



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 132 OF 2010

REPUBLIC APPLICANT

VERSUS

**THE PERMANENT SECRETARY (OP) in the
MINISTRY OF INTERNAL SECURITY 1ST RESPONDENT
CORPORAL ALPHONSE LUMOSI 2ND RESPONDENT
EX PARTE
NASSIR MWANDIHI MUSUNGU**

RULING

The ex parte applicant, hereinafter referred to as “**the applicant**” filed an application dated 20th December, 2010 seeking an order of mandamus to compel the Permanent Secretary, Ministry of Internal Security in the Office of the President and Corporal Alphonse Lumosi, to immediately pay to the applicant the decretal sum of Kshs.174,425/= plus interest thereon from 6th May, 2008 until payment in full being the amount due to the applicant in terms of a decree issued in **SPMCC No. 601 of 2005**, Thika. The applicant had been arrested and detained at Thika Police Station on false and malicious allegations. He was thereafter maliciously charged and prosecuted in a criminal case for the offence of creating disturbance in a manner likely to cause breach of peace but was acquitted of the said charges.

Thereafter the applicant filed the aforesaid case, SPMCC No. 601 of 2005 claiming, *inter alia*, damages for false imprisonment and malicious prosecution. The case was heard and judgment delivered in his favour in the sum of Kshs.150,000/= as general damages.

In June, 2008 a certificate of order against the government was issued by the court showing that the total amount inclusive of costs and interest as at 6th May, 2008 was Kshs.174,425/=. Interest continues to accrue thereon at the rate of 12% per annum. To date the aforesaid sum has not been paid.

The application was not opposed by the respondents despite service of the same and due notice of hearing this application having been given.

An order of mandamus can be issued where there is a duty of a public or quasi-public nature imposed by statute upon a person if that person fails and/or neglects to perform that duty. An order of mandamus does not issue against private citizens who are by law not performing public duty. In this case, the Permanent Secretary, Ministry of Internal Security, as an accounting officer in that ministry, is under a lawful duty to ensure that the certificate of order against the government is satisfied by paying such sum as was ordered by the court. He has failed to do so. Consequently, an order of mandamus is now issued

compelling the Permanent Secretary, Ministry of Internal Security, to pay the sum of **Kshs.174,425/=** plus interest thereon from 6th May, 2008 until payment in full. The costs of this application shall be borne by the said Permanent Secretary, the 1st respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF MAY, 2011.

D. MUSINGA
JUDGE

In the presence of:

Nazi – Court Clerk

No appearance for the Applicant