



Republic v Attorney General & 3 others & 3 others; Makori (Exparte) (Judicial Review Miscellaneous Application 25 of 2014) [2022] KEHC 12408 (KLR) (26 July 2022) (Ruling)

Neutral citation: [2022] KEHC 12408 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 25 OF 2014**

**REA OUGO, J
JULY 26, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

ATTORNEY GENERAL & 3 OTHERS 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 3RD RESPONDENT

PRINCIPAL SECRETARY MINISTRY OF INTERIOR 4TH RESPONDENT

AND

PETER MAKORI EXPARTE

RULING

1. On July 13 this court upon considering the *exparte* applicant's application dated August 20, 2019 issued a notice to show cause against the 4th respondent on why contempt proceedings should not be commenced against him.
2. At the hearing of the notice to show cause Ms Nyandoro, counsel for the *exparte* applicant, submitted that they were seeking Kshs 5,395,735/- following a court order by Majanja J issued on June 25, 2018. The interest that accrued between June 7, 2012 to September 7, 2021 amounted to kshs 9,224,409/- while the decretal amount was kshs 8,411,119.35/-. Therefore, the respondent upon paying kshs 12,411,493.35/- to the *exparte* applicant, owed a balance of kshs 5,395,735/- to the applicant.
3. The respondents opposed the application. According to the replying affidavit dated December 9, 2021 by Chepkirui Janet, it was averred that the applicant had been paid kshs 12,411,493.35/- and that the amount he now claims was not part of the judgment in Kisii HC JR 25 of 2014. Mr Nderitu, for the



respondent submitted that the applicant was paid the full amount and any other interest is statute barred under section 4 (4) of the Limitations of Actions Act. The respondent relied on the case of Justus Ogada Agalo v Managing Director Kenya Railways Corporation [2016] eKLR.

4. Ms Nyandoro in a rejoinder argued that 6 years have not lapsed as it has been only 4 years since 2018.
5. The only issue raised at the hearing was on the interest owed, if any. It is not contested that this court on June 25, 2018 made the following order:

“That an order of *mandamus* be and is hereby issued directing the respondents herein to pay the applicant the sum of kshs 8,541,119.35 being the decretal amount in High Court Miscellaneous Cause no 943 of 2007 at Nairobi together with Interest thereon at the rate of 12% per annum from June 7, 2012 until payment in full.”

6. It is not in dispute that the respondent has paid the appellant a total of kshs 12,411,493.35/- towards the settlement of the decree and interest. The respondent has argued that the claim for interest is statute barred on grounds that the same is statute barred. Section 4 (4) of the Limitations of Actions Act provides as follows:

(4) An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods) the date of the default in making the payment or delivery in question, and no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.

7. The respondent also relied on the case of Justus Ogada Agalo v Managing Director Kenya Railways Corporation (*supra*) where the court stated:

Twelve years had not lapsed when this action was brought to recover the judgment sum and the *ex parte* applicant is entitled to an order for recovery of the judgment sum as well as the costs of the suit. He is also entitled to interest on that decretal sum (judgment sum and costs) together with interest at 14% per annum up to a period of six (6) years as Section 4(4) of the Limitation of Actions Act makes it clear that no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due. Accordingly, I direct that an order of *mandamus* do issue compelling the respondent to pay the decretal sum together with interest at 14% per annum from the date of the judgment up to a period of six years but no more. The respondent shall also bear the costs of these proceedings. It is so ordered.

8. The interest claimed by the *ex parte* applicant is from June 7, 2012 to September 7, 2021, the interest claimed is for 9 years. The *ex parte* applicant is entitled to interest at 12% per annum from June 7, 2012 up to a period of six years but no more. The balance owing on interest of balance of kshs 5,395,735/- is unmerited. The Notice to Show Cause is therefore dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT KISII THIS 26TH DAY OF JULY 2022.

R E OUGO

JUDGE

In the presence:

Applicant absent



Mr Nderitu For the respondent

Ms Aphline court assistant

