



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW DIVISION**

**JR CASE NO. 410 OF 2014**

REPUBLIC.....APPLICANT

VERSUS

PRINCIPAL SECRETARY,

MINISTRY OF LIVESTOCK.....RESPONDENT

MILKA MURUGI NJUGUNA.....EX-PARTE

**JUDGEMENT**

1. Through the notice of motion application dated 10<sup>th</sup> December, 2014 the Applicant, Milka Murugi Njuguna prays for an order of mandamus to compel the Respondent, the Principal Secretary in the Ministry of Livestock Development to pay the Applicant the sum of Kshs.164,088/= together with costs and interest at 14% per annum being the amount awarded in Kiambu CMCC No. 976 of 1995. The Applicant also prays for the costs of the suit.
2. The application is unopposed.
3. An order of mandamus is issued to compel a public officer to perform a statutory duty. In the case of **Kenya National Examination Council v Republic, Ex parte Geoffrey Gathenji & 9 others, Nairobi Civil Appeal No. 266 of 1996** the Court of Appeal stated the purpose of an order of mandamus as follows:

**“The next issue we must deal with is this: What is the scope and efficacy of an ORDER OF MANDAMUS? Once again we turn to HALSBURY’S LAW OF ENGLAND, 4<sup>th</sup> Edition Volume 1 at page 111 FROM PARAGRAPH 89. That learned treatise says:-**

**“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.”**

At paragraph 90 headed “the mandate” it is stated:

**“The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”**

**What do these principles mean? They mean that an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”**

4. Among the exhibits placed before the Court by the Applicant are an amended decree, a certificate of order against the government dated 13<sup>th</sup> November, 2007 and demand notices to the Respondent and the Attorney General dated 24<sup>th</sup> March, 2005 and 2<sup>nd</sup> May, 2013 respectively. These exhibits confirm the existence of a judgement against the Respondent and demand for payment. There is no evidence that the Applicant has paid the decretal sum.
5. Section 21(3) of the Government Proceedings Act, Cap 40 imposes a duty upon the Respondent to make payment where a certificate of order has been issued against the department.
6. The Applicant has therefore established a case against the Respondent and an order of mandamus shall issue as prayed. The interest on the decretal amount will be at court rates. The Applicant will also have the costs of the proceedings.

Dated, signed and delivered at Nairobi this 27th day of May , 2015

**W. KORIR,**

**JUDGE OF THE HIGH COURT**