



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO. 12 OF 2019

DAVID NGUGI NJANE (as the legal administrative of the Estate of JACINTA

MUTHONI NGUGI - DECEASED..... APPLICANT

VERSUS

INSPECTOR GENERAL OF POLICE & ANOTHER.....RESPONDENTS

JUDGMENT

1. The *Ex Parte* Applicant is a decree holder from **Nakuru Chief Magistrates CMCC No. 1250 of 2006**. In the suit, the *Ex Parte* Applicant had sued the Respondents on his own behalf and on behalf of the estate of the late Jacinta Muthoni Ngugi under the Fatal Accidents Act and the Law Reform Act.

2. The *Ex Parte* Applicant obtained a judgment dated 18/12/2018 in which the Respondents were found liable jointly and severally for Kshs. 1,600,000/- together with costs and interests at Court rates.

3. The Respondents did not satisfy the decree even after the *Ex Parte* Applicant obtained a *Certificate of Order Against the Government* under section 21 of the Government Proceedings Act.

4. This prompted the *Ex Parte* Applicant to bring the present action. After duly obtaining leave, the *Ex Parte* Applicant has filed this substantive Judicial Review Application dated 13/02/2020. It seeks the following main prayer:

That this Honourable Court be pleased to grant an order of mandamus compelling the 1st and 2nd Respondents to pay the *Ex Parte* Applicant herein the decretal sum of Kshs. 1,664,000/- and costs of the suit amounting to Kshs. 261,875/- in satisfaction of the judgment delivered on the 18th December, 2018 in the matter serialized as Nakuru CMCC No. 1250 of 2006: David Ngugi Njane v Inspector General of Police & Hon. Attorney General

5. The Honourable Attorney General filed Grounds of Opposition but did not file any submissions. The first ground obliquely claims that the Application does not meet the qualifications for the prayers sought. There is no explanation why the Honourable Attorney General feels so.

6. The other two objections claim that the *Ex Parte* Applicant has not furnished the Honourable Attorney General with the requisite documents to enable him to process payment. This demonstrably false. The *Ex Parte* Applicant has exhibited the documents served on the Honourable Attorney General. In any event, he has now been served with the present Application with exhibits those documents. He has not reacted to these factual demonstrations.

7. It is not in doubt that section 21(4) of the Government Proceedings Act prohibits execution against the Government. The said provision states:

Save as provided in this section, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government of any money or costs, 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.

8. However section 21 (1) of the Act provides:

Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government,

or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

9. Section 21 (3) of the said Act on the other hand provides:

If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.

10. As many decisions in our jurisdiction have pointed out, the effect of these provisions is that whereas execution proceedings as are known to law are not available against the Government, the Accounting Officer for the Government department concerned is nevertheless under a statutory duty to satisfy a judgement made by the Court against that department. That Accounting Officer can be compelled by an order for mandamus to do so. This is what the Applicant seeks here.

11. As the Court of Appeal said in **Republic vs. Kenya National Examinations Council Ex Parte Gathengi & 8 Others Civil Appeal No 234 of 1996** while citing with approval **Halsbury's Law of England, 4th Edn. Vol. 7 p. 111 para 89**:

The order of mandamus is of 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.

12. In the present case, the Applicant has obtained a Certificate of Costs against the Government as required by the Statute. They have served it on the Attorney General as required by the Statute. The Attorney General has failed to make the payments. The Honourable Attorney General is under a duty to make the payment and no lawful justification for non-payment has been proffered.

13. In the circumstances, the order prayed for by the Applicants is merited. It is hereby granted as prayed in the Notice of Motion dated 13/02/2020.

14. Orders accordingly.

DATED AT NAKURU THIS 28TH DAY OF JANUARY, 2021

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JOEL NGUGI

JUDGE

NOTE: This judgment was delivered by video-conference pursuant to various Practice Directives by the Honourable Chief Justice authorizing the appropriate use of technology to conduct proceedings and deliver judgments in response to the COVID-19 Pandemic.