



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Misc Civ Suit 75 of 2005

REPUBLIC APPLICANT

VERSUS

TOWN CLERK, MUNICIPAL COUNCIL OF NAKURURESPONDENT

RULING

This is an application by one Mr. Christopher Mwangi seeking an order of Mandamus to compel the Town Clerk, Municipal Council of Nakuru to pay a sum of Kshs.303,914/= plus interest and costs being the decretal sum and costs as awarded in Nakuru CMCC No.1093 of 1999 Christopher Mwangi vs Odhiambo Tukiko and Municipal Council of Nakuru. The said judgment was delivered in favour of the subject herein sometimes in 2001. A decree was thereafter issued compelling the respondents to pay the decretal sum but to date they have refused, failed and/or neglected to do so. The applicant said that he had made numerous efforts to have the respondent comply with the decree but to no avail. The applicant was left with no alternative but to file this application. The said application was served upon the respondent but he did not file any response thereto.

The prerogative order of mandamus is issued in cases where there is a duty of a public or quasi-public nature or a duty imposed by statute and it is issued to compel the performance of such a duty. A local authority has an obligation to satisfy every lawful decree that is issued against it and the person who has to ensure that is done is the clerk of the local authority as the Chief Executive and administrative officer according to the provisions of Section 129(1) of the Local Government Act Cap 265 Laws of Kenya. Section 263A is also very clear regarding on the issue. It provides as follows:

(a) *“Where any judgment or order has been obtained against a local authority, no execution or attachment or process in the nature thereof shall be issued against the local authority or against the immovable property of the local authority or its vehicle or its other operating equipment, machinery, fixtures or fittings, but the clerk of the local authority shall, without delay, cause to be paid out of the revenue of the local authority such*

amounts as may, by the judgment or order, be awarded against the local authority to the person entitled thereto.

(b) no immovable property of the local authority or any of its vehicles or its other operating equipment, machinery, fixture or fittings shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the clerk of the local authority.”

It is evident that the respondent herein is in breach of an express statutory duty in failing to pay without delay out of the revenue of the local authority the decretal sum. The respondent did not even bother to come to court or file any papers to explain why he had failed to do so over the years.

The orders are warranted and consequently I hereby issue an order of mandamus to compel the respondent to pay the decretal amount in Nakuru CMCC No.1093 of 2004 plus the accrued interest thereon within the next fourteen (14) days from the date hereof failing which the respondent will be liable to contempt of court proceedings. The costs of this application are also awarded to the applicant.

DATED, SIGNED & DELIVERED at Nakuru this 28th day of July, 2005.

D. MUSINGA

JUDGE

28/7/2005