



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISC. CIVIL APPLN. NO. 18 OF 2009(JR)

JOSEPHAT OPUKA OTIATO APPLICANT

-VERSUS-

1.THE PERMANENT SECRETARY MINISTRY OF ROADS/PUBLIC WORKS

2.ATTORNEY GENERAL RESPONDENTS

RULING

1. The Ex-parte Applicant herein, **JOSEPHAT OPUKA OTIATO** was involved in a road traffic accident on 30/07/1992 a result of which he instituted Kakamega HCCC No. 403 of 1993 which was later on transferred to the Chief Magistrate's Court at Kakamega and became CMCC No. 1432 of 1994.
2. Judgment was delivered on 08/12/2004 in favour of the Exparte Applicant in the sum of Kshs. 320,000/= with costs. Costs were later on assessed at Kshs. 20,000/=.
3. After pursuing the satisfaction of the judgment in vain, the Exparte Applicant took out judicial review proceedings for orders of mandamus.
4. Leave was granted on 17/09/2009 and the main Notice of Motion was evenly dated and duly filed in Court on 18/09/2009. The said Notice of Motion was heard and allowed by the Court on 30/06/2011.
5. The record reveal further efforts taken by the Applicant towards having the Respondents satisfy the decree in vain.
6. Being apprehensive that the Applicant may be caught up by limitation of time, he on 09/09/2014 filed a Notice of Motion dated 04/09/2014 seeking leave to commence contempt proceedings against the first Respondent herein who is now described as **'the Principal Secretary responsible for Roads'**. Leave was granted on 18/02/2015 paving the way to the Notice of Motion dated 03/03/2015 which seeks a committal order against the Principal Secretary for being in contempt of the Court orders.
7. When the said application came up for hearing on 28/05/2015 the first Respondent was not present neither was he represented in Court. After the Court was satisfied of proper service upon the Respondents, it allowed the Applicant to argue the application.
8. The Applicant took this Court through the history of the matter including all the efforts he took to have a peaceful satisfaction of the decree in Kakamega CMCC No. 1432 of 1994. It is indeed so evident on record that a Mr. Onyiso and a Mr. Tarus, Learned State Counsels severally appeared

for the Respondents and sought for time to enable the satisfaction of the decree in issue. The Applicant has always demonstrated a high level of patience with the hope that one day the decree would be satisfied without any further Court intervention. From the record and the history of the matter I am satisfied that the first Respondent has been all aware of both the pendency of the decree of the lower Court as well as the Order of Mandamus issued by this Court. The said decree remains unsatisfied to date.

9. I am likewise satisfied and do hereby find that the first Respondent's conduct in been so aware of the decree of the lower Court and failing to satisfy the same amounts to disobedience of the orders of this Court. I therefore find **the Principal Secretary responsible for Roads** to be in contempt of Court.

10. The Applicant has sought for the said Principal Secretary's committal to jail for six months in order to uphold the rule of law in this Country. Whereas that prayer is well available in law, this Court would however give the Principal Secretary a further chance to make good the decree as ordered hence purging the contempt. This will have to be done **within 60 days** from today.

11. In sum, this Court therefore makes the following final orders:-

- a. ***The Principal Secretary responsible for Roads is hereby held to be in contempt of the orders of this Court made on 30/06/2011 requiring the satisfaction of the decree in Kakamega CMCC No. 1432 of 1994;***
- b. ***The Principal Secretary responsible for Roads is hereby ordered to satisfy the decree in Kakamega CMCC No. 1432 of 1994 within 60 days of this ruling;***
- c. ***The matter shall be fixed for a Mention in October 2015 to ascertain the then position and for further orders of this Court as may deem necessary to uphold the rule of law;***
- d. ***The Applicant shall within 14 days of this ruling extract and serve this order upon the Respondents herein as before both in Nairobi and Kakamega.***

Orders accordingly.

DELIVERED, DATED and SIGNED at KAKAMEGA this 23rd day of July, 2015

A. C. MRIMA

JUDGE

In the presence of

Mr. Munyendo Counsel For the Applicant

N/A For the Respondents

Miss Selpher Court Assistant