



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

J.R. MISC NO .2 OF 2018

REPUBLIC..... APPLICANT

VERSUS

**THE PRINCIPAL SECRETARY INCHARGE OF MINISTRY OF INTERIOR
AND CORDINATION OF NATIONAL GOVERNMENT (STATE) DEPARTMENT
OF INTERIOR..... RESPONDENT
SAMUEL GITAH WANGUI..... EX PARTE APPLICANT**

JUDGMENT

By a Notice of Motion dated 13/2/2018, the ex parte applicant herein Samuel Gitahi Wangui, seeks the following orders:

- 1. THAT an order of MANDAMUS do issue to compel the Principal Secretary (In charge of Ministry of Interior and Co-ordination of National Government (State Department of Interior) to pay to the applicant the sum of Ksh.1,561,507/= being the decretal amount owed to him in Nyahururu CMCC No 48 of 2014 together with interest accruing thereon at the rate of 14% per annum from 9/12/2016 and further costs to be taxed, until payment in full;**
- 2. THAT the Principal Secretary Incharge of Ministry of Interior and Co-ordination of National Government (State Department of Interior) do comply with satisfying the decree, costs and Interests in NYAHURURU CMCC NO 48 OF 2014 and further costs to be taxed within 21 days from the date of service of the order;**
- 3. THAT in default, a Notice to Show Cause do issue against the Principal Secretary in charge Ministry of Interior and Coordination of National Government (State Department of Interior) to show cause why he/she should not or be cited for Contempt of court.**

The applicant’s case is predicated on a statement of facts dated 26/4/2017 and the verifying affidavit of the applicant of the same date. His case is that he filed Nyahururu CMCC 48 of 2014 against the Attorney General (AG) in which he was awarded General and Special damages on 26/10/2016. The AG was ordered to pay the applicant a sum of Ksh.1,561,507/= being the decretal sum owed to the applicant together with interest and costs; that after the decree and certificate of costs was obtained, a demand letter to settle the decretal sum, dated 17/1/2017(SGW 6) was addressed to the AG, but there was no response to the said letter.

Due to the failure by the AG to settle the said sum, the applicant has moved this court for an order of mandamus to compel the respondent to settle the decretal sum and costs. The Court of Appeal discussed the purview and nature of an order of an order of mandamus in the case of Republic Vrs Kenya National Examination Council ex parte Githinji and others CA 234/1996 when it said:

“The order of mandamus is of a most extensive remedial nature and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly, it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”

Though served with the Notice of Motion, the respondent did not file a reply nor did a representative attend court. The Notice of Motion was therefore unopposed.

I have seen, exhibited to the Notice of Motion by the applicant, the judgment of the Lower Court in which an award of Ksh.1,200,000/= for

pain and suffering and Ksh.199,250/= on special damage was made in favour of the applicant. A decree was extracted on 9/12/2016 and the demand letter dated 17/1/2017 was served on the respondent 27/1/2017. The applicant has also annexed a certificate of order dated 20/12/2017 which was served on State Law office on – 12/1/2017 together with the Notice of Motion. There is no evidence that the applicant has been paid.

The applicant has demonstrated that there is a decree in his favour that should be settled by the respondent but the respondent has refused or neglected to perform his duty to settle the same. The applicant is therefore entitled to the order sought. I hereby grant the applicant an order of mandamus compelling the Respondent to pay the applicant the sum of Ksh.1,561,507/= with interest at court rates from the date of this application was filed till payment in full. The said payment be made within 30 days of this judgment. In default, a Notice to Show cause do issue on the Principal Secretary, Ministry of the Interior and Coordination of National Government to show cause why he cannot be cited for contempt of Court. The ex parte applicant will have costs of the application.

Dated, Signed and delivered at Nyahururu this 24th day of May, 2018.

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R.V.P Wendoh

JUDGE

PRESENT:

Mr. Waichungo for Applicant

Soi – Court Assistant