



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**JUDICIAL REVIEW NO. 3 OF 2017**

**IN THEATER OF AN APPLICATION FOR ORDERS OF JUDICIAL REVIEW IN THE  
NATURE OF MANDAMUS**

**AND**

**IN THE MATTER OF JUDGEMENT AND DECREE IN MALINDI ELC CIVIL SUIT NO. 102  
OF 2008 BETWEEN MARIAM MUENI MUSEMBI & ANOTHER VERSUS THE  
COMMISSIONER OF LANDS AND 6 OTHERS**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ORDER 53 CIVIL PROCEDURE RULES**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE COMMISSIONER OF LANDS.....1<sup>ST</sup> RESPONDENT**

**THE LANDS REGISTRAR, KILIFI.....2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**WILSON GACHANJA.....4<sup>TH</sup> RESPONDENT**

**ALFRED CHERWON.....5<sup>TH</sup> RESPONDENT**

**JAMES RAYMOND NJENGA.....6<sup>TH</sup> RESPONDENT**

**HOLBURN PROPERTIES LTD.....7<sup>TH</sup> RESPONDENT**

**AND**

MARIAM MUENI MUSEMBI.....1<sup>ST</sup> EX-PARTE APPLICANT

TIMOTHY MUCHINA CHEGE.....2<sup>ND</sup> EX-PARTE APPLICANT

### JUDGEMENT

1. The 1<sup>st</sup> ex-parte Applicant Miriam Mueni Musembi and the 2<sup>nd</sup> ex-parte Applicant Timothy Muchina Chege hold a decree in Malindi ELC No. 102 of 2008 (formerly Nairobi High Court Civil Case No. 3107 of 1997). They allege that the Commissioner of Lands (1<sup>st</sup> Respondent), the Lands Registrar Kilifi (2<sup>nd</sup> Respondent), the Honourable Attorney General (3<sup>rd</sup> Respondent), Wilson Gachanja (4<sup>th</sup> Respondent), Alfred Cherwon (5<sup>th</sup> Respondent), James Raymond Njenga (6<sup>th</sup> Respondent) and Holburn Properties Limited who are the judgement debtors in that matter have failed, refused or neglected to pay the decretal amount despite service of the decree.
2. Through the notice of motion dated 18<sup>th</sup> April, 2017, the ex-parte applicants seek an order of mandamus compelling the 1<sup>st</sup> Respondent to settle the decretal amount.
3. There is evidence through the affidavit sworn on 24<sup>th</sup> April, 2017 by Kimani Karebe that service of the notice of motion indicating the hearing date of 31<sup>st</sup> May, 2017 was effected upon the 1<sup>st</sup> Respondent.
4. The 1<sup>st</sup> Respondent did not attend the hearing and neither has any response been filed.
5. An order of mandamus is issued to compel the performance of a statutory duty by a public officer or body - see **Kenya National Examination Council v Republic Ex-parte Geoffrey Gathinji Njoroge & 9 Others [1997] eKLR**.
6. The ex-parte applicants have through their application established that they have a decree directing the 1<sup>st</sup> Respondent to pay them the amount indicated in the said decree. They have also shown that they have asked the 1<sup>st</sup> Respondent to pay the said decretal amount. They have further demonstrated that the 1<sup>st</sup> Respondent has a duty to discharge the said decree but has failed to do so.
7. In the circumstances of this case, the ex-parte applicants have met the conditions for the grant of an order of mandamus. An order of mandamus will therefore issue ordering the 1<sup>st</sup> Respondent to settle the decree issued on 17<sup>th</sup> November, 2015 by the Environment and Land Court at Malindi in Civil Case No. 102 of 2008 (formerly Nairobi High Court Civil Case No. 3107 of 1997). The ex-parte applicants will have the costs of the proceedings from the 1<sup>st</sup> Respondent.

**Dated, signed and delivered at Malindi this 29<sup>th</sup> day of June 2017.**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**