



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MIGORI**

**JUDICIAL REVIEW NO. 05 OF 2021**

**REPUBLIC.....APPLICANT**

**versus**

**THE COUNTY SECRETARY MIGORI COUNTY GOVERNMENT & 2 OTHERS....DEFENDANTS**

**AND**

**AFRICA MERCHANT ASSURANCE CO. LTD.....EX-PARTE**

**JUDGMENT**

The ex-parte applicant, **Africa Merchant Assurance Co Ltd** filed the Notice of Motion dated 5/11/2021 through the firm of Kerario Marwa Advocates, seeking an order of Mandamus to issue from this court commanding the Respondents, The County Secretary Migori County Government; The Chief Officer Finance Migori County Government and Migori County Government (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondent) to pay the applicant the decretal sum of **Kshs. 19,056, 186/=** together with interest at 14% upto the date of payment. The said sum is the decretal sum in Migori HCC NO. 6 of 2018, Africa Merchant Assurance Co Ltd vs. County Government of Migori.

The application is supported by a verifying affidavit of Anunda Were, the Branch Manager of the applicant and a statement of facts dated 25/10/2021.

The background to this application is that the ex-parte applicant obtained judgment against the 3<sup>rd</sup> Respondent in Migori HCC No. 6 of 2018.

The applicant served on the 3<sup>rd</sup> Respondent the Certificate of Order pursuant to Order 29 Rule 3 Civil Procedure Rules and Section 21 of the Government Proceedings Act. The decretal sum was not paid despite the said service. After the applicant filed this application, the same was served on the Respondent and an affidavit of service dated 22/3/2022 sworn by the process server, George Ochieng Bala confirming service on the Respondent on 22/3/2022 was filed. The Notice was duly stamped by the Respondent's office but the Respondent neither opposed the application by filing a reply nor was there an appearance at the date for taking directions. The circumstances under which an order of Mandamus will issue were aptly set out in the case of **Republic vs. Kenya National Examination Council exparte Gathenji & Others CA 234 OF 1996** – where the court cited the Halsbury's Laws of England 4<sup>th</sup> Edition v 7 page 111 paragraph 89, thus

**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.”**

Under Section 44 of the County Government Act, and Section 103 of the Public Finance Management Act, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents respectively are responsible for operations of the County and the Finance matters in the County. They are the persons who should ensure that monies owed by the County Government are paid. Failure to perform their duties attracts the order of mandamus to compel them to do so.

In absence of a response to the application and appearance by the Respondents representative, I find that the Notice of Motion is unopposed. It is therefore granted as prayed. The applicant will also have costs of this application.

**DATED, SIGNED AND DELIVERED AT MIGORI THIS 29TH DAY OF MARCH, 2022**

**R. WENDOH**

**JUDGE**