



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC. CIVIL APPLICATION NO.223 OF 2009**

**INS THE MATTER OF AN APPLICATION TO COMMENCE JUDICIARY REVIEW  
PROCEEDINGS**

**IN THE OF MANDAMUS BY PETER EKURA ENOI**

**REPUBLIC.....APPLICANT**

**AND**

**THE PERMANENT SECRETARY MINISTRY OF  
DEFENCE.....RESPONDENT**

**AND**

**HON. ATTORNEY GENERAL.....INTERESTED PARTY**

**EXPARTE**

**PETER EKURA ENOI.....SUBJECT**

**RULING**

The applicant has a decree in the sum of Kshs.345,111.00 awarded in Nkr. CMCC NO.718 of 2004 being a road accident claim against the Permanent Secretary, Ministry of Defence. The decree was issued on 1<sup>st</sup> December, 2005 and todate the same has not been satisfied. The applicant has now brought the instant motion against the aforesaid permanent secretary (erroneously referred to as Permanent Secretary, Ministry of Agriculture) in which the Attorney General is named as the interested party seeking that the permanent secretary be compelled by an order of mandamus to comply with the decree in question.

Despite Service with the application and the hearing notice, the Attorney General did not reply or participate in the argument of the application. I must point out that the motion seeks a “*writ*” of mandamus, which as must be known to any advocate cannot be issued by this court by dint of clear provisions of **section 8(2)** and **8(3)** of the **Law Reform Act**. I will exercise my discretion under **Section 1A** and **1B** of the **Civil Procedure Act** and ignore the word “*writ*”. An order of mandamus will be issued against an issue to compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. See **The Kenya National Examination Council Vs. Republic, Exparte Geoffrey Gathenji Njoroge & others**, Civil Appeal No.266 of 1996.

The applicant has a decree issued in Nkr. CMCC No.718/2004 in the sum of Kshs.345,111.00 which has remained unsettled for the last 11 years. No appeal to challenge the decision of the lower court has been brought to my attention. The Permanent Secretary, Ministry of Defence is the Accounting Officer of the ministry, appointed by the Treasury, whose duty under the law is to account for any funds issued to the ministry from the exchequer account or appropriated by Parliament.

See **Section 2** of the **Exchequer and Audit Act – Cap 412**. It follows that the permanent secretary, Ministry of Defence has the legal obligation to meet the ministry’s civil liabilities. In this particular case, it fell for the Permanent Secretary in the performance of his public duty to settle the decree. His failure to budget for and eventually pay the decretal sum, legally due to the applicant has no justification.

In the result, there will be an order of mandamus directed to the Permanent Secretary, Ministry of Defence to settle the decretal sum.

I award costs to this application to the applicant.

**Dated, Delivered and Signed at Nakuru this 31<sup>st</sup> day of May, 2011.**

**W. OUKO**

**JUDGE**