



REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

MISC. CIVIL APPEAL NO.7 OF 2012

**IN THE MATTER OF AN APPLICATION BY ISAAC MUTEMBURA CATAMUKA FOR
ORDERS OF MANDAMUS**

AND

**IN THE MATTER OF THE HIGH COURT OF KENYA AT BUNGOMA MISC. CIVIL APPL.
NO. 126 OF 2005**

AND

**IN THE MATTER OF THE CIVIL PROCEDURE ACT CHAPTER 21 AND CIVIL
PROCEDURES RULES 2010**

AND THE LAW REFORM ACT CHAPTER 26 LAWS OF KENYA

AND

REPUBLIC.....APPLICANT

VRS

ATTORNEY GENERAL.....RESPONDENT

EX-PARTE

ISAAC MUTEMBURA GATAMUKA.....APPLICANT

AND

**PERMANENT SECRETARY MINISTRY OF INTERNAL
SECURITY AND PROVINCIAL ADMINISTRATION.....INTERESTED PARTY**

RULING

1. Before me is a motion on notice dated 30/07/12. The same seeks an order of mandamus to compel the Permanent Secretary, Ministry of Internal Security and Provincial Administration and direct him to satisfy the decree on costs issued in Bungoma High Court Misc. Application No.126 of 2005 for Kshs.139,080/=. The motion was supported by the Affidavit of Isaac Mutembura Gatamuka sworn on 1st February, 2012.

2. I note from the record that leave to file the application was granted on 11/7/12. In the statement and Affidavit in support, the Ex-parte Applicant contended that he filed Bungoma High Court Misc. Civil Appl. No.126 of 2005 against the Attorney General in 2005. That those proceedings were for Judicial Review Orders of Prohibition which were determined in his favour and he was awarded the costs of the proceedings.

3. That pursuant thereto, the costs were taxed at Kshs.139,080/= and the Deputy Registrar of the High Court issued a certificate for costs for the said sum on 1st November, 2006. That the said certificate had been served upon the Attorney General but the costs has not been settled yet. That the Respondent in the present application is the accounting officer in the Ministry of Internal Security and he should be compelled to pay the amount as prayed.

4. The application was not opposed. I have considered the pleadings on record including the submissions of Mr. Onchiri, learned Counsel for the Ex-parte Applicant. My view is that the application cannot succeed.

5. This is so because, Section 21 of the Government Proceedings Act Chapter 40 Laws of Kenya, requires that a Certificate of Judgment be issued against the government after such Judgment. Liability of government or any accounting officer in any government department to settle any Judgment or decree only arises upon such certificate in the prescribed form being issued by the proper officer of the Court and being presented to the Officer in charge of the relevant government department. In this Case, there had to be a certificate in the prescribed form by the Deputy Registrar that the relevant government department was liable to pay the costs of Kshs.130,080/=. There was no such certificate.

6. Accordingly, the liability of the Ministry of Internal Security to pay the sum of Kshs.130,080/= had not arisen. The application was premature. An order of Mandamus compelling the Respondent to pay that of which liability has not arisen cannot issue.

7. Accordingly, I will set aside the leave and strike out the Motion with leave to the Ex-parte Applicant file fresh proceedings after obtaining the requisite certificate. I will make no orders as to costs.

DATED and delivered at Bungoma this 27th day of March, 2014.

A. MABEYA

JUDGE