



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

JUDICIAL REVIEW NO. 2 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. 120
OF 2011 BETWEEN JOYCE NYOKABI & ANOTHER VERSUS THE COMMISSIONER OF
LANDS AND 5 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.....1ST RESPONDENT

LANDS REGISTRAR, KILIFI.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

WILSON GACHANJA.....4TH RESPONDENT

ALFRED CHERWON.....5TH RESPONDENT

JAMES RAYMOND NJENGA.....6TH RESPONDENT

AND

JOYCE NYOKABI

(Administrator of David Kamau Mwangi).....1ST EXPARTE APPLICANT

TIMOTHY MUCHINA CHEGE..... 2ND EX-PARTE APPLICANT

JUDGEMENT

1. The 1st ex-parte Applicant, Joyce Nyokabi and the 2nd ex-parte Applicant, Timothy Chege hold a decree in Malindi ELC No. 120 of 2011 (formerly Nairobi High Court Civil Case No. 1012 of 1998). They allege that the Commissioner of Lands (1st Respondent), the Lands Registrar Kilifi (2nd Respondent), the Honourable Attorney General (3rd Respondent), Wilson Gachanja (4th Respondent), Alfred Cherwon (5th Respondent) and James Raymond Njenga (6th Respondent) who are the judgement debtors in that matter have failed, refused or neglected to pay the decretal amount despite service of the decree.
2. They have therefore filed the notice of motion application dated 18th April, 2017, in which they seek an order of mandamus directing the 1st Respondent to settle the decretal amount.
3. There is evidence through the affidavit of Kimani Karebe sworn on 24th April, 2017 that service of the notice of motion indicating the hearing date of 31st May, 2017 was effected upon the 1st Respondent.
4. The 1st Respondent did not attend the hearing and neither has any response been entered.
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 1st Respondent to pay them the amount indicated in the said decree. They have also shown that they have asked the 1st Respondent to pay the said decretal amount. They have further demonstrated that the 1st 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 directing the 1st Respondent to settle the decree issued on 17th November, 2015 by the Malindi Environment and Land Court in Malindi in Civil Case No. 120 of 2011 (formerly Nairobi High Court Civil Case No. 1012 of 1998). The ex-parte applicants will have the costs of the proceedings from the 1st Respondent.

Dated, signed and delivered at Malindi this 29th day of June 2017.

W. KORIR,

JUDGE OF THE HIGH COURT