



**Malika v Attorney General (Judicial Review 5 of 2016)  
[2022] KEHC 11055 (KLR) (22 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 11055 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
JUDICIAL REVIEW 5 OF 2016  
WM MUSYOKA, J  
JULY 22, 2022**

**BETWEEN**

**VINCENT ALUKHULA MALIKA ..... APPLICANT**

**AND**

**ATTORNEY GENERAL ..... RESPONDENT**

**JUDGMENT**

1. This matter was initially being handled by F. Amin J, and I only took it over on 16<sup>th</sup> June 2022, following retirement of F. Amin J. That is how I get to be preparing and delivering this judgment.
2. Leave was granted herein on 17<sup>th</sup> June 2021 to being “Mandamus Proceedings” against the Ministry of Water and Sanitation. Through its Chief Accounting Officer with respect to a decree made in Kakamega CMCCC No. 290 of 2012.
3. The substantive Motion, dated 30<sup>th</sup> June 2021, has filed herein on 2<sup>nd</sup> July 2021. Attached to that Motion is the judgment delivered in Kakamega CMCCC No. 290 of 2012 against the Attorney General on 15<sup>th</sup> July 2015; copy of the decree and certificate of stated costs in Kakamega CMCCC No. 290 of 2012, dated 13<sup>th</sup> August 2016; copy of a certificate of order against government, issued in Kakamega CMCCC No. 290 of 2012 dated 13<sup>th</sup> August 2016; and copies of correspondence between the Advocate for the ex-parte applicant, the Ministry of Water and Sanitation and the Attorney General.
4. The duty on the part of Government to settle decrees made by courts of law arises only after the certificate of order against the Government has been served upon the relevant government department. Government only pays against the said certificate, which is a critical accounting document for that purpose, according to section 17 of the *Government Proceedings Act*, Cap 40 Laws of Kenya.
5. There is evidence that the ex-parte applicant did obtain the certificate of order against Government, but there is nothing to show whether the said certificate was ever served on the Accounting Officer of



the relevant Ministry for satisfaction. It is not enough to obtain the certificate, the same is intended to be served on the officer responsible for action. The duty to pay only arises upon the said service.

6. Consequently, as there is no evidence that the certificate of order against Government was ever served on the relevant officer, the duty on the part of the Government to satisfy the decree has not arisen, and it is premature to issue a Mandamus order in the circumstances. The Motion dated 30<sup>th</sup> June 2021, is accordingly incompetent, and I hereby dismiss the same. There shall be no order on costs

**JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 22<sup>ND</sup> DAY OF JULY 2022.**

**W.M. MUSYOKA**

**JUDGE**

Mr. Erick Zalo, Court Assistant

