



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**MISCELLANEOUS APPLICATION NO.17 OF 2016**

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

**AND**

**IN THE MATTER OF THE PRINCIPAL MAGISTRATE’S COURT AT HOMA BAY**

**CIVIL CASE NO.74 OF 2016**

**IN THE MATTER OF GOVERNMENT PROCEEDINGS ACT**

**BETWEEN**

**JOSEPH ONYANGO AGENGA ..... APPLICANT**

**AND**

**THE HON. ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**PRINCIPAL SECRETARY FOR INTERIOR**

**AFFAIRS AND CO-OPERATION.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. **JOSEPH ONYANGO AGENGA** (the applicant) has by a notice of motion dated 15/07/2016 brought pursuant to **Order 53 (1)** of the **Civil Procedure Rules 2010**, and **Section 21 (3)** of the **Government Proceedings Act** applied for orders to issue in respect of prayer 3 which seeks that a notice to show cause to issue against the Principal secretary for Interior Affairs to show cause why he should not be cited for contempt of court, having failed to honour the decree issued in Principal Magistrate’s Court Homa Bay PMCC No.74 of 2011 where judgment was entered in favour of the applicant against the 1<sup>st</sup> respondent.
2. The background to the matter is that the applicant was arrested and arraigned at Homa Bay Law Courts on 1<sup>st</sup> July 2009 on a charge of affray on allegations that he had engaged in a public brawl with one MORRIS OCHIENG.
3. The matter was eventually dismissed under **Section 210** of the **Criminal Procedure Code** and he thereafter instituted civil proceedings for malicious prosecution against the OCS Homa Bay police station and the Attorney General in the aforementioned civil case. Judgment was entered in his favour in the sum of Kshs.50,000/= as special damages on 12<sup>th</sup> September 2012 and Kshs.350,000/= for general damages. Interest was also awarded at court rate of 14%.

4. The applicant states that he had a legitimate expectation that the sum would be satisfied timeously in less than 2 years, but to date nothing has been done. He explains that a copy of the decree together with certificate of costs was forwarded to the 1<sup>st</sup> Respondent on 3<sup>rd</sup> December 2013.

5. Thereafter it seems neither party have acted to settle the matter. Has a reminder ever been sent to the 2<sup>nd</sup> respondent to settle the claim apart from the first demand which seems to have been the only communication sent.

6. I do not think the applicant is being candid in adopting the position he has taken – it would appear this was a case of the proverbial letting the sleeping dog lie. The applicant is as guilty of latches as the respondent – the letter dated 3<sup>rd</sup> February 2013 marked **JOA 5** did not give the 2<sup>nd</sup> respondent a time span within which to act and it has not been demonstrated that the 2<sup>nd</sup> respondent has refused to settle the decree. I thereof decline to grant the orders sought.

**Delivered and dated this 31<sup>st</sup> day of January, 2017 at Homa Bay**

**H.A. OMONDI**

**JUDGE**

Mr. Nyakwamba present for Applicant

N/A for respondent