



**Republic v County Secretary, Kisii County & another; Kumenda & another (Exparte)
(Civil Case 001 of 2022) [2024] KEHC 3393 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3393 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CIVIL CASE 001 OF 2022
JM CHIGITI, J
MARCH 20, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY SECRETARY, KISII COUNTY 1ST RESPONDENT

THE CHIEF OFFICER FINANCE KISII COUNTY 2ND RESPONDENT

AND

DR. JOHN ABOKO KUMENDA EXPARTE

DR. FLORENCE GATUNE WAIHIEGENI EXPARTE

RULING

1. The Application that is before this court is the one dated wherein the applicant is seeking the following orders;
 - a. An order of Mandamus to issue against the Respondents herein namely, the County Secretary, Kisi County and the Chief Officer Finance, Kisii County to compel them to proceed and pay out the Costs in the sum of ksh 341, 860/= as taxed by the Court on the 20th of February, 2021 in Judicial Review Application no E002 of 2021; *Republic v Kisii County Assembly & 4 Others and Dr. John Aboko Kumenda & Another* against the Respondents herein.
 - b. The costs of this application be in favour of the Ex-parte Applicants.
2. The Applicants filed and successfully prosecuted Kisii High Court Judicial Review no E002 of 2021; *Republic v Kisii County Assembly & 4 Others and Dr. John Aboko Kumenda & Another*
3. Judgement was delivered on the 6th day of October, 2021 wherein the Applicants were awarded half the costs of the proceedings as itemized in the Decree.



4. The applicant thereafter filed a Bill of Costs which was taxed on the 21st day of February, 2022.
5. A Certificate of costs was subsequently extracted and issued by the Deputy Registrar.
6. The said Certificate of costs was duly served upon the County Attorney's offices on the 31st of March, 2022.
7. A further demand was made through a letter dated the 31st of May, 202 which was duly served upon the County Attorney on the 2nd of June, 2022.
8. The Respondents have deliberately refused and or ignored to settle the same.
9. The applicant argues that the costs as taxed by the Deputy Registrar constitute the half costs awarded by the Court.
10. The applicant also argues that in any event, should the Court find that the Deputy Registrar ought to have divided the costs awarded into half, it would then follow that the Respondents are still obligated to pay half of the said costs, that is ksh 170, 930/=.

The Respondent's Case;

11. The application is opposed by the responded who argues that the Judgement in Kisii High Court Judicial Review Cause no 2 of 2021 was clear and categorical that the 1st and 2nd Ex-parte applicants shall have half the costs of the proceedings.
12. The decree extracted from the above said Judgement is also a mirror of the Preliminary Objection.
13. It is the Respondents case that the Ruling by the Deputy Registrar dated 22nd February 2022 on the Bill of Costs shows the sum total of taxed costs as ksh 341, 860/=.
14. The Certificate of Taxation issued by the Deputy Registrar in respect to Kisii JR. no 2 of 2021 shows the taxed and certified costs payable to the ex-parte applicants are ksh 341, 860/=.
15. In conclusion the respondent argues that the Ex-parte applicants are only entitled to half of ksh 341, 860/= which is ksh 170,930/=.

Analysis and Determination;

16. Judgment was delivered on the 6th Day of October, 2021 the applicant said Judicial Review Application was allowed wherein was awarded half the costs of the proceedings.
17. The applicants filed a Bill of Costs which was taxed on the 21st Day of February, 2022 and a Certificate of costs was subsequently extracted and issued by the Deputy Registrar.
18. The Certificate of Taxation issued by the Deputy Registrar in respect to Kisii JR. no 2 of 2021 shows the taxed and certified costs payable to the ex-parte applicants are ksh341, 860/=.
19. The applicant is claiming a different figure from the Honourable Judge had decreed.
20. The Applicant concedes that in any event, if the Court finds that the Deputy Registrar ought to have divided the costs awarded into half, it would then follow that the Respondents are still obligated to pay half of the said costs, that is ksh 170, 930/=.
21. The Judgment in respect to Kisii JR. no 2 of 2021 was delivered on the 6th Day of October, 2021 wherein the Applicants were awarded half the costs of the proceedings.



22. The Certificate of Taxation issued by the Deputy Registrar shows the taxed and certified costs payable to the ex-parte applicants at ksh 341, 860/= which is 100% of the costs.
23. The Ex-parte applicants are only entitled to half of ksh341, 860/= which is ksh 170,930/=. No reference was filed to challenge the certificate of costs. I note that the time for filing a reference has since lapsed.
24. This court cannot allow an illegality to continue where one exists. The court has powers to act suo muto so as to cure a mistake in law like the one obtaining herein in order to promote the rule of law under Article 165 of the Constitution which I hereby do.

Disposition;

25. The application dated 26th June, 2023 cannot succeed for claiming a different figure from the amount awarded in the judgment as set out in the decree.

Order;

1. To that extent this court shall strike out the application dated 26th June, 2023.
2. The certificate of taxation shall be amended to read ksh 170,930/= as opposed to ksh341, 860/=.
3. No orders as to costs.

DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 20TH DAY OF MARCH, 2024

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CHIGITI. J (SC)

JUDGE

