



Republic v Principal Secretary Ministry of Interior & Co-ordination of National Government & another; Kamau (Exparte) (Miscellaneous Application 17 of 2019) [2022] KEHC 18065 (KLR) (23 September 2022) (Judgment)

Neutral citation: [2022] KEHC 18065 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS APPLICATION 17 OF 2019**

**J NGAAH, J
SEPTEMBER 23, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

PRINCIPAL SECRETARY MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL GOVERNMENT 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

PETER NJOROGE KAMAU EXPARTE

JUDGMENT

1. The motion before court is dated 28 March 2019 brought under Article 47 of the Constitution, section 7 of the *Fair Administrative Action Act* No 4 of 2015; section 21 of the *Government Proceedings Act*, cap. 40 and Order 53 of the *Civil Procedure Rules*. Two main prayers sought in the motion have been framed as follows:

1. That a mandamus order be and is hereby issued compelling the Principal Secretary, Ministry of Interior and Coordination of National government to pay the ex parte applicants (sic) the sum of Kshs 464, 325 with interest thereon at the rate of 12% per annum from December 20, 2017 in terms of the certificates of the orders against the government arising out of the judgement of the Court of Appeal Nairobi Civil Appeal No 155 of 2016; NBI HCCA No 187A of 2014 and Milimani CMCC No 1203 of 2008 between Peter Njoroge Kamau versus the Attorney General.



2. That in default of compliance with the payment the principal secretary- ministry of Interior & Coordination of National Government to show cause for committal to civil jail up to a period of 6 months.”
3. The applicant also asked for costs of the application.
4. The application is based on a statutory statement dated January 22, 2019 and the verifying affidavit sworn by the applicant on even date.
5. The application is fairly simple and straightforward.
6. On December 20, 2017, the Court of Appeal sitting in Nairobi in Civil Appeal No 155 of 2016 in which the applicant was the appellant and the Hon. Attorney General, the respondent, gave judgement for the applicant in the sum of Kshs 250, 000/=. The applicant was also awarded costs in the Chief Magistrate’s Court, this Honourable Court and the Court of Appeal. No doubt, the original suit in the magistrates’ court culminated in the appeal in the High Court and, eventually, in the Court of Appeal.
7. Several certificates of order against the government were issued and served upon the respondents. The cumulative sum arising from the certificates is stated to be Kshs 464, 325 which, according to the applicant, continues to attract interest at the rate of 12% per annum and further court fees.
8. The certificates were served upon the respondents on diverse dates in the year 2018 but to date they have failed or neglected to settle the amount due. Consequently, the applicant has filed the present application.
9. Although Ms Nyakora, the learned counsel for the respondents informed the court that she had filed grounds of objection, I have not seen any on record.
10. If anything, the record shows that the Hon Attorney General has consistently sought time to pay the applicant. For instance, on February 25, 2020 Mr Munene, the learned counsel who appeared for the Attorney General, is on record as having informed the court as follows:

“ We ask for more time to get funds from the parent ministry. I apologise for the delay.”
11. On December 16, 2020, Ms Nyakora, suggested that indeed efforts to pay the applicant were on course and she informed the court as follows:

“ I have done a letter to the Ministry. I am yet to get a response on settlement of this matter of court.”
12. And on June 15, 2021, Ms Nyakora was more candid on the position she had taken on the application when it came up for hearing. The learned counsel stated as follows:

“ I am not opposing the application except for the question of interest. Interest was not awarded the applicant.”
13. So, the only point of departure between the applicant and the respondents is whether the respondents should also be compelled to pay interest as urged by the applicants.
14. Certainly, it is not a question for this court’s determination. It is not the concern of this court to go behind the documents upon which the application is founded and interrogate the basis of their content. I suppose if the respondent’s doubted their validity, it would be open to the respondents to go back to the courts which issued these documents and correct the errors that there may be, if any. For



instance, if there is any error on the decree or certificate of order against government, the applicants had the liberty to move the court or taxing master which or who issued the decree or the certificate, as the case may be, to correct the error as appropriate.

15. In the circumstances, I find the applicant's application valid and with merit. It is allowed in terms of prayer 1 of the motion dated March 28, 2019. The applicant will also have costs of the application. It is so ordered.

SIGNED, DATED AND DELIVERED ON 23 SEPTEMBER 2022

NGAAH JAIRUS

JUDGE

