



**Republic v Ministry of Labour and Social Security Services & 2 others; CM
(Deceased Minor Suing through Next of Kin PMB) (Exparte Applicant) (Judicial
Review E011 of 2022) [2023] KEHC 19485 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 19485 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
JUDICIAL REVIEW E011 OF 2022
RPV WENDO, J
MAY 25, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**MINISTRY OF LABOUR AND SOCIAL SECURITY SERVICES 1ST
RESPONDENT**

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

**PS MINISTRY OF LABOUR, SOCIAL SECURITY SERVICES 3RD
RESPONDENT**

AND

**CM (DECEASED MINOR SUING THROUGH NEXT OF KIN
PMB) EXPARTE APPLICANT**

JUDGMENT

1. The application for determination is a Notice of Motion dated July 26, 2022 The *ex-parte* applicant through the firm of Kerario Marwa & Co Advocates is seeking the following orders: -
 - i. That an order of Mandamus do issue from this court commanding the respondents to pay the applicant the decretal sum of Kshs 2,131,544/= together with interest in Migori CMCC No 17 of 2020.
 - ii. The respondents be condemned to pay costs of this judicial review,
2. The application is based on grounds found in the statement of facts filed with the Chamber Summons dated April 26, 2021 and the supporting affidavit of Peter Monari Burure dated April 2, 2021.



3. According to the ex-parte applicant, he obtained judgment in his favour against the Ministry of Labour, Social Services in Migori CMCCC No 17 of 2020 for the sum of Kshs 2,131,544/= together with interest at 14% until payment date; that the Ministry has refused or neglected to pay him; that he has been advised by his Counsel that the government's property cannot be attached in the execution of his certificate of order for Kshs 2,131,544/=together with interest at 14% because the law prohibits the attachment; that the decree and order against the government Ministry were duly served upon the government and it is in the best interest of justice that an order of Mandamus do issue to compel the Respondents to pay.
4. The application is not opposed. Despite numerous service, the respondents chose not to participate in these proceedings. There is an affidavit of service dated January 12, 2022 deponed by Kerario Marwa Advocate on record evidence of service.
5. I have considered the application and the supporting documents annexed to the verifying affidavit as "PMB1" and "PMB2" being the Certificate of Order against the Government dated November 15, 2021 and an affidavit of service dated January 12, 2022 respectively.
6. It is not in dispute that a judgement was delivered in favour of the ex-parte applicant and the court awarded him a total of Kshs 2,000,000/= being the decretal sum together with costs which have been taxed and certified at Kshs 131,544/=. There is no mention from the Certificate of Costs when the interest should start running from.
7. The *ex-parte* applicant is simply seeking an order of mandamus to compel the respondents to do their public duty and satisfy the decree which they have failed to do to the detriment of the ex-parte applicant.
8. In the case of *Republic Vs. Attorney General & Another Ex-parte Ongata Works Limited* (2016) Eklr Odunga J Referred To The Case Of R. (regina) Vs. Dudsheath, Ex Parte, Meredith [1950] 2 ALL E.R. 741, AT 743, where Lord Goddard C. J. held as follows:

It is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy... "
9. Before an order of *Mandamus* can issue, the *ex-parte* applicant must comply with Section 21 of the *Government Proceedings Act*. In *Kisya Investments Ltd -vs-The A. G.* (2005) 1KLR 74, the Court explained why the strict and elaborate procedure under that section has to be followed, It is meant to allow the Government time to enable it to make arrangements to satisfy the decree. In this case, the ex-parte applicant has satisfied the above requirement under the law and a Certificate of Order of costs dated November 15, 2021 was duly issued pursuant to Section 21 of the *Government Proceedings Act*.
10. Having found that the ex-parte applicant is fully compliant, the court finds that he is deserving of an order of *Mandamus*. The application is allowed as prayed. Interest on the decretal sum shall be at the rate of 14% until payment in full. Costs of this application is assessed at Kshs 20,000/= in favour of the ex-parte applicant.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 25TH DAY OF MAY, 2023.

R. WENDOH

JUDGE

Judgment delivered in the presence of;



Mr. Awino holding brief Mr. Mwita for the Ex-Parte Applicant.

No appearance for the Respondents.

Emma / Phelix Court Assistant.

