



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

JR. NO. 6 OF 2019

(Before Hon. Justice Mathews N. Nduma)

IN THE MATTER OF AN APPLICATION FOR THE JUDICIAL REVIEW ORDER OF MANDAMUS

AND

IN THE MATTER OF THE LAW REFORM ACT

AND

IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT

AND

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT

BETWEEN

REPUBLIC..... APPLICANT

VERSUS

CLERK, COUNTY ASSEMBLY OF KISUMU.....1ST RESPONDENT

COUNTY SECRETARY, COUNTY GOVERNMENT OF KISUMU.....2ND RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER IN CHARGE OF FINANCE, COUNTY

GOVERNMENT OF KISUMU.....3RD RESPONDENT

ANN ATIENO ADUL.....EX PARTE APPLICANT

JUDGMENT

1. The Exparte Applicant upon being granted leave by the court prays for a judicial review order of mandamus to compel:

2. Clerk, County Assembly of Kisumu as the Accounting Officer of the County Assembly of Kisumu; County Secretary, County Government of Kisumu, as the Head of the County Public Service; and County Executive Committee member in charge of finance to jointly and or severally to pay to the Applicant the sum of Kshs. 5,200,000 being the taxed costs in terms of the certificate of order against the Government issued on 6th July 2018 in Kisumu Employment and Labour Relations Court, Petition number 297 of 2014.

3. The application is founded on grounds set out on the face of the Application which in summary are that on 12th January 2015, E&LRC entered judgment in favour of the Applicant and awarded the costs of the proceedings to the applicant. A decree was subsequently extracted on 26th February 2015.

4. Two appeals, Kisumu Court of Appeal, Civil Appeal No. 17 and 18 of 2015 were preferred against the judgment and decree and the same were dismissed with costs on 6th October 2015 which costs have also not been paid.
5. An attempt to lodge an Appeal with the Supreme Court in supreme court petition no. 3 of 2016 was dismissed by the Supreme Court and costs were awarded to the applicant.
6. To determine the costs payable, the applicant filed a party and party Bill of Costs on 4th February 2015 for taxation which bill was taxed on 26th February 2016 in the sum of Kshs. 5,200,000. Certificate of costs was therefore issued on 26th February 2016 accordingly. A certificate of order against the government was therefore applied for and issued on 6th July 2018.
7. The government departments of County Assembly of Kisumu and County Executive of Kisumu are thus indebted to the applicant in the sum of Kshs. 5,200,000.
8. The certificate of costs dated 16th February 2016 and certificate of order against the government dated 6th July 2018 have been served both on the County Secretary and County Executive committee member in charge of finance and payment has been demanded.
9. The three have failed, refused and or neglected to pay the applicant the taxed costs. Their conduct amounts to contempt of court and offends the provisions of Article 47 of the constitution of Kenya 2010. This also violates *Section 7(2) (i) of the Fair Administrative Action Act, 2015* which guarantee the applicant expeditious, reasonable and efficient administrative action. The delay of more than three years is inordinate and defeats administration of justice. Wherefore the application be granted with costs.
10. The 2nd and 3rd respondents filed grounds of opposition dated 15th July 2019 stating that the application lacks merit, is pre-mature and amounts to abuse of the court. That the applicant has failed to disclose the amount if any, each and every respondent should settle out of the claimed sum of money.
11. The 2nd and 3rd respondents further filed a replying affidavit sworn by Nerry Achar the County Executive Committee member in charge of finance in the County in which the respondents aver that they are strangers to the suit because by the time Wasilwa J. entered judgment against the County Government in 2016, the present members of the executive committee were not in office thus are not party to any information concerning payment of any costs.
12. That the 2nd and 3rd respondents were not served with any court orders as alleged or at all and 2nd and 3rd respondents were not party to the judgment in petition no. 297 of 2014 under which respondents were to meet the costs jointly and severally.
13. That parties who ought to have paid costs were excluded from the application namely Eliud Owen Ojuok, Stephen Nicholas Okola, Gabriel Ochieng and Attorney General to the prejudice of the 2nd and 3rd respondents.
14. That the 1st respondent did not accommodate the costs in its proposed budget of 2019/2020 on 31st July 2019 and therefore there shall be no sufficient funds to pay the costs.

Determination

15. The applicant has laid out a sound basis for the application. The grounds set out herein before are very clear that the respondents are indebted to the applicant in the sum of Kshs. 5,200,000. The respondents have exhausted all avenues of Appeal in the matter. The defence offered by the respondents to the application is hollow and lacks any basis in fact or law.
16. The Applicant has followed the process to the letter and service on the cited officers has been established to the satisfaction of the court.
17. Accordingly, the application has been proved on a balance of probabilities and the same is granted as prayed as follows.
18. A judicial Review order of Mandamus, against and compelling the Clerk, County Assembly of Kisumu and County Executive Committee member in charge of finance and county secretary Kisumu county is issued to jointly and or severally to pay to the Applicant Kshs. 5,200,000 forthwith being the taxed costs in terms of the certificate of order against the County Government issued on 6th July 2018 in Kisumu E&LRC Petition Number 297 of 2014,
19. Costs are also awarded in respect of this application.

Judgment Dated, Signed and delivered at Nairobi this 16th day of April, 2020

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. They have waived

compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

Mathews N. Nduma

Judge

Appearances

Mr. Okongo for the Applicant.

P.D Onyango for 2nd and 3rd Respondents

Chrispo – Court Clerk