



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. APPLICATION NO. 135 OF 2013

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF
MANDUMUS**

AND

IN THE MATTER OF APPLICATION BY JUSTUS OGADA AGALO

BETWEEN

JUSTUS OGADA AGALO APPLICANT

VERSUS

THE MANAGING DIRECTOR KENYA RAILWAYS CORPORATIONRESPONDENT

JUDGMENT

On 30th May 2003 the exparte applicant obtained judgment against the respondent herein for a sum of Kshs.218,750/= together with costs and interest at 14% per annum which costs were on 27th October 2003 assessed and certified at Kshs.59,255/=. The respondent did not appeal that judgment but despite being served with the decree did not satisfy the judgment hence necessitating the institution of these proceedings for an order for judicial review in the nature of mandamus to compel it to satisfy the judgment.

The application was opposed the grounds of opposition being that:-

- 1. THAT the application is fatally defective as it is not supported by any affidavit as the verifying affidavit annexed to it was sworn in support of another application and is not related to the current one.***
- 2. THAT apart from the verifying affidavit being improperly on record, even the purported annexures are not properly before Court.***
- 3. THAT part of the applicant's claim is arrears of interest in respect of a judgment debt being claimed after the expiry of six years which is contrary to Section 4(4) of the Limitation of Action Act.***
- 4. THAT in the premises the claim by the applicant is not sustainable in law as it is.***

The application was canvassed by way of written submissions. It is instructive, from a perusal of the submissions of the respondent's counsel, that the respondent does not dispute there was a judgment

entered against it in favour of the exparte applicant. This finding is informed by a paragraphs at page 3 of the submissions which state:-

“Moreover, the applicant has not come to this Court with clean hands and is guilty of non disclosure of material facts to this case. It ought to be noted that negotiations have been underway and the respondent was willing to settle the decretal amount and costs and interests were negotiated downwards (interest in this regard being limited to accrued interest until 2009) to its dismay, the applicant maintained his unreasonable figure of Kshs.748,104/=.....

Considering our reasons stated above, it is our humble submission that the claim by the applicant is not sustainable by law as it is and what is owing to the applicant is limited to the decretal amount and costs of the suit....

Further, we pray that the Court finds that the respondent does not need to be compelled to satisfy the decretal amount especially when it has always intended to pay but its efforts have been rendered fruitless by the applicant who was not keen on settling this matter but on escalating this amount to cover accrued interest which is now beyond the required limitation period.”

A reading of these paragraphs shows that the respondent acknowledges, first that it is indebted to the applicant and secondly that contrary to its allegations it was not notified of the indebtedness or that the applicant has sat on its rights there have been negotiations between them. Twelve years had not lapsed when this action was brought to recover the judgment sum and the exparte applicant is entitled to an order for recovery of the judgment sum as well as the costs of the suit. He is also entitled to interest on that decretal sum (judgment sum and costs) together with interest at 14% per annum up to a period of six (6) years as Section 4(4) of the Limitation of Actions Act makes it clear that no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due. Accordingly I direct that an order of mandamus do issue compelling the respondent to pay the decretal sum together with interest at 14% per annum from the date of the judgment up to a period of six years but no more. The respondent shall also bear the costs of these proceedings. It is so ordered.

Signed, dated and delivered at Kisumu this 21st day of April 2016

E. N. MAINA

JUDGE

In the presence of:-

Olango for the Applicant

N/A for the Respondent

CC: Felix Magutu