



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
MISCELLANEOUS APPLICATION NO. 291 OF 2010

IN THE MATTER OF AN APPLICATION BY:-

REPUBLICAPPLICANT

VERSUS

THE COMMISSIONER OF POLICE1ST RESPONDENT

THE HON. ATTORNEY GENERAL OF

THE REPUBLIC OF KENYA.....2ND RESPONDENT

JAMES NJOGU MAINA3RD RESPONDENT

THE SENIOR PRINCIPAL MAGISTRATE'S

COURT AT MACHAKOS4TH RESPONDENT

MUTENDE MAKAU (suing as the legal Representative of the estate of

MAKAU KINYUNGU (Deceased)EXPARTE APPLICANT

RULING OF THE COURT

The Application

1. By a Notice of Motion dated 27/03/2011 and amended on 29TH November, 2011 brought pursuant to Order 53 Rule 3(1) of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act and all enabling provisions of the law, the Ex-parte Applicant seeks the following prayers:

(1) THAT an order of Mandamus be directed to the Commissioner of Police in the Republic of Kenya compelling him to pay to the Applicant the sum of Kshs.246, 886/= as at the date of this Application plus further accrued interest thereon at 12% per annum till payment in full.

(2) THAT the costs of this Application are provided for.

The Application is supported by an annexed Affidavit of MUTENDE MAKAU sworn on even date and further on the following grounds namely:

(a) The Applicant obtained judgment in his favour in CMCC. No. 373 of 2006 on 22nd June,

2010 in the sum of Kshs. 200,000/= plus costs and interest.

(b) That the Respondents are fully aware of the judgment issued against them yet they have ignored and/or refused to settle the same.

(c) That the Honourable Attorney General was served with a demand letter dated 22/07/2010 with regard to release a cheque in the sum of Kshs.246,886/=.

(d) That the Respondent is enjoined in law to pay the sum claimed to the Applicant and further delay is to the prejudice of the Applicant.

2. The Exparte Applicant case is that he had sued the Respondents in Machakos CMCC. 373 of 2006 for general and special damages arising from a road traffic accident involving motor vehicle registration No, GK Z 225 Nissan Lorry then driven by the 3rd Respondent as authorized driver or servant of the Respondents and which rammed onto motor vehicle KAL 233 U thereby resulting in the death of the deceased herein **Makau Kinyungu**. The Ex-parte Applicant duly obtained judgement in his favour against the Respondents in the sum of **Kshs.200,000/=** plus costs and interest. The Ex-parte Applicant thereafter obtained all the requisite court decrees culminating in a certificate of Order against the Government dated 25/10/2010 which were duly forwarded to the Honourable Attorney General who has neglected to satisfy the same. The Exparte Applicant thereafter sought leave to commence Judicial Review proceedings vide an Application dated 23/12/2010 which was duly granted as it was not opposed. The Applicant now prays for an order of Mandamus to be issued to compel the Respondents to satisfy the judgment in **Machakos CMCC. No. 373 of 2006** and that the Applicant be paid decretal sums plus accrued interest due.

3. The Application for the Judicial Review orders is noted to be unopposed by the Respondents.

4. Counsel for the Applicant filed written submissions while the Respondents did not file any.

5. I have considered the Judicial Review Application dated 27/03/2011 and amended on 29/11/2011. I am satisfied that there is indeed a judgment and decree as well as a certificate of order against the Government in **Machakos CMCC 373 of 2006** in favour of the Applicant who is the legal representative of the Estate of **Makau Kinyungu (deceased)** against the Respondents herein which decree has neither been settled nor the judgments appealed against to date. The Ex-parte Applicant duly followed the requisite procedure by first seeking for leave to commence these Judicial Review Proceedings against the Government which was duly granted and that the substantive Application duly filed within the requisite period. It seems the Respondents have refused to settle the decree despite being requested to do so by way of written demand letters. This court finds that the Ex-parte Applicant who is the legal representative of the estate of **Makau Kinyungu (deceased)** has made out a case for the grant of Judicial Review Orders of Mandamus to settle the decree in **Machakos CMCC No. 373 of 2006**.

In the result I hereby grant an Order of Mandamus directed to the Respondents compelling them to pay to the Ex-parte Applicant the sum of **Kshs.246,886/=** together with interest accrued thereon at the rate of 12% from 25th October, 2010 as well as costs of **Kshs.31,960/=**.

As the proceedings were unopposed, the Applicant is awarded half costs.

Dated, signed and delivered at **MACHAKOS** this 25TH day of **JULY**, 2017.

D. K. KEMEI

JUDGE

In the presence of:-

C/A: Kituva