



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Judicial Review 229 of 2012

REPUBLICAPPLICANT

VERSUS

ATTORNEY GENERALRESPONDENT

PERMANENT SECRETARY MINISTRY OF DEFENCE.....INTERESTED PARTY

EX-PARTE

ISAIAH ODUOR OCHANDA

JUDGMENT

The ex-parte applicant (Isaiah Oduor Ochanda) has come to this court by way of the notice of motion dated 30th May, 2012 asking for an order of mandamus to compel the Attorney General (the respondent) and the Permanent Secretary Ministry of Defence (the interested party) to satisfy the decree in Nairobi High Court Civil Case No. 1051 of 1996 *Isaiah Oduor Ochanda v Attorney General*.

In brief, the ex-parte applicant sued the Republic of Kenya through the Attorney General in Nairobi High Court Civil Case No. 1051 of 1996 as a result of injuries sustained in the course of his duties as a military officer and in a judgment delivered on 2nd March, 2011 K. H. Rawal, J (as she then was) entered judgment in his favour. A decree for kshs.19,078,1919.78 was drawn on 29th June, 2011. On 10th October, 2011 a certificate of costs for the sum of kshs.351,518.90 was issued to the applicant. As required by the law, on 14th November, 2011 a certificate of order in the sum Kshs. 22,916,828.34 was issued against the Government.

Thereafter the applicant's counsel wrote to the respondent demanding payment of the said amount but the respondent did not respond. The applicant eventually came to this court and obtained leave to commence these proceedings.

The respondent and the interested party did not file any response despite being served. I will therefore consider the material placed before the court by the applicant and reach a decision on the same.

The question is whether the respondent is under a duty to pay the said amount. Under Section 21(3) of the Government Proceedings Act Cap 40 the accounting officer of the government department concerned shall pay to the person entitled or his advocate the amount appearing in the certificate together with interest. The accounting officer is therefore under a legal obligation to make payment in respect of any certificate duly issued to a party by the court. The applicant has demonstrated that the respondent was asked to make payment but ignored the request.

From the material placed before the court it is evident that the applicant has established a case for the issuance of the orders sought. As such the application in question is allowed with costs to the applicant.

Dated and delivered at Nairobi this 21st day of November , 2012

W. K. KORIR,
JUDGE