



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 394 OF 2017**

***(Before Hon. Justice Mathews N. Nduma)***

**LINNET KHASOHA ABDALLA.....CLAIMANT**

**VERSUS**

**VIHIGA COUNTY PUBLIC SERVICE BOARD.....1<sup>ST</sup> RESPONDENT**

**THE GOVERNOR VIHIGA COUNTY**

**H.E. DR. W.K. OTTICHILO.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. Application dated 12<sup>th</sup> November 2018 is premised on *Section 20(7) of the Employment and Labour Relations Court Act, Cap 234, Laws of Kenya and part 'V' of the contempt of court Act No. 46 of 2016*. The application was filed after the contempt of court Act, Cap 46 of 2016 was declared null and void for being inconsistent with the constitution. The Act cannot be relied upon therefore.

2. However the provisions of *Section 20(7) of ELRC Act*, are still valid and may be relied upon to enforce the orders of this court by way of contempt proceedings but only with regard to defiance of court summons and/or subpoena to attend court or provide documents or items to the court in addition to the provisions of Judicature Act, and the English Common Law our courts have always relied upon for this purpose.

3. The respondent raises preliminary objection to the application to the effect that the application violates the mandatory statutory provisions of *Section 21 of the Government Proceedings, Act Cap 40 Laws of Kenya*.

4. *Sections 21(3) and (4)* prohibit execution or attachment or process in the nature thereof to be issued to enforce payment by the government and that no person shall be individually liable under any order for the payment by the government of any money or costs.

5. It is true that the accounting officer for the government department concerned is nevertheless under a statutory duty to satisfy a judgment made by the court against that department.

6. In ***Judicial Review Miscellaneous Application No. 44 of 2012 between the Republic vs The Attorney General and Another exparte James Alfred Koroso it was held***

*“In the present case the exparte applicant has no other option of realizing the fruits of his judgment since he is barred from executing against the Government. Apart from Mandamus, he has no option of ensuring that the judgment that he has been awarded is realized”*

7. Further in ***Republic vs Attorney General and another exparte Stephen Wanyee Roki (2016) KLR***, it was held

*“That being the position execution under the civil procedure Rules is barred in so far as the County Governments are concerned. What then is the option available to a party in whose favour judgment has been decreed?...it follows that the only remedy available to such a person is to institute judicial review proceedings and seek an order of mandamus compelling the county government to settle the decree in question”*

**Determination**

8. The present application is anchored on a piece of legislation that was declared unconstitutional ***in Nairobi Constitutional Petition No.***

**87 of 2017 KHRC vs The Attorney General and another.**

9. Furthermore, the proper way to compel a County Government to comply with a judgment of the court sounding in money is by instituting Judicial Review proceedings, in which an order of mandamus is sought to compel the particular department of the County Government to comply with the court order.

10. The contempt proceedings under *Section 20(7) of E&LRC Act*, do not suffice for this purpose, other than to punish a person who fails to heed to the summons and/or subpoena by the court to appear before it or furnish specific documents and/or items before court.

11. For the foregoing reasons, the Notice of Motion application is totally defective, lacks merit and is dismissed.

**Ruling Dated, Signed and delivered this 19<sup>th</sup> day of September, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

M/S Wafula for M/S Kinyanjui for the Respondents

M/S Ndeda for N.E Mugusu for Claimant/Applicant

Chrispo – Court Clerk