

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Misc Civ Appli 162 of 2006

IN THE MATTER OF: THE ESTATE OF THE LATE KANYI

KIIRU THUO

AND

IN THE MATTER OF: AN APPLICATION BY GRACE NYAMBURA

KANYI AND JOSEPH KIIRU KANYI FOR

JUDICIAL REVIEW ORDER OF MANDAMUS

AND

IN THE MATTER OF: THE LOCAL GOVERNMENT ACT CAP. 265

GRACE NYAMBURA KANYI

JOSEPH KIIRU KANYI.....APPLICANTS

VERSUS

MUNICIPAL COUNCIL OF MOMBASA.....RESPONDENT

RULING

By their Notice of Motion dated and filed on the 27th February 2006 the Ex-parte Applicants seek under Order 53 Rules 1, 2, 3 and 4 of the Civil Procedure Rules an order of Mandamus to compel the Town Clerk, Treasurer and or the Municipal Council of Mombasa by itself its agents and or officers to pay to Applicants a total of Sh. 10,147,182/= being the decretal sum in HCCC No. 115 of 2003. Although the same was served upon the Respondent on 14th March 2006 no replying affidavit has been filed opposing it. The grounds of opposition filed by counsel for the Respondent yesterday when I had refused to adjourn the matter are frivolous. No wonder Miss Musembi did not bother to urge them.

As section 263A of the Local Government Act forbids the attachment of local authorities properties I agree with Mr. Kilonzo that an order of mandamus is the only avenue decree holders are left with in seeking the local authorities to settle decrees. In the circumstances I allow this application and order that an order of mandamus do issue to compel the Town Clerk and or the Treasurer of the Municipal Council of Mombasa to settle the decree in HCCC No. 115 of 2003. Costs to the Applicants.

DATED and delivered this 7th day of July 2006.

D. K. MARAGA

JUDGE