



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**Misc Civil Appli 662 of 2003**

**IN THE MATTER OF: AN APPLICATION BY MOMBASA FIRE BRIGADE  
ASSOCIATION FOR LEAVE TO APPLY FOR ORDERS  
OF MANDAMUS**

**AND**

**IN THE MATTER OF: THE LOCAL GOVERNMENT ACT**

**AND**

**IN THE MATTER OF: HCC NO. 125a OF 1998 MOMBASA FIRE BRIGADE  
ASSOCIATION – VS – THE MUNICIPAL COUNCIL  
OF  
MOMBASA**

**IN ACCORDANCE WITH ORDER LIII RULES 1,2,3 & 4 OF THE CIVIL  
PROCEDURE RULES**

**REPUBLIC ..... APPLICANTS**

**VS**

**1. RASHID MWAKIWIWI, TOWN CLERK & ACCOUNTING OFFICER  
2. THE MUNICIPAL COUNCIL OF MOMBASA ..... RESPONDENTS**

**EX-PARTE: MOMBASA FIRE BRIGADE ASSOCIATION**

**R U L I N G**

Notice of Motion dated 3.5.05 seeks the interpretation of a court order made on 24.2.05 to the effect that the Town Clerk of Mombasa Municipal Council do pay the Defendants claims amounting to Sh. 6,384,163.30/= At the time the order was made the Town Clerk of Mombasa Municipal was a Mr. Rashid Mwakiwiwi.

No payment has been made to date. The council has a change of Town Clerk, the present one is FRANKLIN MAGAJU.

The Applicants claim arose out of a judgment of court entered against the Council in this court on 17.6.2002. It was not personally against the Town Clerk. However, Section 263A of Local Government Act Cap 265 it is provided that where judgment has been obtained against a local authority there shall not be execution or attachment but the Clerk of the local authority shall, without delay cause to be paid out of the revenue of local authority such amounts as may satisfy, the judgment that may be awarded against

local authority to the person entitled thereto.

The section is mandatory and whoever is a Town Clerk must pay the amount of judgment. It is his duty under the law.

Application is allowed with costs to Applicants.

Dated 20th July 2005.

**J KHAMINWA**

**JUDGE**