



**REPUBLIC OF KENYA**

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

**MISC. APPLICATION NO. 39 OF 2012 (J/R)**

**IN THE MATTER OF AN APPLICATION BY MARIAM I. D. HASSAN FOR ORDERS OF JUDICIAL REVIEW (MANDAMUS)**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT AND ALL THE ENABLING PROVISIONS OF THE LAW**

**AND**

**IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT CAP 40 AND THE CIVIL PROCEDURE ACT CAP 21 AND RULES THEREOF 2010 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ENFORCEMENT OF THE JUDGMENT AND DECREE IN KAKAMEGA CHIEF MAGISTRATE’S COURT CIVIL CASE NO. 179 OF 2009**

**AND**

**REPUBLIC .....  
APPLICANT**

**VERSUS**

**PERMANENT SECRETARY, OFFICE OF THE PRESIDENT**

**MINISTRY OF STATE FOR PROVINCIAL**

**ADMINISTRATION AND INTERNAL SECURITY ..... RESPONDENT**

**AND**

**MARIAM J. D. HASSAN ..... EX-PARTE APPLICANT**

**RULING**

This is a Notice of Motion dated 27th July, 2012 brought under Order 53 rule 3 of the Civil Procedure Rules 2010, and Section 8 & 9 of the Law Reform Act (Cap 26). The prayers sought are as follows -

- 1. That an order of mandamus do issue compelling the Permanent Secretary, Ministry of Provincial

Administration and Internal Security to pay the ex-parte applicant the sum of Kshs.2,128,047/= together with accrued interest being the amount due and owing by the Government of Kenya to the ex-parte applicant pursuant to the judgment and decree passed in Kakamega Chief Magistrate Court Civil Case No. 179 of 2009.

2. That the cost of the application be provided for.

The application was filed with a supporting affidavit sworn by the ex-parte applicant on 27.7.2012 together with a verifying affidavit. It was deponed in the affidavit that judgment in the case was delivered on 18.11.2010.

The ex-parte applicant, through counsel Nandwa & Company filed written submissions in support of the application.

The Attorney-General, on behalf of the respondent, opposed the application by filing grounds of opposition, which are as follows -

1. The respondent is no longer in existence.
2. No successor has been appointed in place of the respondent.
3. The application is premature and should be disallowed.
4. The orders of mandamus cannot issue against a non-existent office.
5. The court would act in vain if the orders sought are granted.

Mr. Nandwa who appeared in court for the ex-parte applicant relied on the written submissions, while Mr. Onyiso for the respondent relied on the grounds of opposition filed.

This is an application for mandamus. Mandamus orders are issued by the judicial review court to compel a public officer or a public institution to comply or act in accordance with the law. A judgment has already been entered in favour of the applicant. The culprit was a Police Officer who shot somebody dead. The Attorney-General has opposed this application merely because the Permanent Secretary herein referred to no longer exist in that name. In my view, that is a lame excuse. There must be an office which still deals with police matters since the police function still exists. In my view, the designation of these offices is an administrative or executive act. The name of the offices can be changed at the will of the Executive. However, who ever oversees the operations of a particular office becomes the successor of the officer who previously supervised that institution. I therefore find no reason why the orders sought cannot be granted, against whichever office that currently has charge of police matters.

In the result therefore, I allow the application. An order of mandamus be and is hereby issued against the Permanent Secretary named, or any officer currently performing the functions previously performed by that Permanent Secretary. The ex-applicant is awarded the costs of this application.

***Dated at Kakamega this 31st October, 2013***

**George Dulu**

**JUDGE**