

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

Civ Misc Appli 174 of 2004

**REPUBLICAPP
LICANT**

THROUGH

1. DAVID NJAGI WAMBUA

**2. KIOKO NDONYA.....EXPARTE
APPLICANT**

VERSUS

**PERMANENT SECRETARY OFFICE OF THE
PRESIDENT.....RESPONDENT**

R U L I N G

This application is brought by the Ex Parte applicants through the Republic. They come under Order 53 and seek for the Judicial Order of Mandamus directed against the Permanent Secretary, Office of the President, to direct and compel the said Permanent Secretary, to pay a sum of Kenya shillings One Hundred and Forty Seven Thousand Seven Hundred and Twenty Four (147,724) in settlement of a decree due to be settled under Machakos Senior Resident Magistrate's Court Civil Case No. 104 of 1995. The Ex Parte applicants in support of the application deponed that after the decree was obtained, they have served all the relevant and necessary documents required to be served and have requested the judgement debtor to settle the decree but that the judgement debtor has refused or failed to settle, although it is the duty of the judgement to settle the claim. As a result, the decree holders claim that there is no other manner of obtaining the settlement of the claim except by obtaining the superior order of mandamus.

I have considered the arguments from the Ex Parte applicant. This application was not opposed in any way although the applicant stated that he served the application upon the decree-holder. That would indicate to the court that the Respondent was not averse to the relief sought being granted. Nor have I any doubt in my mind that a mandamus can issue against a government department or Ministry to compel it to settle a decree obtained against it where it has become a public duty upon it to settle. In **Shah vs. Attorney General (No.3) [1970] E.A 543**, the Government failed to settle a decree passed against it. An order for Mandamus was issued, directed to Treasury officer compelling him to settle the decree because settling the claim was a statutory duty cast upon him by law. In the case of **Republic vs. Dunsheath, exparte Miredith [1950]2 All E.R. 741, 743** it was noted that mandamus is not only a discretionary relief that this court will grant but also that it is only available for granting where there is a no more appropriate remedy to the applicant. That is to say, if there is a satisfactory alternative remedy available to the applicant, the court will not grant mandamus. The court also noted that if enforcement of the Order of Mandamus will present problems like lack of adequate supervision, the court might show unwillingness to issue the order.

In this case, there is no doubt that direct execution against the Government is forbidden, thus leaving no other alternative method of getting a settlement. All necessary requirements including serving the Attorney General with relevant documents, had been complied with. It is the view of this court therefore that the ex parte applicants are entitled to the Order of Mandamus.

This application is therefore granted as prayed with costs. Orders accordingly.

Dated and delivered at Machakos this 20th day of December 2005.

D. A. ONYANCHA

JUDGE