



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW DIVISION**

**JR CASE NO. 305 OF 2013**

REPUBLIC .....APPLICAN

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VERSUS

PRINCIPAL SECRETARY,

MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL  
GOVERNMENT.....RESPONDENT

EX-PARTE

HERMAN MARINE NDERI

**JUDGEMENT**

1. Through the notice of motion application dated 23<sup>rd</sup> August, 2013 the ex-parte Applicant (“the Applicant”) Herman Marine Nderi prays for an order of mandamus to issue **“against the Respondent to the effect that he pays the exparte applicant the sum of Kshs. 4,162,878/= within 14 days of service of this order and in default he be committed to civil jail for a period not exceeding 6 months.”** The Applicant also prays for the costs of the application. The Respondent is the Principal Secretary of the Ministry of Interior and Coordination of National Government.

2. The Applicant’s case is that his fundamental rights were violated by agents of the Kenyan Government in 1986. He later filed Nairobi High Court Petition No. 115 of 2011 against the Attorney General seeking compensation in respect of the said violation. The Court awarded him Kshs. 3,500,000/= with interest which had risen to Kshs. 4,162, 878/= by 2<sup>nd</sup> August, 2013. The Applicant contends that a Certificate of Order against the Government had been served upon the Attorney General but no payment has been made hence the necessity of these proceedings.

3. The Respondent did not file any reply to the application. On 21<sup>st</sup> May, 2014 when the matter came up for hearing Mr. Wanga who was holding brief for Ms Chege informed the Court that Ms Chege had not put in a reply as she had not received any instructions from the Respondent.

4. An order of mandamus is issued to a public body directing the performance of a statutory duty where it has failed to do so. The Respondent has a duty to pay a claim once a Certificate of Order has been issued by the Court-see **Section 21 of the Government Proceedings Act, Cap 40.**

5. The Respondent has been asked to pay the decretal amount but has refused to comply and no reason has been given as to why there has been no compliance. This is a case that calls for the issuance of an order of mandamus. An order of mandamus is therefore issued directing the Respondent to pay the amount in the Certificate of Order together with interest accrued from the date of its issuance until payment in full. The Applicant will also have the costs of these proceedings.

6. The Applicant's prayer for an order committing the Respondent to civil jail if he fails to pay the decretal amount within 14 days from the date of the issuance of the order of mandamus is misplaced. An order for committal to civil jail can only be made once there is evidence of disobedience of a Court order. At this stage there is no such evidence. This particular prayer therefore fails.

Dated, signed and delivered at Nairobi this 17<sup>th</sup> day of June , 2014

**W. KORIR,**

**JUDGE OF THE HIGH COURT**