



Edine Venture Limited v County Government of Kisumu (Judicial Review Application E016 of 2021) [2024] KEHC 6601 (KLR) (31 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6601 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E016 OF 2021**

MS SHARIFF, J

MAY 31, 2024

**IN THE MATTER OF THE CIVIL PROCEDURE ACT AND RULES
2010 CAP 21 LAW OF KENYA UNDER ORDER 53 RULES (1) & (2)**

AND

IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF KENYA (2010)

BETWEEN

EDINE VENTURE LIMITED APPLICANT

AND

COUNTY GOVERNMENT OF KISUMU RESPONDENT

RULING

Background

1. On 3rd March 2022 the Applicant herein was granted leave to apply for orders of mandamus against the Respondent in a bid to execute a judgment of a Ksh.2,999,980 delivered on 29th September, may 2021 in Kisumu CMCC No. 282 of 2021: Edine Ventures –vs- County Government of Kisumu.
2. Pursuant to the said leave the Applicant filed the substantive notice of motion on 4th March 2022. The same is brought under the provisions of order 53 rules 3 and 4 of the *Civil Procedure Rules* 2010 and Sections 812) and 9 of the *Law Reform Act* (CAP 26) Law of Kenya and the Applicant craves for the following orders:
 1. That an Order Of Mandamus do issue to compel the Respondent to pay the Decretal sum of Kshs.2,999,980= awarded to the Ex-parte Applicant in Kisumu CMCC No. 282 of 2021, Edine Ventures Limited –versus- County Government Of Kisumu together with interest thereon on 12% per annum from 6th May, 2009 until payment in full and costs of the suit.



2. That the court be at liberty to make such further and other orders as it deems fit to meet the ends of justice.
3. That the costs of this application be borne by the Respondent.
3. This application stands unopposed albeit duly served upon the Respondent.

Analysis And Determination

4. I have considered the application herein, the statement of facts dated 8th December 2021, the affidavit in verification of the statement of facts sworn by Joyce Gitau on 8th December 2021 and the submission filed by the Applicant and the issue that emerges for determination is whether the Applicant has made out a case for grant of the orders of mandamus.
5. *Vide* a plaint dated 7/7/2021 the ex parte Applicant had successfully sued the Respondent for breach of contract and on 29th September 2021 judgment was entered against the Respondent for a sum of Ksh.2,999,980 in Kisumu CMCC No. 282 of 2021.
6. Subsequent to the delivery of the said judgment, the *ex parte* Applicant duly served the Respondent with the certificate of order against the Government on 29th October 2021 and a demand letter dated 29th October, 2021 through a process server by the name of Moses Omondi Ogada of CPS 02265. Service was duly acknowledged by endorsement by the Respondents with a receipt stamp on the duplicate of the documents served.
7. The aforesaid service notwithstanding, the Respondent failed, refused and/or negligent to make good the demand hence the current application.
8. An order of mandamus finds definition in *Halsburg's Law of England*, 4th Edition Vol at page 1 paragraph 89, thus:

“The order must command no more than that the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”
9. Mandamus was also defined by Justice Matiro in *R -vs- Principal Secretary Ministry of Internal Security and Anor parte Schow Noorani and Anor* (2018) (eKLR) thus:

“Mandamus is an equitable remedy that serves to compel public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in *Apotex Inc. -vs- Canada* (Attorney General), (23) and, was also discussed in *Dragan -vs- Canada* (Minister of Citizenship and Immigration). (24) The eight factors that must be present for the writ to issue are: -

 - i. There must be a public legal duty to act;
 - ii. The duty must be owed to the Applicants;
 - iii. There must be a clear right to the performance of that duty, meaning that:
 - a. The Applicants have testified all conditions precedent; and
 - b. There must have been:



- i. A prior demand for performance;
- ii. A reasonable time to comply with the demand, unless there was outright refusal; and
- iii. An express refusal, or an implied refusal through unreasonable delay;
- iv. No other adequate remedy is available to the Applicants;
- v. The Order sought must be of some practical value or effect;
- vi. There is no equitable bar to the relief sought;
- vii. On a balance of convenience, mandamus should lie.”

10. The ex parte Applicant has duly satisfied the requirements for grant of orders of mandamus and has also complied with the provisions of Section 21 of the Government Proceedings Act (cap 40 Laws of Kenya). I therefore find that this application is well merited given that the judgment is yet to be satisfied. I thus make the following orders:-

- a. An order of mandamus be and is hereby issued against the County Government of Kisumu, the Respondent herein, compelling it to pay the *ex parte* Applicant the decretal sum of Ksh.2,999,980 awarded to the ex parte Applicant in Kisumu MCCC No. 282 of 2021: Edine Ventures Limited –vs- County Government of Kisumu plus interest thereon at the rate of 12% per annum accruable from the 6th day of May 209 until payment in full.

The ex parte Applicant is also awarded costs of this application.

It is hereby so ordered.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 31ST DAY OF MAY, 2024

MWANISHA S. SHARIFF

JUDGE

