



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI LAW COURTS)

MISCELLANEOUS CIVIL APPLICATION 279 OF 2007

WILLIAM WAITHAKA MWANGI.....APPLICANT

VERSUS

ATTORNEY-GENERAL.....RESPONDENT

R U L I N G

Before me is a Notice of Motion dated 20th August 2007 filed by Mbigi Njuguna & Company advocates on behalf of the ex-parte applicant William Waithaka Mwangi. The application was brought under the provisions of Order 53 rule 3 of the Civil Procedure Rules and section 3A of the Civil Procedure Act (cap.21). It seeks for the following orders that ?

1. An order of mandamus do issue against the Permanent Secretary, Office of the President in charge of Department of Defence to compel him to pay William Waithaka Mwangi a sum of Kshs.109,834 together with interest at court rates from 1st August 2005 till payment in full as decreed in NAIROBI PMCC NO. 428 OF 2003 (Nairobi) William Waithaka Mwangi –vs- The Attorney General.
2. Costs of the application be borne by the respondent.

The application has grounds on the face of the Notice of Motion and is supported by the affidavit of the applicant WILLIAM WAITHAKA MWANGI sworn on 20th August 2007. In the documents filed in the application, there is extract of the judgment of the subordinate court showing the decretal amount of Kshs.79,174/= and costs of 30,660/= dated 27th July 2005. There is also a certificate of order against the Government issued on 1st August 2005 showing an amount of Kshs.109,834 payable to the plaintiffs. There is also a letter dated 22nd August 2005 addressed to the Attorney-General by counsel for the applicant, enclosing the certificate of order against the Government dated 1st August 2005, and decree certificate dated 27th July 2005 – and giving 30 days notice to the Attorney-General to pay the amount within 30 days, and in default a mandamus application to be filed against the Government.

The amount appears not to have been paid. There after, this application was filed and served on the Attorney-General who on 27th December 2007 filed a notice of appointment for the defendant through James Ang'awa Atanda a Principal Litigation Counsel.

The Attorney-General neither filed any papers in opposition to the application, nor did he appear at the

hearing of the same. Mr. Mbigi, counsel for the applicant informed me, at the hearing of the application, that the Attorney-General was served with hearing notice in the normal manner for Friday hearings, which were served through serial numbers. Indeed, I have sighted the acknowledgment of service of serial number 0960F which was stamped as having been received by the Attorney-General's Chambers on 23rd January 2008 and signed by the recipient. I was satisfied with the service.

Mr. Mbigi, counsel for the applicant submitted that the applicant was a victim of a road accident involving an army truck. He was on 30/6/2005 awarded damages in the Chief Magistrates court at Nairobi. Thereafter, a certificate of order against Government was extracted and served in 2005. The same had not been honoured. Counsel contended that this Notice of Motion was served, but no response had been filed. In his view, the application had merits and should be allowed.

I have considered the application and the documents filed therein. I have considered the submissions of counsel for the applicant. Judgment has indeed been entered against the Government. The Ministry or department concerned is Defence. Certificate of order against Government was served. Payment was not made. This Notice of Motion was served. Though the Attorney-General entered appeared, he did not file any papers in response to the application. He did not attend court at the hearing of the application. The application therefore stands unopposed. I have to allow the same.

Consequently, I allow the application and order as

follows ?

1. An order of mandamus be and is hereby issued against the Permanent Secretary, Office of the President in-charge of Department of Defence to compel him to pay William Waithaka Mwangi a sum of Kshs.109,834 together with interest at court rates from 1st August 2005 till payment in full as decreed in NAIROBI PMCC NO.428 OF 2003 (Nairobi) William Waithaka Mwangi –vs- The Attorney-General.
2. The respondent will bear the costs of this application.

It is so ordered.

Dated and delivered at Nairobi this 14th day of April, 2008.

George Dulu

Judge

In the presence of ?

Mr. Mbigi for applicant

No appearance for respondent

Mwangi – court court