



IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CIVIL APPLICATION NO.224 OF 2009

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO COMMENCE JUDICIAL REVIEW
PROCEEDINGS IN THE**

NATURE OF MANDAMUS BY BEATRICE WANJIRU NGUGI

REPUBLIC.....APPLICANT

VERSUS

THE PERMANENT SECRETARY MINISTRY OF AGRICULTURE.....RESPONDENT

AND

HON. ATTORNEY GENERAL.....INTERESTED PARTY

EXPARTE

BEATRICE WANJIRU NGUGI.....SUBJECT

RULING

The applicant was awarded Kshs.421,340/= and Kshs.13,340/= in general and special damages in CMCC No.1030 of 2006 being a claim for injuries sustained in an accident involving the deceased and a Government of Kenya vehicle. The Attorney General was notified of the award and a decree subsequently served. No payments have been made, four (4) years since the entry of judgment, hence the instant motion for judicial review. The prayer sought is framed thus:

“That this honourable court be pleased to issue a writ (sic) of mandamus against the Permanent Secretary, Ministry of Agriculture to compel him to comply with decree issued by court in Nakuru CMCCC No.1030 of 2006 and to pay the applicant the decreed sum now standing at Kshs.466,895/= together with such further interest as may accrue till payment is made in full.”

Section 8 of the Law Reform Act is explicit:

“The High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs of mandamus, prohibition or *certiorari*. In any case in which the High Court in England is, by virtue of the provisions of Section 7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938 of the United Kingdom empowered to make an order of mandamus, prohibition or *certiorari*, the High Court shall have power to make a like order.”

This court has no jurisdiction to issue writs, except only *habeas corpus*. Secondly, as is common knowledge, judicial review proceedings starts with the leave of the court. That leave is sought by way of chamber summons. Within 21 days, the notice in motion must be brought. Grounds or reliefs not set out in the statement accompanying the chamber summons cannot be relied upon at the hearing of the motion. The relief sought in the chamber summons upon which leave was framed thus-

“a) That the subject be granted leave to apply for an order of *certiorari* to issue a writ of mandamus (sic) against the Permanent Secretary Ministry of Agriculture to compel him to comply with the decree issued by the court in Nakuru Chief Magistrate’s civil suit No.1030 of 2006 and pay the applicant the decretal sum now standing at Kshs.466,895 together with such further interest as may accrue till payment in full.”

Clearly the motion is based on a different relief from that upon which leave was granted. The application is incompetent. Not even the O2 rule can save it as that rule was not enacted to correct or overlook incompetent applications.

Apart from these technical matters, how efficacious is the order of mandamus in compelling the Permanent Secretary to pay decreed sum? What if the Permanent Secretary fails to comply with the order of mandamus?

First, by dint of **Section 21 (4) of the Government Proceedings Act**, no execution or attachment can issue against the government or any Government department or any officer of Government. Indeed the section provides further that no person is individually liable under any order for any Government (read public) debt. The Permanent Secretary cannot be held personally liable for monies owed to another person by the Government.

I have had an opportunity in a case similar to this to hold that for the foregoing reasons, the Government, its departments and officers cannot be cited for contempt of court merely by reason of their failure to pay damages decreed by the court. See **Uasin Gichu Quarry Limited Vs. Commissioner of Lands**, Nku. H.C.C.Misc. Application NO.100 of 2002. I believe the best course to take in situations like this is provided for in **Section 21(1)(2) and 3** aforesaid.

Briefly, where in civil proceedings against the government an order is made in favour of any person against the government, or against a Government department or against an officer of the government, the proper officer of the court is required, on application by the person in whose favour the order has been made, to issue a CERTIFICATE in the prescribed form, stating the amount payable. This certificate is to be served upon the Accounting Officer concerned and a copy may be served also upon the Attorney

General.

The Accounting Officer, it is further provided, must, subject to any pending appeal, pay the whole amount appearing on the certificate together with any interest to the person or his advocate.

For the reasons stated earlier, this application fails and is dismissed.

Dated, Delivered and Signed at Nakuru this 16th day of February, 2011.

W. OUKO

JUDGE