



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR CASE NO. 40 OF 2011

REPUBLICAPPLICANT

VERSUS

HON. ATTORNEY GENERAL1ST RESPONDENT

PERMANENT SECRETARY

OFFICE OF THE PRESIDENT, PROVINCIAL

ADMINISTRATION & INTERNAL SECURITY.....2ND RESPONDENT

EX-PARTE

SIMON WAINAINA MWAURA

JUDGEMENT

The ex-parte Applicant, Simon Wainaina Mwaura, was the Plaintiff in Nairobi CMCC No. 11358A of 2005. In the said suit he had sued the Attorney General and another for compensation as a result of damages suffered after his Motor Vehicle Registration No. KAC 006L Toyota Corolla collided with Motor Vehicle Registration No. GKA 988A belonging to the Office of the President, Provincial Administration and Internal Security. The Attorney General is the 1st Respondent and the Permanent Secretary in the Office of the President (Provincial Administration and Internal Security) is the 2nd Respondent. At the conclusion of the trial, the magistrate entered judgment in favour of the Applicant. On 3rd December, 2010 a certificate of order against the government was issued in the sum of kshs.244,245.40 together with interest at the rate of 12% per annum until payment in full. The Attorney General was subsequently asked by the Applicant's counsel to pay the amount indicated in the certificate of order but no payment has been forthcoming.

The Applicant has therefore sought the assistance of this court and through a notice of motion application dated 19th November, 2012 he prays for an order of mandamus to compel the respondents to satisfy the **“Judgment, Decree and Certificate of Costs issued by the Chief Magistrate’s Court Milimani Nairobi in CMCC No. 11358”A” of 2005 Simon Mwaura vs. Elphas Murithi & the Hon. Attorney**

General entered on 17th June, 2010.” He also prays for the costs of the application.

The respondents opposed the application through grounds of opposition dated 7th January, 2013. In summary the respondents claim that the Applicant has not supplied them with the necessary documents to enable them process payment.

The question is whether the Applicant has met the conditions for the grant of an order of mandamus. For an order of mandamus to issue, an applicant must show that the public office to which the order is targeted owes a statutory duty to him/her and has failed, neglected or refused to discharge that duty. An Applicant must also show that he has in clear terms asked the office or officer to perform the duty.

The Applicant before this court has demonstrated that he has written to the Attorney General asking for compliance with the court judgement. He has also shown that the respondents have failed to comply. The Applicant has also established that the 2nd Respondent being the accounting officer of the relevant government department has a duty under Section 21 of the Government Proceedings Act to pay the amount reflected in the certificate of order.

I therefore find that the Applicant has met the conditions for the grant of an order of mandamus. As such, an order of mandamus is issued directing the respondents to pay the Applicant the sum of kshs.244,245.40 together with interest at the rate of 12% per annum until payment in full. The Applicant will also get the costs of this application.

Dated, signed and delivered at Nairobi this 7th day of August , 2013

W. K. KORIR,

JUDGE _____