.

e) That despite service, the Respondent have refused to comply with the said orders and satisfy the decree of this Court, neither have they given any explanation for the failure thereof.

f) He thus urged this Court to compel the Respondents to satisfy the said decree.

3. The application is also supported by an Affidavit of the ex-parte Applicant **James Mangi Muraya** deposed upon on 12th November, 2020 and whose averments reiterate the facts in the above grounds and the statement of facts.

4. The suit is contested and **George Kinyanjui**, an Accountant in the 1st Respondent's Finance Department swore a replying affidavit deposed upon on the 22nd June, 2021 and averred that the respondents are aware about the said decree and have not refused to satisfy it as alleged.

5. The Respondents' affiant avers that they received the ex-parte Applicants certificate of Order against the Government and certificate of costs against the government both dated 27th May, 2020 on the 28th May, 2020 however that their budgetary provision for the year 2020/2021 had been closed and the same was factored in in the year 2021/2021 as evidence by the correspondence annexed herein as GK-1a.

6. It is contended that this suit has been prematurely filed and the Respondent therefore urged this Court to dismiss it with costs as the decree has been budgeted and is to be paid in the next financial year.

7. This suit was disposed by written submissions with the applicant filing on 15th October, 2021 and the Respondent filing on 25th October, 2021.

Ex-parte Applicant's Submissions.

8. It was submitted for the ex-parte Applicant that this suit was necessitated by the respondent's refusal to satisfy the decree when they had been served with certificate of order for costs against government on the 28th May, 2020. He argued that the only way in which the government can be compelled to satisfy a decree is by issuance of Judicial Review Orders as was aptly state in **Republic V Attorney General and another ex parte James Alfred Koroso [2013] eklr.**

9. It was then argued that as much as the certificate of order against government was served on the Respondent after closure of budget, it is not sufficient ground to deny the ex parte applicant fruits of his judgment and buttress its argument by citing the case of **Republic V County Secretary County Government of Meru & 2 others Ex parte Andrew Wachira [2021] eklr.**

Respondents Submissions.

10. The respondents submitted that for a Judicial Review Order to issue, the applicant must demonstrate that the respondent's actions were marred by illegality, irrationality and procedural impropriety as was held in **Ernest B.M Oranga –v- Kakamega county commissioner of Cooperatives and 6 others [2016] eklr.**

11. It was submitted that the respondents being a county Government are governed by the Government proceedings Act, which provides under section 21 states that a certificate of order against the government has to be issued within 21 days from the date of the Judgment which was not the case in this suit as the ex-parte Applicant served he respondent with the certificate of Order on 28th May, 2020 when budgetary allocations had already been made , nevertheless he argues that the applicant shall be paid in the 2021/2022 financial year.

12. He thus submitted that the respondents have not deliberately failed to satisfy the decree but the payment has to be budgeted for and since the Certificate of Order was served late the same is to be paid in the next financial year as the budget for the current financial year is exhausted.

13. The Respondents then submitted that the ex parte applicant has failed to demonstrate the refusal by them to pay the decretal sum therefore the application is not merit and the same ought to be dismissed with costs.

14. I have examined the averments of the parties herein. The exparte applicant has demonstrated that he was awarded a Judgment and decree by this court (J Radido) in ELRC No. 124 of 2016 for kshs.617,432/=.

15. The exparte applicant further demonstrated that he extracted the decree and served it upon the respondents on 20/3/2018.

16. The respondents have not denied the issuance of the Judgment against themselves and further the service of the decree upon themselves. They have not also demonstrated what steps they have taken to satisfy the decree since 2018.

17. They only aver that the same was not factored in the budget until 2020/2021. We are in year 2021 and still no payment has been made.

18. It is my finding that indeed the respondents have neglected to make good the Judgment and decree as served upon them.

19. The application before me is merited and enter Judgment against the respondents as follows;

a) That an Order of MANDAMUS be directed against the Respondents compelling the 2nd Respondent to fully comply with the decree issued by Hon. Radido (J) in Nakuru ELRC Cause No. 124 of 2016 on the 28th February, 2018, together with certificate of costs against the agreement and certificate of Order for costs Against the Government Issued on 27th May, 2020.

b) That the Respondent cater for the costs of this Application.

20. That is the Judgment of this court.

Dated and delivered in open Court this 7TH day of DECEMBER, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mr. Ouma holding brief for Mr. Mukira for Ex-parte Applicant – present

Kinuthia for respondent – present

Court assistant - Fred