



REPUBLIC OF KENYA

High Court at Nakuru

Miscellaneous Civil Application 366 of 2006

REPUBLIC APPLICANT

VERSUS

THE PERMANENT SECRETARY

INTERNAL SECURITY OFFICE OF THE PRESIDENT RESPONDENT

EX PARTE

MARGARET WANJIKU KINYANJUI AND

PENINA NDUTA KARIUKI

RULING

By the Notice of Motion dated 31/3/2007, Margaret Wanjiku Kinyanjui and Penina Nduta Kariuki (hereinafter referred to as the ex-parte applicants) sought the following order:-

- 1. That an order of mandamus do issue compelling the Permanent Secretary, Internal Security in the Office of the President to satisfy the decree, costs and interest in Nakuru CMCC No. 705 of 2001**
- 2. Costs be borne by the respondent.**

The motion was premised upon the grounds on the face of it, the statement of facts dated 30/6/2006, the verifying affidavits sworn by Peninnah Nduta Kariuki and Margaret Wanjiru Kinyanjui on 2.6.2006 and skeleton arguments dated 11/8/2010.

According to the affidavits, judgment was entered against the respondent on 23/7/2002. Despite having been served with all the relevant documents, the respondent has not made any steps towards settling the decretal sum thus necessitating these proceedings.

The application was opposed. Ms. Khatambi for the Attorney General submitted that the exparte applicants had not served the respondent with the necessary documents including the judgment and certificate of costs to enable it settle the decretal sum.

In reply, Mr. Mutonyi, counsel for the exparte applicants stated that all documents were served upon the respondent and were annexed to the application.

I have considered the affidavits, skeleton arguments filed by the ex parte applicants and submissions by both counsel. From perusing the file, the ex parte applicants exhibited a letter dated 19/5/2004 (MWK7) addressed to the Attorney General by the applicant's counsel, forwarding a certified copy of the certificate of order against the Government. In the letter, a demand was made for the decretal sum. It is therefore clear that the same was indeed served upon the respondent.

An order of mandamus lies to command a public body (or officer) to perform its statutory duty if it has refused or neglected to do so. In the instant case, the permanent secretary, who has a statutory duty to settle this claim, has neglected/refused to settle the claim herein since 2004.

For the foregoing reason, I hereby grant the order of mandamus sought herein compelling the Permanent Secretary, Internal Security in the Office of the President to satisfy the decree, costs and interest in Nakuru CMCC No. 705 of 2001. I also award costs to the ex parte applicants as prayed.

DATED and DELIVERED this 22nd day of November, 2012.

R.P.V. WENDOH
JUDGE

PRESENT:

Ms Koima holding brief for Mr. Mutunyi for Ex parte Applicants

Mr. Marete holding brief for Ms Khatambi for the Respondent

Kennedy – Court Clerk