



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Miscellaneous Civil Suit 641 of 2009**

**REPUBLIC.....APPLICANT**

**AND**

**MUNICIPAL COUNCIL OF MOMBASA.....RESPONDENT**

**AND**

**TOWN CLERK, MUNICIPAL COUNCIL OF MOMBASA.....INTERESTED PARTY**

**VERSUS**

**ALI MBWANA SHAMBI.....EX-PARTE APPLICANT**

**JUDGMENT**

On 1<sup>st</sup> March, 2010, I granted the applicant, Ali Mbwana Shambi, leave to apply for an order of mandamus against the Interested Party, the Town Clerk, Municipal Council of Mombasa, to compel him to satisfy the decree of Mombasa SRMCC No. 103 of 2008. The decree, which was exhibited as AMS-2, was for Kshs. 121,830/= inclusive of costs and interest as on 20<sup>th</sup> April, 2009 and had been obtained against the Municipal Council of Mombasa in favour of the applicant.

The applicant pursuant to the said leave lodged this Notice of Motion on 18<sup>th</sup> March, 2010 seeking the said relief. The application is based on the grounds stated in the statement and verifying affidavit accompanying the application for leave. Those grounds, in the main, allege that the Interested Party, who is by Law mandated to satisfy the said decree, has failed to do so despite having been served with the said decree. The applicant has therefore sought enforcement of the same by these proceedings.

The respondent has opposed the Motion on Notice on the basis of Grounds of Opposition filed by its advocates. The grounds are that the application is misconceived and bad in law; that the application does not disclose any cause of action and that the same is scandalous, an abuse of the process of the court and brought in bad faith. In his written submissions filed with the leave of the court, counsel for the respondent contended that the Notice of Motion was misconceived and bad in Law because it sought a relief for which leave was not obtained and further that the relief sought was not specific.

It is rather difficult to appreciate the respondent's objection given that leave was obtained to move this court for an order of mandamus against the Interested Party to compel him to satisfy the decree in Mombasa SRMCC No. 103 of 2008. The decree exhibited in the application for leave indicated the decretal amount as 121,830/= inclusive of costs and interest as already stated. The Notice of Motion has sought an order of mandamus against the same Interested Party ordering him to pay the applicant a total sum of Kshs. 116,365/= due and outstanding together with interest as from 14<sup>th</sup> November, 2008 till payment in full. The grounds for the Motion on Notice are the same namely that the applicant obtained a decree in Mombasa SRMCC No. 103 of 2008 against the Interested Party which has not been satisfied and has not been challenged. The variance in the order sought is in the amount of the decree. Would such variance vitiate the Notice of Motion? Has it in any way prejudiced the respondent? The respondent does not deny being served with the decree sought to be satisfied. Nor does it allege satisfaction. In the premises, I do not find the motion misconceived or bad in Law. The applicant is entitled to be paid the sum he was awarded in the decree by the respondent. That is a clear disclosure of a valid cause of action against the Respondent. I also find nothing scandalous with the application nor has bad faith been demonstrated. There is in the premises no abuse of the process of the court.

In the end, there is no valid objection against the Notice of Motion. The Interested Party should have advised the respondent to pay the applicant as decreed in Mombasa SRMCC No. 103 of 2008. That failure to pay is an action or decision amenable to the judicial review order of mandamus. The application is accordingly allowed as prayed.

It is so ordered.

**DATED AND DELIVERED AT MOMBASA THIS 12<sup>TH</sup> DAY OF JULY 2010.**

**F. AZANGALALA**

**JUDGE**

Read in the presence of:-

Ogolla holding brief for Mango for the Applicant and Mr. Wameyo holding brief for Ngigi for the Respondent.

**F. AZANGALALA**

**JUDGE**

**12<sup>TH</sup> JULY 2010**