



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISC. APP NO.6 OF 2015

REPUBLIC

EX-PATE TN minor suing through next friend and father

SNM.....APPLICANT

VERSUS

THE ATTORNEY GENERALRESPONDENT

AND

CABINET SECRETARY, MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT, FORMERLY PERMANENT SECRETARY MINISTRY OF INTERNAL SECURITY PROVINCIAL ADMINISTRATIONINTERESTED PARTY

R U L I N G

Introduction

1. By the Notice of Motion dated 10th February 2014 brought pursuant to Order 53 (1), (2), (3) and (4) of the Civil Procedure Rules and Section 8 (2) and 10 of the Law Reform Act the ex parte applicant prays for ORDERS:-
 1. THAT the Honourable Court be pleased to issue Judicial Review Order of Mandamus against the Cabinet Secretary, Ministry of Interior and National Co-ordination formerly Permanent Secretary Ministry of Internal Security and Provincial Administration to direct him to satisfy the decree obtained in Kakamega CMC C No.513 of 2008 for kshs.302,975 together with accrued interest of Kshs.164,823/= making a total of Kshs.467,798.
 2. THAT costs of this application be provided for.
2. The application is supported by the affidavit of the exparte applicant and further reinforced by copies of statements and affidavit together with annextures.

Exparte Applicant’s Application

3. Briefly the ex-parte applicants case is that he is the father and representative of TN a minor who was involved in an accident on the 14th day of January 2008 which involved motor vehicle Reg. No.GKA 497H Land Cruiser owned by the Interested Party. He filed Kakamega CMCC No.513 of 2008 and was awarded Kshs.302,975/= as per Certificate of Order and costs dated 10th October

2011 against Government which certificate was served upon the Respondent who has since failed to satisfy the decree hence the application herein and further that interest has been accumulating since then and now stands at Kshs.164,823.

4. The ex-parte applicant's application is further reinforced by a copy of statement and verifying affidavit and annexures which have been attached to the affidavit in support of the application.

Determination

5. This Court has considered the pleadings herein and the oral submissions as made by the ex parte applicant's Counsel Mr. Onyando. The Court notes further that the respondents were represented by Mr. Tarus when the date for submissions was taken and also notes that the respondents sought leave to file their response but have since not filed the same and no reasons have been given as to why they have not complied.
6. Having been served with the Certificate of costs the respondent through the Attorney General ought to have appealed against the judgment in Kakamega CM CC No.513 of 2008 if they were aggrieved with the same but they did not prefer any appeal. Judgment was entered way back on 18th day of August 2009 in favour of the ex-parte applicant to the tune of Kshs.302,975 and Certificate of Order and costs against the Government taken out on the 10th October 2011.
7. It is now approximately seven (7) years since judgment was entered and approximately five years since the Certificate of Order and costs against the Government was extracted. Even though served the respondent herein has not made any effort to satisfy the decree obtained in Kakamega CMCC No.513 of 2008. There is no other way the ex-parte applicant can enjoy the fruits of his judgment unless he quickly moves to compel the interested party and the respondent to perform their duties.
8. This Court subscribes to the observations made by Odunga J. in **High Court Judicial Miscellaneous Application No.44 of 2012 [2014] e KLR – Republic –vs- AG & Another Ex parte Alfred Kosono** and adds that in this age of Constitutional freedoms, each arm of the Government is expected to do its work diligently, honestly and without fear or favour. Failure to do so can only mean one thing: a return to the dark days when justice would often times be dispensed at the whim of forces outside the Judiciary. Those were the dark days that are fit to be tossed into the sea of forgetfulness and left there to rest forever and be remembered no more.
9. For all the reasons set out above, an order of mandamus in accordance with prayer 2 is hereby issued compelling the respondents to pay kshs.467,798/= only inclusive of costs and interests within thirty (30) days from the date of issuing this order.
10. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 17th day of March 2016

RUTH N. SITATI

J U D G E

In the presence of:

Mr. Onyando (present) for Exparte Applicant

Mr. Taruru (absent) for Respondent and Interested Parties

Mr. Lagat - Court Assistant