



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW DIVISION**

**JR CASE NO. 41 OF 2011**

**REPUBLIC .....APPLICANT**

**VERSUS**

**THE PERMANENT SECRETARY MINISTRY OF TRANSPORT.....RESPONDENT**

**EX-PARTE**

**GEOFFREY NJIHIA WAHOME**

**JUDGMENT**

The application before this court is the notice of motion dated 25<sup>th</sup> March, 2011 in which Godfrey Njihia Wahome (the ex-parte applicant) seek orders as follows:-

- 1. THAT the Honourable Court be pleased to grant to the Applicant an Order of Mandamus directed at the Respondent compelling him to pay to the Applicant the sum of Kshs.5,893,806.10 being the decretal amount in High Court Civil Case No. 87 of 2007 at Nairobi, as per the Certificate of Order Against the Government dated 14<sup>th</sup> January, 2011.**
- 2. THAT the costs of this Application be provided for.**

The respondent (the Permanent Secretary, Ministry of Transport) did not file any response despite being given over one year by this court to do so. This matter will therefore be determined using the material availed to the court by the applicant.

Briefly, the applicant was a victim of an accident which occurred on 18<sup>th</sup> November, 2003 involving motor vehicles registration numbers KAR 214A and GK X628 along Waiyaki Way in Nairobi. The applicant sustained serious injuries in the accident. He later filed a claim for compensation against the Government of Kenya after the driver of the government vehicle was convicted for dangerous driving contrary to Section 47 of the Traffic Act in City Court Traffic Case No. 19156 of 2003. Judgment was subsequently entered in his favour in Nairobi High Court Civil Case No. 87 of 2009 and he was awarded kshs. 4,199,120/=. On 14<sup>th</sup> January, 2011 the Deputy Registrar issued a Certificate of Order Against the Government for the sum of kshs.5,893,806.10. That is what the applicant is asking this court to compel the respondent to pay.

As provided by Section 21(3) of the Government Proceedings Act, Cap 40, once a certificate is issued against the Government, the accounting officer of the Government department concerned shall pay to the person entitled or his advocate the amount in the certificate. That is the duty the respondent owes to the applicant herein. The application therefore succeeds and an order of mandamus shall issue accordingly.

It is unfortunate and unjust that the respondent had to wait to be reminded of a clear statutory obligation. This is one case where the applicant deserves costs. He is therefore awarded costs.

Dated, signed and delivered at Nairobi this 8<sup>th</sup> day of March, 2013

**W.K. KORIR,**

**JUDGE**