



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**JUDICIAL REVIEW No. 30 'A' OF 2018**

**REPUBLIC .....APPLICANT**

**VERSUS**

**CHIEF OFFICER FINANCE,**

**NAKURU COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF NAKURU .....2<sup>ND</sup> RESPONDENT**

**AND**

**GILBERT KABAGE KARIANJAH**

**JOYCE WANJIKU KABAGE**

**MONICA NYIHA KABAGE .....EX PARTE APPLICANTS**

**JUDGMENT**

1. The ex parte applicant herein having obtained leave to commence judicial review proceedings on 25<sup>th</sup> October 2018 filed Notice of Motion dated 5<sup>th</sup> November 2018 seeking substantive orders. The said application was later replaced with Amended Notice of Motion dated 5<sup>th</sup> November 2018 wherein the following orders are sought:

*1. THAT an order of mandamus do issue to compel the respondents herein, by themselves and or their agents to settle the decree issued by the court in Nakuru ELC No. 177 of 2015 by paying to the subject applicants the sum of KShs 2,267,150/= forthwith in default the 1<sup>st</sup> respondent be committed to civil jail for such period as the court may direct.*

*2. THAT the costs of the application for leave and this motion be awarded to the subject.*

2. The application is supported by an affidavit sworn by Gilbert Kabage Karianjahi. He deposed that he and the other ex parte applicants were plaintiffs in **Nakuru ELC No. 177 of 2015** while the County Government of Nakuru was the defendant. That a consent judgment was recorded in the matter pursuant to which a decree was issued in their favour on 18<sup>th</sup> May 2017 for KShs 2,200,000. Despite demanding the said sum, the County Government of Nakuru failed to pay. On 13<sup>th</sup> September 2017, the advocates for the County Government of Nakuru wrote to the ex parte applicants' advocates advising them to pay KShs 67,150 as further court fees to enable issuance of the decree by the court. He further stated that the ex parte applicants paid the said sum of KShs 67,150 on 21<sup>st</sup> September

2017 and that despite various promises, the respondents have not paid.

3. The respondents opposed the application through grounds of opposition in which they contended that the application is premature, incompetent and bad in law and that the amounts claimed in the application do not agree with the amounts in the decree. They nevertheless did not file any replying affidavit.

4. When the application came up for hearing, the ex parte applicants relied entirely on the application and its supporting affidavit and urged the court to render judgment. The respondents equally relied on the grounds of opposition and asked the court to prepare judgment.

5. I have considered the application, the supporting affidavit and the grounds of opposition. The 2<sup>nd</sup> respondent herein is a county government established pursuant to **Article 176 of the Constitution** and the **County Governments Act, 2012**. The 1<sup>st</sup> respondent is an officer within the 2<sup>nd</sup> respondent. From the affidavit evidence presented by the ex parte applicants and which is not controverted by the respondents, I am satisfied that a decree for KShs 2,200,000 was issued against the 2<sup>nd</sup> respondent and in favour of the ex parte applicants in **Nakuru ELC No. 177 of 2015 Gilbert Kabage Karianjahi & 2 Others v The County Government of Nakuru** way back on 18<sup>th</sup> May 2017. What's more, the decree arose from a consent judgment. I am equally satisfied that the ex parte applicants incurred additional costs of KShs 67,150 being further court fees thus bringing the total amount owing to KShs 2,267,150.

6. The nature and scope of the judicial review order of mandamus was discussed by the Court of Appeal in **Kenya National Examinations Council v Republic Ex parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR** where the Court of Appeal stated:

*The next issue we must deal with is this: What is the scope and efficacy of an **ORDER OF MANDAMUS**'' Once again we turn to **HALSBURY'S LAW OF ENGLAND, 4<sup>th</sup> Edition Volume 1 at page 111 FROM PARAGRAPH 89. That learned treatise says:-***

*“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”*

*... What do these principles mean'' They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.*

7. The aforesaid decree having been issued and the respondents having been called upon to settle it, they are under a legal duty to pay to the ex parte applicants the total sum of KShs 2,267,150. Their failure to discharge that duty necessitates issuance of an order of mandamus to compel them to perform the public duty of satisfying a decree lawfully issued by the court. I am therefore satisfied that the ex parte applicants have made a case for the judicial review order of mandamus.

8. The ex parte applicants also seek an order that in default of payment the 1<sup>st</sup> respondent be committed to civil jail for such period as the court may direct. The issue of committal to civil jail is not for this court to determine now. If and when need arises to seek committal of anybody, appropriate application or proceedings in that regard

should be brought.

9. I therefore make the following orders:

- a) An order of mandamus is hereby issued compelling the respondents herein, by themselves and or their agents to settle the decree issued by the court in **Nakuru ELC No. 177 of 2015 Gilbert Kabage Karianjahi & 2 Others v The County Government of Nakuru** by paying to the ex parte applicants the sum of KShs 2,267,150 (two million two hundred sixty seven thousand one hundred fifty) forthwith.
- b) Costs of these proceedings awarded to the ex parte applicants.

**Dated, signed and delivered in open court at Nakuru this 5<sup>th</sup> day of February 2020.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Ms Wangari for the ex parte applicants

No appearance for the respondents

Court Assistants: Beatrice & Lotkomoi



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