



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Misc Appli 289 of 2005

REPUBLIC.....

APPLICANT

VERSUS

PERMANENT SECRETARY PROVINCIAL AND INTERNAL SECURITY.....RESPONDENT

R U L I N G

The Applicant in this Judicial Review Application, **Joseph Gatere Kibugi** was a successful litigant before the Naivasha Senior Resident Magistrate's Court Case No.481 of 2001. Judgment was awarded in his favour for a total sum of Kshs.424,932/- being the decretal sum and interest against the respondent.

The applicant applied before this court by way of a Notice of Motion dated 9th May, 2005, for the following orders:-

1) That an order of mandamus do issue to remove to this court the proceedings and Judgment of the Naivasha Senior Principal Magistrate's court Civil case No.487 of 2001 made on 28th May, 2003, for purposes of having the Permanent Secretary in charge of Internal Security and Provincial Administration compelled to satisfy the same at pain of being punished for contempt of court.

The applicant also sought for orders of costs be provided for.

This application was supported by the grounds stipulated on the body of the application and more particularly expounded in the applicant's replying affidavit.

Briefly, the applicant had filed a case against the State and several other defendants where he sought for orders of general and special damages for malicious prosecution. Judgment was entered against the defendants as well as the respondent jointly and severally for Kshs.375,705 and costs of Kshs.49,225/- totaling Kshs.424,930 as at the time of the filing of this motion.

Due to the Respondent's failure to pay the decretal amount it became necessary for the applicant to file this application for purposes of making the respondent to be compelled through an order of Mandamus and to perform its statutory obligations.

The applicant's Counsel, Mr. Ndegwa told the court that immediately the respondents were served with this application the cheque for the decretal sum and interest as decreed in the lower court was settled on 5th August, 2005. However this payment did not take into account the interest with effect from 13th January, 2004 to 5th August, 2005, when the payment was made.

According to counsel for applicant the application should be allowed as the respondent has only partially complied with the order.

On the part of the respondent Mr. Muiruri argued that the sum sought to be paid by way of the orders as sought in this application was paid.

A demand of Kshs.424,930/- was made and a sum of Kshs.429,930/- was issued to the applicant. Counsel submitted that for an order of mandamus to issue there must be a demand which is expressed in unequivocal terms. There must be absolute refusal to comply with the demand. The decretal sum having been satisfied this application is therefore spent and if there is any claim of interest outstanding the applicant should resort to other avenues.

I have carefully considered this application and the submissions by both counsel for the applicant and the respondent. The applicant herein was granted leave of this court on 3rd May, 2005, to initiate proceedings by way of an application for Judicial Review against the respondent.

The application was duly filed on 9th May, 2005, and upon its service to the respondent they complied and paid the amount demanded.

The principles upon which the order of mandamus can be issued have been well articulated in many authorities of the Court of Appeal and this court. It is an order or command issued by the High Court directed at a public body requiring them to do a particular thing that is

Specified which appertains to their office and which is the nature of a public duty.

In the present case, the respondent was served with the application for the orders sought and he complied by paying the sum of Kshs.429,930/- on 5th August, 2005. In essence the application dated 9th May, 2005, was settled or in other words overtaken by event.

If the applicant has other claims the same has not been specified and there is no evidence that the respondent has failed to perform its public duty and I therefore refuse to exercise my discretion to grant the orders as prayed as the amount sought to be paid was duly paid.

I therefore dismiss the application with no order as to costs.

It is so ordered.

Ruling read and signed on 5th May, 2006.

MARTHA KOOME

JUDGE