



**Republic v Cabinet Secretary, Ministry of Interior and Coordination of National Government & another; Macharia (Exparte Applicant) (Judicial Review 3 of 2020) [2023] KEHC 20791 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 20791 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
JUDICIAL REVIEW 3 OF 2020**

**GL NZIOKA, J**

**JUNE 30, 2023**

**IN THE MATTER OF AN APPLICATION BY FRANCIS NDUNGU  
MACHARIA FOR LEAVE TO INSTITUTE JUDICIAL REVIEW  
PROCEEDINGS SEEKING AN ORDER OF MANDAMUS**

**AND**

**IN THE MATTER OF ARTICLE 23 (F) AND 47 OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE CABINET SECRETARY, MINISTRY OF INTERIOR AND  
COORDINATION OF NATIONAL GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**FRANCIS NDUNGU MACHARIA ..... EXPARTE APPLICANT**

**JUDGMENT**

1. By a notice of motion application dated May 5, 2023, brought under the provisions of order 53 rule 3 (1) and (3) of the [Civil Procedure Rules, 2010](#) the ex-parte applicant, is seeking for an order of *mandamus* compelling the respondents to pay the sum owing of Kshs 273,255.12 as per Certificate of Order against the Government dated July 23, 2021 together with further interest from July 16, 2021 and costs herein.
2. The application is based on the grounds as stated in the statutory statement and verifying affidavit both dated; July 16, 2020. The ex-parte applicant avers that, he filed a civil suit namely; Naivasha



Chief Magistrate's Civil Suit Case No 306 of 2009 against the 2<sup>nd</sup> respondent and another. That, on December 14, 2018 the trial court entered judgment in his favour, and the 2<sup>nd</sup> respondent was ordered compensate him for the loss and damage he suffered in the sum of Kshs 100,000 as general damages and Kshs 5,000 as special damages.

3. That, the 2<sup>nd</sup> respondent was served with a decree and certificate of costs dated September 30, 2019 demanding for payment vide a letter dated December 14, 2018. However, despite the demand for payment and several reminders, the respondent(s) have declined and/or refused to settle the decretal amount.
4. That, the respondents' refusal to pay is without merit, unreasonable, an abuse of power, and violation of his right to fair administrative action under Article 47 of the Constitution of Kenya which states that every person has a right administrative action that is expeditious, efficient lawful and reasonable and procedurally fair.
5. Be that as it were, despite the respondent(s) being served with the application, they did not enter appearance nor file a response thereto. Therefore, the application is basically unopposed.
6. Having considered the materials and arguments advanced by *ex parte* applicant and I find that, the main issue to determine is whether the applicant has met the threshold for grant of the orders sought. In that regard, section 21(4) of the Government Proceedings Act provides as follows:

“Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs”.

7. Pursuant to the aforesaid, it follows that a decree holder can only enforce a judgment in its favour against the Government, by seeking for an order of *mandamus* to compel the Government to pay make payment.
8. The order of *mandamus* is derived from the Latin word “*mandare*” meaning to command. It is a judicial remedy in the form of an order from a court to any Government, Subordinate court, Corporation, or Public authority, to do some specific act which that body is obliged under law to do, and which is in the nature of public duty, and in certain cases one of a statutory duty, where a public body or official has unlawfully refused, declined or otherwise failed to undertake the duty.
9. In that regard, the Court of Appeal in the case of; Kenya National Examination Council v Republic, Ex-Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR stated as follows:

“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.”

10. To revert back to the matter herein, the *ex parte* applicant has produced a copy of the decree dated; September 30, 2019, the demand notice dated; December 14, 2018, and the Certificate of Order dated; July 23, 2021 in support of the application for orders sought. It suffices to note that, judgment herein was entered in the year 2018. The notice thereof was issued as far back as 2021. The question is; for how long can the *ex parte* applicant wait to enjoy the fruit of justice.
11. It is noteworthy that, the respondents are litigants like any other litigant under the law. The fact that section 21(4) of the *Government Proceedings Act* shields them as aforesaid does not mean it exonerates them from liability. Indeed the old adage states that “justice delayed is justice denied”. Further Article 159 of the *Constitution of Kenya, 2010* implores the courts to dispense justice expeditiously. Finally, Article 48 of the *Constitution* gives the *ex parte* applicant the right to access justice.
12. In the circumstances and taking into account the aforesaid, the only remedy available to the *ex parte* applicant is an order of *mandamus*. Consequently, the notice of motion application dated May 5, 2023, is allowed as prayed.
13. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 30<sup>TH</sup> DAY OF JUNE, 2023.**

**GRACE L NZIOKA**

**JUDGE**

In the presence of: -

Ms. Kiberenge for the applicant

N/A for the respondents

Ms. Ogutu court assistant

