



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Civil Appli 1186 of 2007

IN THE MATTER OF AN APPLICATION BY M/S G.H. TANNA & SONS LIMITED FOR JUDICIAL
REVIEW BY WAY OF AN ORDER OF MANDAMUS DIRECTED TO THE PERMANENT SECRETARY
MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION

AND

IN THE MATTER OF HCCC NOL 647 OF 2000 - G.H. TANNA & SONS LIMITED -VS- THE ATTORNEY
GENERAL

AND

IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT, CHAPTER 40 OF THE LAWS OF
KENYA

REPUBLIC APPLICANT

V E R S U S

THE PERMANENT SECRETARY, MINISTRY OF FOREIGN

AFFAIRS AND INTERNATIONAL CO-OPERATION..... RESPONDENT

EX-PARTE

G.H. TANNA & SONS LIMITED

R U L I N G

This is a Notice of Motion dated 18th December, 2007 filed by M/s Adera & Company advocates for the applicant, named as **G.H. TANNA & SONS LIMITED**. The application was said to be brought under section 8 and 9 of the Law Reform Act (*Cap 26 of the Laws of Kenya*), Order 53 Rules 3 and 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act (*Cap. 21 of the Laws of Kenya*).

The application seeks for an order of mandamus to issue against the Permanent Secretary in the Ministry of Foreign Affairs and International Cooperation to compel him to pay the decretal amount awarded in HCC No. 647 of 2000 and interest. It also seeks for orders of costs.

The main ground of the application is that the said Permanent Secretary being the Accounting Officer had failed or neglected to pay the decretal amount of Kshs.5,961,928/= to the applicant in satisfaction of a decree given by the court on 13th October, 2000 in HCCC 647 of 2000 – **G.H. TANNA & SONS LTD. -VS- THE ATTORNEY-GENERAL.**

The application was filed after leave was granted by Hon. Justice Wendo, as shown in the pleadings filed, and the court record. It was served on the Attorney-General. State Counsel in the names of Mr. Sitima and Mr. Gikera appeared

for the respondents on 6th June, 2008, and 13th October, 2008 respectively. On both occasions, the State Counsel indicated that they were pursuing payments from the Permanent Secretary. The Attorney-General did not file any documents in opposition to the application.

After a number of mentions, on 13/10/2008, in the presence of Mr. Gikera for the respondents. I fixed a hearing date. However, on the hearing date, no State Counsel appeared in court. The application was therefore heard in their absence and remained unopposed.

Because the application was unopposed, and the State Counsel had indicated that they were pursuing payment, there can be no reason for me to decline allowing the application. The claim of the applicant was not only unopposed, but appears infact to have been accepted by the state counsel, except for the settlement which has not been forthcoming.

For the above reasons, I allow the application and grant the orders prayed as follows-

- 1. An order of MANDAMUS be and is hereby issued and directed to the Respondent/Permanent Secretary in the Ministry of Foreign Affairs and International Cooperation to compel him to make payment of the decretal amount awarded in HCCC No. 647/2000 G.H. TANNA & SONS LIMITED -VS- THE HON. ATTORNEY-GENERAL which stood at Kshs.5,961,928/= as at 24/09/2007 plus further interest at 23% pa thereon till payment in full.**
- 2. The costs of relating and incidental to, this application are awarded to the applicant.**

It is so ordered.

Dated and delivered at Nairobi this 5th March, 2009.

GEORGE DULU

JUDGE.

In the presence of-

Mr. Otieno for applicant

N/A for Attorney-General

Mr. Mwangi Court Clerk.