



**REPUBLIC OF KENYA**

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

**MISC. CIVIL APPLICATION (JR) NO. 3 OF 2013**

**IN THE MATTER OF AN APPLICATION BY RENTON COMPANY LIMITED FOR A  
JUDICIAL REVIEW ORDER OF MANDAMUS**

**AND**

**IN THE MATTER OF THE HC. PETITION NO. 215 OF 2010**

**AND**

**REPUBLIC .....APPLICANT**

**AND**

**THE PERMANENT SECRETARY**

**MINISTRY OF LANDS.....RESPONDENTS**

**EXPARTE:                   RENTON COMPANY LIMITED**

**JUDGEMENT**

1. By a Notice of Motion dated 2<sup>nd</sup> April 2013, the ex parte applicant herein, **Renton Company Limited**, seeks the following orders:
  1. **An order of Mandamus compelling the Respondent herein to pay the Applicant a sum of Kshs. 981,542/00 being the taxed costs of the High Court Petition No. 215 of 2010 as per the certificate of the order against the government annexed in the verifying affidavit sworn on 12<sup>th</sup> November 2012 and filed on 14<sup>th</sup> January 2013.**
  2. **The costs of this application be provided for.**
2. The Motion is based on the grounds set out in the statutory statement filed herein on 14<sup>th</sup> January, 2013 and verifying affidavit sworn by **James G. Gachini**, a Director of the applicant company herein.
3. According to the deponent, on 11<sup>th</sup> June 2012 the applicant filed a Petition in the High Court at Nairobi i.e. Petition No. 215 of 2010 against the Land Registrar and the Hon. Attorney General which petition was heard on 23<sup>rd</sup> March 2011 and by the judgement delivered on 1<sup>st</sup> July 2011, the same was allowed as prayed with costs save that no award of damages was made.
4. It was deposed that the costs were subsequently taxed on 3<sup>rd</sup> April 2012 in the sum of Kshs. 981,542.00 and a certificate to that effect was issued on 11<sup>th</sup> September 2012. To date no reference has been lodged against the Ruling on Taxation by the Respondent and the time for

lodging such reference has already expired.

5. On the 24<sup>th</sup> day of September 2012, the Applicant advocates on record issued a notice to the respondents for settlement of the said costs but no response was received. Despite being served with the Certificate of the order against the government, the Respondents have failed, refused and or neglected to settle the said costs which failure according to the is contemptuous and an abdication of the public duty.
6. It is therefore the applicant's view that it is mete and just for this Honourable Court to order that the Permanent Secretary in the Ministry of Land, who is the accounting officer in the said Ministry, to pay the said costs within 30 days and in default therefore to be arrested and committed to civil jail for defiance and contempt's of the court order. To him, such an order will not only be necessary and justifiable but will also enable this Honourable Court to put into effect its judgement delivered herein on the 1<sup>st</sup> July 2012.
7. The application was however not opposed with the result that the factual averments in the affidavit were not controverted.
8. I considered the uncontroverted averments in the said affidavit, the annexures thereto as well as the submissions filed herein.
9. As was held by this Court in High Court Judicial Review Miscellaneous Application No. 44 of 2012 between the **Republic vs. The Attorney General & Another ex parte James Alfred Kosoro**:

**“...the present case the ex parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from *mandamus*, he has no option of ensuring that the judgement that he has been awarded is realised. 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 judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya. To 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 to be 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 benefit.....The 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 a 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 serves. Whereas it is true that he represents the Government, it does not follow that his duty is therefore confined to his Government employer. In *mandamus* cases it is recognised that when statutory 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, *mandamus* is a remedy through which a public officer is compelled to do a duty imposed upon him by the 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 for 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."**

10. I adopt the same reasoning in this application.

11. In the premises I find merit in the Notice of Motion dated 2<sup>nd</sup> April, 2013 and grant an order of mandamus compelling the Respondent herein to pay the applicant a sum of Kshs 981,542.00 being the taxed costs in the High Court Petition No. 215 of 2010. I also award the costs of this application to the applicant.

**Dated at Nairobi this 2<sup>nd</sup> day of April 2014**

**G V ODUNGA**

**JUDGE**

**Delivered in the presence of:**

**Miss Oyagie for Mr Thuita for the Applicant**

**Mr Bitta for Mr Njoroge for the Respondent**