



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISC. CIVIL APPLICATION NO.6 OF 2014

REPUBLICAPPLICANT

VERSUS

THE PRINCIPAL SECRETARY

MINISTRY OF ENVIRONMENT WATER &

NATURAL RESOURCESRESPONDENT

AND

ATTORNEY GENERALINTERESTED PARTY

AND

EX-PARTE APPLICANT.....SARAH PENSULAR MUYEKANE

R U L I N G

Introduction

1. By the Notice of Motion dated 5/06/2014 brought under Sections 8 and 9 of the Law Reform Act Cap 26 Laws of Kenya and Order 53 rule 3(1) of the Civil Procedure Rules 2010 the ex-parte applicant seeks for orders:-
 - a. THAT an order of Mandamus be issued to compel the Respondent to pay kshs.840,365/= plus interest accrued thereon as at 11/2/2014 arising from the decree in VIHIGA SPM CC No.14 of 2011 delivered on 27/2/2013 till payment in full.
 - b. THAT costs of this application be provided for

Applicant’s Case

2. The application is based on the grounds that judgment in VIHIGA SPM CC having been delivered on 27/2/2013 in favour of the ex parte applicant and the Respondents and the interested party having been notified of the decree the same has not been settled to date. The applicant claims that the Respondent and the interested party are not keen on settling the same denying her the enjoyment of the fruits of her judgment. The applicant therefore contends that it would be in the interest of justice that the orders sought herein are granted.
3. The application is supported by the applicants own affidavit dated 5th June 2014 where she

explains that judgment was entered in her favour on 27/2/2013 in VIHIGA SPMCC No.14 of 2011 where the Court awarded her the sum of kshs.665,000/= together with costs assessed at kshs.53,913/= and interest thereon. This was as a result of a claim which arose out of an accident in which she lost her daughter MELVIN MIDEVA. See annexures “SPM (1) and (b)” being copies of the decree and certificate for costs. She states that the decretal sum, costs and interest now stand at kshs.840,365/= as at 11/2/2014 which amount continues to accrue interest. She claims that her Counsel on record have written letters claiming settlement of the said sums, costs and interest but they have remained adamant and are unwilling to settle. See annexures SPM 3 (a) and (c) being copies of the said letters. She prays for the orders and avers the Respondent will suffer no prejudice.

4. The application is not opposed even after being served upon the Respondents and the interested party. This is confirmed by Mr. Osango for the ex parte applicant.
5. Mr. Tarus for the Respondent and the Interested party told the Court that he followed up this matter with one Peter Obaga and was told that the vehicle in question was not under the Ministry of Environment Water and Natural Resources docket.
6. This Court notes that the Respondents have not filed any response, no grounds of opposition or preliminary objection and concludes therefore that they do not oppose the application.

Determination

7. This Court has carefully read through the Notice of Motion dated 5/06/2014 the supporting affidavit, and the Ex parte Chamber Summons dated 26/03/2014 together with the Statutory Statement and verifying affidavit. The ex parte applicant was awarded kshs.840,365/= vide the judgment delivered on 27/2/2013 in Vihiga SPM CC No.14 of 2013. The said Court is a competent Court. There was no appeal or any application by the Respondent to set aside the judgment or in any way challenge the same. There is therefore no reason to deny the applicants application herein. See **High Court Judicial Miscellaneous Application No.44 of 2012 [2014] e KLR Republic –vs- AG & Another Exparte James Alfred Kosono** in which Odunga J observed:-

“In the present case the ex parte applicant has no other option of realizing the fruits of his judgment since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgment that he has been awarded is realized. 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 judgments have been decreed by Courts of competent jurisdiction cannot enjoy the fruits of their judgment due to roadblocks placed in their paths by actions or non-actions of public officers. It must be rememberedTo 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 so 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 benefitThe 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 the 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 served.....In Mandamus cases it is recognized that when statutory duty is cast upon a public office in his official capacity and the 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, a Mandamus is a remedy through which a public officer is compelled to do a duty imposed upon him by 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 as 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.”

8. This Court entirely agrees with the observations made by Odunga J. in the above stated case. In this age of Constitutional freedoms and reforms each arm of the Government is expected to do its work diligently, honestly and without favour. By delaying payment as ordered by the Court the Respondent continues to incur interest on the said sum until payment in full. This is not helping the Respondent in any way but it is the applicant who is left to suffer and in the end the taxpayer has to bear the extra burden of paying the applicant amounts that are much higher than what would have been paid initially. Such an eventuality is unacceptable and must be arrested by the Courts.
9. For the reasons set out above an order of mandamus directed to the Principal Secretary Ministry of Environment Water and Natural Resources do hereby issue compelling him to pay the sum of kshs.840,365/= plus interest accrued thereon arising from the Decree in Vihiga SPM CC No.14 of 2011 delivered on 27/2/2013 till payment in full.
10. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 25th day of November 2015.

RUTH N. SITATI

J U D G E

In the presence of:

Mr. Osango (present) for Applicant

Mr. Tarus (absent) for Respondents

Mr. Okoiti - Court Assistant