



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**JUDICIAL REVIEW NO. 1 OF 2015**

**IN THE MATTER OF AN APPLICATION BY:**

**AFRICAN SAFARI CLUB, FRANK HELGE NEUGEBAUER AND HASMUKH HARILAL  
NANDHA**

**THE JOINT APPLICANT'S APPLICATION MANDAMUS**

**AND**

**IN THE MATTER OF THE HIGH COURT AT NAKURU J.R. MISCELLANEOUS  
APPLICATION NUMBER 52 OF 2011**

**IN THE MATTER OF THE SENIOR PRINCIPAL MAGISTRATE'S COURT NAROK**

**IN THE MATTER OF THE HONOURABLE ATTORNEY GENERAL**

**IN THE MATTER OF: NAROK/CIS – MARA/LEMEK/172**

**: NAROK/CIS – MARA/LEMEK/173**

**AND**

**IN THE MATTER OF SAMSON SAPEI OLOLMAITAI**

**AND**

**REPUBLIC.....APPLICANT**

**-VERSUS-**

**THE PRINCIPAL SECRETARY IN CHARGE OF INTERNAL SECURITY OF THE OFFICE  
OF THE PRESIDENT..... RESPONDENT**

**EXPARTE**

**FRANK HELGE NEUGEBAUER**

**HASMUKH HARILAR NANDHR**

## J U D G M E N T

1. The Notice of Motion, filed on 15/3/2016 pursuant to leave granted by this court, seeks an order of mandamus to compel the Respondent to satisfy the judgment costs arising from Nakuru High Court Miscellaneous Application No. 52 of 2011. The said costs were certified at Kshs 448,431/=.

2. In the said miscellaneous suit the Applicants had successfully moved the High Court in Nakuru to quash the decision of the Attorney General to prosecute the Applicants and further prohibited related proceedings in Criminal Case 339 of 2011 at Narok. They were also awarded costs.

3. In the present application, the Applicants assert that despite the costs being taxed and certified, the Respondent has neglected and or refused to honour the judgment in respect of payment of costs. On 16<sup>th</sup> June 2015 the Respondent entered appearance in this matter. However, the substantive Notice of Motion elicited no response from the Respondents despite service. Equally, submissions on the said Motion were served upon the Respondents pursuant to this court's directions on 29/6/2016. The substantive Motion is therefore unopposed.

4. In their submissions in support of the Motion, the Applicants have restated the history of the matter and the law applicable. It is the Applicants' position that an order of mandamus will issue against an authority which neglects to perform a legal duty. Reliance was placed on the case of **Republic -Vs- Minister for Local Government & Another Ex parte Mwahima [2002] 2 KLR 559**, and the judgment of **Odunga J** in **Republic -Vs- Town Clerk City Council of Nairobi [2013] eKLR**, *inter alia*.

5. I have considered the undisputed facts regarding the background to the present Notice of Motion. There is no doubt that there exists an unsatisfied certificate of taxation of costs in favour of the Applicants. Orders of mandamus, as stated in **Republic -Vs- Town Clerk, Kisumu Municipality ex parte East African Engineering Consultants [2007] 2EA 441:-**

**“are issued in the name of the Republic.....and its officers are compelled to act in accordance with the law. The state so to speak by the very act of issuing the orders from upon its officers for not complying with the law. Execution as known in the Civil Procedure process was not contemplated [against the government] and this includes garnishee proceedings.”** (See also **Shah -Vs- Attorney General (No. 3) 1970 EA 543**.)

6. Section 21 (4) of the Government Proceedings Acts prohibits execution against the Government. It states:-

**“Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.”**

7. The procedure for enforcing decrees against the Government is set out in Section 21 of the Act. As **Githua J** stated in **Republic -Vs- Permanent Secretary Ministry of State for Provincial Administration and Internal Security and Another ex parte Fredrick Manoah Egunza [2012] eKLR**:

**“The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act.....which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Honourable Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Honourable Attorney General, Section 21 (3) imposes a statutory duty on the accounting officer to pay the**

**sums specified in the said order to the person entitled or to his advocate.....”**

8. In this case the Applicants assert that despite notice being given to the Respondent in the form of the certificate of order and of costs the Respondent has not paid the sums awarded to them as costs.

9. In **Republic –Vs- Kenya National Examinations Council exparte Gathenji & Others [1996] eKLR Civil Appeal No. 266 of 1996**, the Court of Appeal stated:

**“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual..... These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons which has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed” (See also Republic –Vs- Town Clerk, City Council of Nairobi (Supra).**

10. I think I have said enough to demonstrate that the Respondent has a statutory duty in this case to satisfy the certificate of costs due to the Applicants. A successful litigant is entitled to the fruits of his judgment. A situation where such Applicants hold a decree or certificate of costs against the Government that remains unsatisfied over a long period amounts to injustice which calls for remedying. A successful litigation will be rendered a pyrrhic victory if the successful litigant is unable to enjoy the fruits of the litigation.

11. In the circumstances I am persuaded that this is a proper case for the issuance of the order of mandamus to compel the Respondent to satisfy the certified costs in Nakuru High Court Miscellaneous Application No. 52 of 2011. I therefore grant prayer 1 of the substantive Notice of Motion, with costs. There was no order in the Nakuru matter for the payment of interest on costs, and none is issued in this case.

Delivered and signed at Narok, this **28<sup>th</sup>** day of **October, 2016**.

In the presence of:-

Mr. Kamwaro holding brief for Mr. Kabiru for Applicants

N/A for the Respondent

Court Assistant : Barasa

**C. MEOLI**

**JUDGE**