



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**JR CASE NO. 281 OF 2012**

**REPUBLIC .....APPLICANT**

**VERSUS**

**PERMANENT SECRETARY**

**MINISTRY OF ENVIRONMENT**

**& MINERAL RESOURCES.....1<sup>ST</sup> RESPONDENT**

**PERMANENT SECRETARY**

**MINISTRY OF LANDS.....2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL .....3<sup>RD</sup> RESPONDENT**

**EX-PARTE**

**JOSEPH BRADLEY WAWERU GITARI**

**JUDGEMENT**

Through the notice of motion application dated 14<sup>th</sup> August, 2012 the ex-parte applicant Joseph Bradley Waweru Gitari prays for an order of mandamus compelling the permanent secretaries for the Ministry of Environment and Natural Resources and Ministry of Lands being the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively to pay him “the sum of Kshs.1,135,007.59 being the decretal amount in Chief Magistrate’s Court Civil Case No. 209 of 2003 at Milimani Commercial Courts, Nairobi which sum is inclusive of kshs.69,355/= being the certified costs thereon together with interest thereon at 12% per annum from 14<sup>th</sup> January, 2010 to 14<sup>th</sup> June, 2012.”

According to the statutory statement and verifying affidavit, the ex-parte applicant sued one Agnes Njeri Muiruri in Nairobi Milimani Commercial Courts CMCC No. 209 of 2003. The said Agnes Njeri Muiruri roped in the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein as third parties. Judgment was subsequently entered against the two respondents in favour of the applicant. A certificate of order was issued against the Government on 17<sup>th</sup> April, 2010. It is the applicant’s case that despite the said order being served on the respondents, they have failed to pay the decretal amount. The 3<sup>rd</sup> respondent is the Attorney General of the Republic of Kenya and is in these proceedings by virtue of his constitutional mandate.

The application was opposed through the grounds of opposition dated 22<sup>nd</sup> May, 2013. It is the respondents' case that the application is defective since it is not directed to a specific officer against whom the orders are sought. On this ground, I must say that I have looked at the application and find that the same is directed at the permanent secretaries of two specified ministries. They are the accounting officers of those ministries and they are responsible for meeting court orders. This particular ground of opposition has no merit and it fails.

The second ground of opposition is that the applicant had not taken any steps to seek payment before filing this application. It is true that for an order of mandamus to issue, an applicant must demonstrate that he has demanded the performance of a statutory duty by a public officer and the officer nevertheless refused, neglected or failed to perform the duty. In the application before this court, the ex-parte applicant has exhibited a letter dated 2<sup>nd</sup> September, 2010 in which his counsel is asking the 3<sup>rd</sup> respondent to direct the 1<sup>st</sup> and 2<sup>nd</sup> respondents to discharge the certificate of order. This clearly shows that the respondents were requested to execute their obligations but they failed to do so.

Another ground of opposition is that the order is being sought to be issued against a non-existent ministry or officer. I presume that this argument is in respect to the 1<sup>st</sup> respondent. At the time this matter was filed the 1<sup>st</sup> respondent was in existence. There must be a successor to that ministry or officer. That is the ministry or officer obligated to pay the decretal amount. An order of mandamus is therefore issuable in the circumstances of this case.

Looking at the evidence placed before the court it is clear that the respondents have refused or failed to comply with their statutory duties. An order of mandamus is therefore an available remedy in the circumstances. The application is therefore allowed and an order of mandamus is issued directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents jointly and severally to pay the sum of Kshs.1,135,007.59 with interest at court rates with effect from 14<sup>th</sup> June, 2012 till payment in full. The applicant will also get the costs of the application.

Dated, signed and delivered at Nairobi this 18<sup>th</sup> day of June , 2013

**W. K. KORIR,**

**JUDGE**