



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA MOMBASA

MISCELLANEOUS APPLICATION NO. 60 OF 2012 (JR)

REPUBLIC.....APPLICANT

VERSUS

1. THE PERMANENT SECRETARY MINISTRY OF

STATE FOR PROVINCIAL

ADMINISTRATION AND INTERNAL SECURITY.....1ST RESPONDENT

2. THE HONOURABLE ATTORNEY GENERAL.....2ND RESPONDENT

EX-PARTE W A O

(Minor Suing Through His Father

J A O).....EX-PARTE APPLICANT

JUDGMENT

1. The Ex-parte Applicant seeks an order of Mandamus to compel the 1st Respondent to pay the sum of Ksh. 830,567 pursuant to a decree of the court in the Principal Magistrate's Court Civil Suit No. 80 of 1998 a personal injury suit against the 1st Respondent.
2. A decree of the court dated 17/11/2011 together with a certificate of order against the Government dated 17/11/2011 duly received at the office of the Attorney General on 26/4/2012 together with demand letter by counsel for the applicant are attached in support of the Application.
3. No appeal was preferred against the judgment of the trial court in the personal injury suit aforesaid.
4. The Respondents did not file any Replying Affidavit and counsel for the Respondents indicated that he had not obtained instructions from the 1st respondent despite rejected services.
5. An order of Mandamus is available to compel the performance of statutory duty. Upon the judgment and decree of the said court in Voi RMCCC No. 80 of 1998, the 1st Respondent was under a duty to satisfy the decree upon the compliance with the provisions of section 21 of the Government Proceedings Act with regard to execution of decrees against the Government.
6. The court has noted that the ex-parte applicant has duly complied with the procedure under section 21 of the Government Proceedings Act by extracting the decree and taking out a certificate of order against

the Government both dated 17/11/2011. The 1st Respondent has no lawful excuse for failure to pay.

Orders

7. Accordingly, the Court grants an order of Mandamus as prayed by the ex-parte Applicant to compel the 1st respondent to satisfy the decree of the court made in Voi RMCCC No. 80 of 1998 ***W A O (Minor suing through his father J A O) v. Attorney General*** on 17/11/2011.

8. The costs of this application and the application for leave to file Judicial Review Proceedings shall be paid by the 1st Respondent to the Ex-parte applicant.

.....

EDWARD M. MURIITHI

JUDGE

DATED AND DELIVERED THIS 13TH DAY OF MARCH, 2018.

E. K OGOLA

JUDGE

Appearances: -

M/S Stephen Oddiaga & Co. Advocates for Applicant

Ms. Namahia, State Counsel for Respondents