



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Civil Application 88B of 2012

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF
MANDAMUS**

AND

**IN THE MATTER OF: SECTION 263A OF THE LOCAL GOVERNMENT ACT (CAP.265) AND
THE ENABLING PROVISIONS OF THE LAW**

BETWEEN

REPUBLIC.....APPLICANT

-VERSUS-

THE TOWN CLERK, CITY COUNCIL OF NAIROBI.....DEFENDANT

EXPARTE

NJAGI WANJERU practising as NJAGI WANJERU & CO. ADVOCATES

JUDGMENT

The Exparte Applicant (*hereinafter referred to as the Applicant*) is Njagi Wanjeru, an advocate of the High Court of Kenya practising as such in the firm of Njagi Wanjeru and Company Advocates.

Pursuant to leave granted on 9th October 2012, the Applicant filed a Notice of Motion dated 9th October 2012 seeking an order of mandamus to compel the Respondent, the Town Clerk of the City of Nairobi to without delay cause to be paid to him all the decretal sums awarded in his favour in various civil suits filed against the Respondent together with interest accruing thereon as at 9th October 2012 or any balance thereof. The Applicant also seeks that the amounts outstanding be paid together with any further interest accruing until payment in full. The civil suits in which the decretal amounts were awarded are indicated on the face of the application.

The application is supported by a statutory statement dated 19th March 2012 and a verifying affidavit sworn by the Applicant on even date and annexures thereto.

Before leave to commence these proceedings was granted, the Respondent was served with the application for leave following court orders issued on 20th March 2012 and entered appearance on 19th April 2012.

However, though duly served with the Notice of Motion on 12th October 2012 as can be seen from the Affidavit of Service sworn by Peter Mwaniki on 29th October 2012, the Respondent did not file any response.

The application is therefore unopposed. The effect of this is that all the depositions made by the Applicant in the verifying affidavit regarding amounts already paid by the Respondent in satisfaction of the decretal amounts, balances outstanding from amounts not paid in full, amounts not paid at all and balances arising from accrued interest on the principal amounts have not been controverted.

It is the Applicant's case that despite several demands for payment, the Respondent has failed to settle the amounts lawfully due to him and that the Respondent has therefore failed to perform his statutory duty imposed by Section 263 A of the Local Government Act.

Section 263A of the Local Government Act requires the clerk of a Local Authority to pay without delay money awarded in a judgment or order to the person entitled out of the revenue of the Local Authority.

As it is not disputed that the sums specified in Prayer 1 of the application have not been settled to date, it is clear that the Respondent being the clerk of the City Council of Nairobi has failed to perform his statutory duty of causing payment of the sums decreed in HC. Misc.Civil App No.508 of 2007; HC. Misc. Civil App. No.578 of 2007 and HC. Misc. Civil App. No.646 of 2006 to the Applicant in full out of the revenues of the City Council of Nairobi. The Respondent has not given any reason to explain his failure to satisfy the decretal amounts awarded to the Applicant against the City Council of Nairobi.

It is therefore my finding that the Applicant has demonstrated that he is deserving of the order of mandamus as prayed in this case. Consequently, I am satisfied that the Notice of Motion dated 9th October 2012 is merited and it is hereby allowed in terms of Prayer 1.

On the prayer for costs, since the application was filed to enforce payment of taxed costs, I find that it would be just and fair if each party was to bear its own costs. It is so ordered.

DATED, DELIVERED and SIGNED this 10th day of December 2012.

C.W. GITHUA
JUDGE

In the presence of:

No appearance for Applicant
No appearance for Respondent