



Digitron (K) Limited v Migori County Assembly Service Board & 3 others (Judicial Review 14 of 2023) [2024] KEHC 1923 (KLR) (29 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1923 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW 14 OF 2023
MS SHARIFF, J
FEBRUARY 29, 2024**

BETWEEN

DIGITRON (K) LIMITED APPLICANT

AND

MIGORI COUNTY ASSEMBLY SERVICE BOARD 1ST RESPONDENT

CLERK, MIGORI COUNTY ASSEMBLY 2ND RESPONDENT

**COUNTY ATTORNEY MIGORI COUNTY GOVERNMENT 3RD
RESPONDENT**

VINCENTIA AWINO KIONGE 4TH RESPONDENT

RULING

1. The Applicant herein is a decree holder in Kisumu CMCC No. E172 of 2021: Digitron (K) Ltd v Migori County Assembly Service Board & Clerk Migori County Assembly.
2. Whereas the judgment in the said subordinate court case was entered against the Respondents by consent of parties, the Respondents failed to settle the judgment sum thus precipitating an application for judicial review orders of mandamus, by the Applicant. This court allowed that application on 26.7.2023 and issued an order of mandamus against the respondents.

B. Application:

3. The Applicant has now approached this court craving the following orders:-
 - i) Spent.
 - ii) Spent.



- iii) Committal of the 4th Respondent Vincentian Awino Kionge to civil jail for contempt given that the Respondents are yet to pay the decretal sum, interest and costs as per the certificate of order for costs despite service upon them of the order of mandamus.
4. The Applicant also craves that the Respondents be denied audience by this court until such a time as they have purged their contempt.
5. No response was filed to resist that application.

C. Analysis and Determination

6. I have perused the affidavit in support of this application sworn on 15th September, 2023 by Joseph Odhiambo Okello who has annexed as annexure JOO-5, an affidavit of service sworn on 11th August, 2023 by Julius Otieno Raminya, a process server. I have indeed established that the Respondents were duly served with the order of mandamus made by this court on 26th July, 2023 which contained a penal notice.
7. As stated by case law, the ingredients to be satisfied before one successfully prosecutes a contempt application was stated by Justice Mativo in Samuel M. N. Mweru & others v National Land Commission & 2 others (2020) eKLR where the learned judge held;

“It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove;

- (i) the terms of the order,
- (ii) Knowledge of these terms by the Respondent,
- (iii) Failure by the Respondent to comply with the terms of the order.

Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities..... :-

There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate.

8. Given that the Respondents are yet to pay the applicant the judgment sum of Ksh.6,759,400 plus costs of Kshs.430,000, I do find the 4th Respondent one Vincentian Awino Kionge in contempt of court.
9. This matter shall be mentioned on 16th April, 2024 for purposes of sentencing the contemnor.
10. The Applicant is granted costs of this application assessed at Kshs.15,000.



DELIVERED, DATED AND SIGNED AT KISUMU THIS 29TH DAY OF FEBRUARY, 2024.

MWANAISHA. S. SHARIFF

JUDGE

