



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
MISC. CIVIL APPLICATION NO. 23 OF 2012

IN THE MATTER OF AN APPLICATION BY FRANCIS ALEXANDER KIMANGI MUINDI
APPLICATION FOR JUDICIAL REVIEW FOR AN ORDER OF MANDAMUS

AND

IN THE MATTER OF EXECUTION OF DECREE IN HCCC NO. 2630 OF 1981

BETWEEN

THE REPUBLIC

AND

MUNICIPAL COUNCIL OF MACHAKOS..... RESPONDENT

VERSUS

FRANCIS ALEXANDER KIMANGI MUINDI APPLICANT

R U L I N G

1. The application dated 10/6/2013 is brought under **Order 51 Rule 1** of the **Civil Procedure Rules 2010; Sections 1A & 3A** of the **Civil Procedure Act (Cap 21)**; the inherent powers of court and other enabling provisions of law.
2. The application seeks the following orders:-
 1. **“(Spent).**
 2. That **appropriate directions be given with regard to the execution of the decree in HCCC No. 2630 of 1981.**
 3. That **the Machakos County Government having taken over the assets and liabilities of the Machakos Municipal Council be compelled through its interim County Secretary to satisfy the decree in HCCC No. 2630 of 1981.**
 4. That **the costs of this application be borne by the said Government.”**
3. The *ex parte* Applicant, **Francis Alexander Kimangi Muindi** (hereinafter Applicant) has deponed that on 29/6/2011, this court decreed in **HCCC No. 2630/1981** that the **Municipal**

Council of Machakos do pay him the sum of Kshs.7,815,680/= together with costs and interest. Subsequently, the **Municipal Council of Machakos** was ordered by order of *mandamus* to satisfy the decree but refused to satisfy the same. That following the devolution process, all the functions of the **Municipal Council of Machakos** were taken over by the **Machakos County Government**. Efforts made to have the **Machakos County Government** to make good the payment have not born any fruit.

4. The application is opposed. According to replying affidavit by **Francis Mwaka**, the Secretary to the County Government of Machakos, the Respondent has not refused to satisfy the decree but is unable to pay the money in a lump sum as its resources are constrained. It is further averred that the Applicant should come out clearly on the nature of the directions sought under **Order 22 rule 7 (2) (j)**.

5. During the hearing of the application, the parties relied on the affidavit evidence.

6. The application is essentially not opposed save for the mode of payment.

7. On the question of directions, I agree with the Respondent that the Applicant ought to seek specific directions as enumerated under **Order 22 rule 7 (2)(j)**.

8. The Applicant is therefore at liberty to take any steps against the Respondent as provided under **Order 22 rule 7 (2) (j)**. Costs to the Applicant.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 18th day of February 2015.

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B. THURANIRA JADEN

JUDGE