



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**MISC APPLICATION NO. 87 OF 2015**

**REPUBLIC..... APPLICANT**

**AND**

**PRINCIPAL SECRETARY,**

**OFFICE OF THE PRESIDENT.....1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**EX PARTE: WATSON MUNYORI NJERU**

**JUDGEMENT**

1. By a Notice of Motion dated 21<sup>st</sup> March, 2015, *the ex parte* applicant herein **Watson Munyori Njeru** seeks an order of mandamus compelling the 1<sup>st</sup> Respondent herein through the 2<sup>nd</sup> Respondent to pay the applicant the sum of Kshs 1,736,206.00 being the decretal amount in the Nairobi Chief Magistrate Civil Case NO. 7357 of 2009 (formerly HCCC No. 972 of 2002) together with costs of Kshs 113,937.00 with interests thereon at 12% per annum from 6<sup>th</sup> June, 2002 till payment in full. The applicant also seeks the costs of the application.
2. According to the applicant, he filed the said Civil Suit based on malicious arrest, detention and prosecution by way of a plaint dated 5<sup>th</sup> July, 2002 which was filed on 6<sup>th</sup> June, 2002, which case was heard on its merits and on 19<sup>th</sup> April, 2013 judgement delivered in his favour in which he was awarded his withheld salary and other emoluments plus costs.
3. Despite that notwithstanding having made several reminders, the respondents failed, refused and/or neglected to provide the funds for the settlement of the same yet they are under a public duty to do so.
4. In support of his case the applicant exhibited copies of the judgement, decree, certificate of costs letter to the Attorney General demanding settlement and letter from the Attorney.
5. Despite having been served the respondents did not oppose the instant application.
6. In High Court Judicial Review Miscellaneous Application No. 44 of 2012 between the **Republic vs. The Attorney General & Another ex parte James Alfred Koroso**, I expressed myself as follows:

**“...the present case the ex parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from *mandamus*, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done he will forever be left baby sitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of the Constitution which enjoins the State to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his/her lawful rights which have been decreed by a Court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under Article 129 of the Constitution executive authority derives from the people of Kenya and is to be exercised in accordance with the Constitution in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit....The institution of judicial review proceedings in the nature of *mandamus* cannot be equated with execution proceedings. In seeking an order for *mandamus* the applicant is seeking, not relief against the Government, but to compel a Government official to do what the Government, through Parliament, has directed him to do. The relief sought is not “execution or attachment or process in the nature thereof”. It is not sought to make any person “individually liable for any order for any payment” but merely to oblige a Government officer to pay, out of the funds provided by Parliament, a debt held to be due by the High Court, in accordance with a duty cast upon him by Parliament. The fact that the Accounting Officer is not distinct from the State of which he is a servant does not necessarily mean that he cannot owe a duty to a subject as well as to the Government which he serves. Whereas it is true that he represents the Government, it does not follow that his duty is therefore confined to his Government employer. In *mandamus* cases it is recognised that when statutory duty is cast upon a Public Officer in his official capacity and the duty is owed not to the State but to the public any person having a sufficient legal interest in the performance of the duty may apply to the Courts for an order of *mandamus* to enforce it. In other words, *mandamus* is a remedy through which a public officer is compelled to do a duty imposed upon him by the law. It is in fact the State, the Republic, on whose behalf he undertakes his duties, that is compelling him, a servant, to do what he is under a duty, obliged to perform. Where therefore a public officer declines to perform the duty after the issuance of an order of *mandamus*, his/her action amounts to insubordination and contempt of Court hence an action may perfectly be commenced to have him cited for such. Such contempt proceedings are no longer execution proceedings but are meant to show the Court’s displeasure at the failure by a servant of the state to comply with the directive of the Court given at the instance of the Republic, the employer of the concerned public officer and to uphold the dignity and authority of the court.”**

7. I am still of the same view.

8. Having considered the material on record and in the absence of any impediment, I do not see why the 1<sup>st</sup> respondent should not be compelled to perform his statutory duty by settling the sums due from him to the applicant.

9. In the result I allow Notice of Motion dated 27<sup>th</sup> March, 2015, and issue an order of *mandamus* compelling the 1<sup>st</sup> Respondent herein to forthwith pay the applicant Kshs 753,870.00 which is the principal sum as per the decree with interests thereon from 6<sup>th</sup> June, 2002 at 12% per annum till payment in full with costs assessed at Kshs 113, 937.00

10. As the facts of this case were substantially disclosed in the statement as opposed to the verifying affidavit, there will be no order as to costs of this application.

11. Orders accordingly.

**Dated at Nairobi this 5<sup>th</sup> day of August, 2016**

**G V ODUNGA**

**JUDGE**

**Delivered in the presence of:**

**Miss Nthiwa for Mr Mutiso for the applicant**

**Mr Odhiambo for Mr Munene for the Respondent**

**Cc Mwangi**