



Mwangangi v Attorney General & 2 others (Judicial Review Miscellaneous Application E002 of 2023) [2024] KEHC 2696 (KLR) (12 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2696 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E002 OF 2023
GMA DULU, J
MARCH 12, 2024**

BETWEEN

MUTUKU KILONZO MWANGANGI APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

SOLICITOR GENERAL 2ND RESPONDENT

**PRINCIPAL ADMINISTRATIVE SECRETARY NATIONAL POLICE
SERVICE 3RD RESPONDENT**

RULING

1. Before me is a Notice of Motion dated 13th July 2023 filed by the ex-parte applicant through counsel Mwinzi & Associates Advocates, under Order 53 Rule 31 and 32 of the *Civil Procedure Rules*, Section 8 and 9 of the *Law Reform Act*, Article 23 of the *Constitution*, as well as the *Government Proceedings Act* (Cap.40).
2. The prayers in the application are as follows:-
 1. An order of mandamus do issue directed to the respondent herein for compelling the respondents to pay the exparte applicant herein sum of Kshs. 772,100/= together with costs and interest at court rate accrued from the date of the decree until payment in full being the decree arising from SPMCC No. 67 of 2016 Voi – *Mutuku Kilonzo Mwangangi v Attorney General*.
 2. An order do issue to the respondent to show cause against detention in prison.
 3. That the court be pleased to grant such or further orders it deems fit to grant in the interests of justice.



4. The costs of the application be awarded to the ex-parte applicant herein.
3. The application has grounds on the face of the Notice of Motion that the ex-parte applicant holds a judgment and decree from SPMCC No. 67 of 2016 Voi dated 12th July 2021 and 20th July 2022 respectively; that the decree and certificate of costs is for Kshs. 772,100.00 and had since accrued interest as at the time of filing the present application of Kshs. 108,094/= which the applicant similarly claims; that the respondents who were represented by the Attorney General have been duly served with notice of judgment and decree; and that the judgment debt and interest thereon or any part thereof had not been paid.
4. The application has been opposed by the Attorney General through Grounds of Opposition dated 7th August 2023 contending that mandamus orders are equitable discretionary orders and are issued subject to satisfaction of certain conditions; that there has not been demonstrated an express refusal or a demonstration of lack of other adequate remedy.
5. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Mwinzi & Associates Advocates for the ex-parte applicant, as well as the submissions filed by the Attorney General for the respondents.
6. From the pleadings and submissions filed herein, the Attorney General does not appear to be contesting the existence of the judgment and decree as well as the costs. They are not disputing that the amounts have not been paid. They claim however that the application is fatally defective because the ex-parte applicant sued wrong parties and was seeking to enjoin Toyota Tsusho Capital Ltd.
7. I have seen copy of the judgment filed herein relating to Voi SPMCC No. 67 of 2016 – *Mutuku Kilonzo Mwangangi v Attorney General* which was delivered on 12th July 2021 as well as copy of the certified decree issued on 20th July 2022.
8. However, I have not seen any purported challenge filed by the Attorney General in the case or an appeal or intended appeal filed by the Attorney General.
9. Thus the judgment and decree and costs ordered by the trial court stand owing and unpaid from 2021, about four (4) years now.
10. I thus find no basis for not allowing the application, as what is sought is payment of the amount as adjudicated by the trial court, and substantial time has already lapsed, and no payment has been made or a proposal made on how to pay the same.
11. I thus allow the application and order as follows:-
 - a. An order of Mandamusbe and is hereby issued to the respondents herein for compelling the respondents to pay the exparte applicant herein the sum of Kshs. 772,100.00 together with costs and interest at court rate accrued from the date of the decree until payment in full being the decree arising from SPMCC No. 67 of 2016 Voi – *Mutuku Kilonzo Mwangangi v Attorney General*.
 - b. The applicant is at liberty to apply for notice to show cause against detention of the respondents in prison for failure to pay the decretal amount, interest and costs herein.
 - c. I award the costs of this application to the ex-parte applicant.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF MARCH 2024 AT VOI IN OPEN COURT.



GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Mwinzi for the applicant

Ms. Saru for respondents

