

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW MISC. APPLICATION NO. 327 OF 2015

BROOKSIDE DAIRY LIMITEDPLAINTIFF/EXPARTE APPLICANT

VERSUS

1. THE PRINCIPAL SECRETARY, MINISTRY OF DEFENCE.....1ST RESPONDENT

**2. HON. ATTORNEY GENERAL.....2ND
RESPONDENT/DEFENDANT**

JUDGMENT

1. Before me for determination is the Judicial Review Notice of Motion dated 30th October 2015. The Exparte applicant Brookside Dairy Limited seeks from this court Judicial Review orders of Mandamus to issue compelling the Principal Secretary Ministry of Defence and the Attorney General to pay the exparte applicant the sum of shs 2,173,831 plus interest at 12% per annum from 21st September 2012 when judgment was issued in CMCC13256/2004 Nairobi until payment in full.

2. The exparte applicant also seeks for orders that compliance be effected within 14 days and in default, notice to show cause to issue to both respondents. Costs are also prayed for.

3. In support of the Notice of Motion are grounds, statement of facts, verifying affidavits, supporting affidavit, application for leave dated 14th August 2015 and annexures which include decree, judgment in the suit in the court below, certificate of order and exhibits to prove that the amount due was indeed owing as claimed and decreed by the trial court.

4. I have noted that the application was served upon the respondents who have not entered any appearance. I have considered the Judicial Review Notice of Motion, the grounds, supporting affidavit, annexures and submissions by Mr Njuguna counsel for the Exparte applicant. I am satisfied that the application as presented is merited and ought to be granted.

5. However, I note that the Honourable Attorney General was sued as the Principal Legal Advisor to the Government. As an office, it does not owe any monies to the Exparte applicant. The decree and judgment in the lower court is clear that it is the Principal Secretary, Ministry of Defence that was supplied with milk and defaulted to pay. Accordingly, I grant Judicial Review Order of Mandamus directed at the Principal Secretary, Ministry of Defence compelling him to pay to the Exparte applicant the sum of shs 2,173,831 as decreed in CMCC 1325/2004 Nairobi, together with interest accruing thereon at the rate of 12% per annum from date of judgment until payment in full.

6. In default of such payment within 60 days from the date hereof. The Exparte applicant is at liberty to apply as appropriate.

Orders accordingly.

Dated, signed, delivered at Nairobi this 25th day of July 2016.

R.E. ABURILI

JUDGE