



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MISC.APPLICATION(JR) NO. 64 OF 2012**

**IN THE MATTER OF: AN APPLICATION FOR AN ORDER OF MANDAMUS**

**BETWEEN**

**FAIZ ALI TAIB.....APPLICANT**

**VERSUS**

**1. THE HON. ATTORNEY GENERAL**

**2. THE PERMANENT SECRETARY, MINISTRY OF HEALTH.....RESPONDENTS**

**RULING**

1. The Notice of Motion before the Court dated 18/10/2018 prays for the following orders: -

(i) That to ensure that this Honourable Court is not made to act in vain, and to ensure that the orders of this Honourable Court made on 18/2/2015 are enforced both in their letter and spirit and that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be directed to immediately ensure full compliance with the said orders.

(ii) That the 2<sup>nd</sup> Respondent be cited for contempt of this Honourable Court and be committed to civil jail for 6 months and fined Kshs. 200,000.00 for neglecting, defying and being in flagrant and contemptuous breach of the Honourable Court's orders of 18/2/2015 issued by the Honourable Court.

(iii) That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be condemned to pay the costs of this application.

2. The Motion is premised on grounds set out therein and is supported by affidavit of Faiza Ali Taib sworn on 1/2/2029.

3. The Applicant's case is that this Court on the 18/2/issued an order of mandamus to compel the 2<sup>nd</sup> Respondent therein being the Principal Cabinet Secretary, Ministry of Health formerly known as Permanent Secretary, Ministry of Health, to pay Kshs. 94,144.50 as at 31/3/2014 calculated from the decretal sum of Kshs. 20,569.85 as at the 28/5/2001 plus interest at the rate of 14% per annum and costs to the Applicant in satisfaction of the decree issued on 28/5/2001 in **Resident Magistrate's Court (Msa) Civil Suit No. 30 of 2001 Faiza Ali Taib v The Attorney General**. The above order was entered by consent of all the parties before Justice Anyara Emukule on 18/2/2015 and issued on 2/11/2015. These orders were duly extracted and served upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondents personally together with Penal Notices endorsed thereon. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents were at all times aware of the existence of the said Court Orders of 18/2/2015 and issued on 2/11/2015 and 3/5/2018 together with the Penal Notices relating thereto.

4. Despite being served with a Notice to Show Cause why contempt proceedings should not be commenced against the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent did not bother to attend Court on 18/9/2018. The orders of 18/9/2018 have not been varied nor set aside; the said orders were not obeyed but instead neglected and/or ignored by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The acts of contempt on the part of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are unacceptable and a total disrespect of the judicial proceedings, the law and this Court; and the aforesaid failure to act on the part of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are calculated to lower the authority and dignity of this Court and to defeat the purpose for the Court's orders.

5. Further, the acts of the Defendants/Respondents are malicious and contemptuous; the dignity of this Court must at all times be upheld as contempt of the Court's orders is a form of judicial treason and such acts eat insidiously into the fabric of and fatally dismembers and takes

away from the natural prestige and authority of the Court and destroys confidence in the entire judicial system.

6. The Applicant avers that this Court has the power, authority and indeed the duty to punish all who act with impunity and are in contempt of Court and to establish due process and respect for the Rule of Law. Further, this Court has a duty to uphold the Rule of Law by punishing all those who are in contempt of Court and that the contemnors should be committed to jail and forced to pay the Kshs. 200,000.00 fine stated in the Contempt of Court Act 2017, so as to send a clear message to wider public that the Court has powers to punish contemnors so as to act as a deterrent to any like-minded persons.

### **The Response**

7. In response to the Motion, **Mr. Mkok** learned Counsel for the Respondents filed a replying affidavit sworn by himself on 17/10/2019.

8. The Respondents' case is that as a requirement, a brief on the matter requesting settlement of the decretal amount was forwarded to the head office in Nairobi. The client Ministry was advised on the Judgment. Counsel submitted that the payment process within the Government is a procedure with controls and measures which require time to engage the relevant stakeholders in the process and that the Respondents be granted reasonable time to make a follow up and report on the progress on payment to this Court.

9. In essence the Motion is not opposed. All that the Respondents ask this Court is more time to pay the decree. This Court has noted from the annexures to the supporting affidavit that the decree here was due for payment as at 28/5/2001. It is now 20 years, and the Respondents are still asking for more time. The request by the Respondents is what is commonly referred to as an abuse of the process of court. The process of this Court started more than 20 years ago, and it yielded a decree, again more than 20 years ago. If I properly understand the Respondents' request, do they need another 20 years to pay a now matured decree for sum of Kshs. 95,000/= ? The Respondents herein had already been compelled, by an order of mandamus, to pay the decree herein. They have refused to do so. What more can this Court do?

10. This Court has the mandate to protect its own dignity, and to ensure that the orders it issues are complied with by all parties before the Court.

11. In that regard, this Court finds the application dated 18/10/2018 to be merited and the Respondents are held in contempt of this Court's Orders made on 18/2/2015.

12. Because the punishment for contempt is *quasi* criminal in nature this Court will not punish the contemnors until they are given a chance to mitigate or to show cause why they should not be punished.

13. For that reason, this matter will be mentioned on an agreeable date to fix a mention for the personal appearance of the contemnors in Court for sentencing. The costs herein shall be for the Applicant.

**Dated, Signed and Delivered at Mombasa this 16<sup>th</sup> day of March, 2021.**

**E. K. OGOLA**

**JUDGE**

Ruling delivered via MS Teams in the presence of:

Mr. Makuto holding brief Mkok for Respondent

No appearance for Applicant

Ms. Peris Court Assistant