



Republic v Permanent Secretary Ministry of Interior Coordination of National Government; Mwangi (Suing as the Legal Representative of Estate of Maureen Mugure Ongati) (Exparte Applicant) (Judicial Review Miscellaneous Application 2 of 2019) [2023] KEHC 2720 (KLR) (21 March 2023) (Judgment)

Neutral citation: [2023] KEHC 2720 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 2 OF 2019**

SC CHIRCHIR, J

MARCH 21, 2023

BETWEEN

REPUBLIC APPLICANT

AND

**THE PERMANENT SECRETARY MINISTRY OF INTERIOR COORDINATION
OF NATIONAL GOVERNMENT RESPONDENT**

AND

**NELLY WANGARI MWANGI (SUING AS THE LEGAL REPRESENTATIVE OF
ESTATE OF MAUREEN MUGURE ONGATI) EXPARTE APPLICANT**

JUDGMENT

1. The Notice of Motion dated 24th my 2019, seeks for an order of *Mandamus* directed at the Permanent Secretary, Ministry of Interior and Coordination of national Government (The respondent).
2. The exparte applicant, Nelly Wangari Mwangi is the decree holder in Murang'a Chief Magistrate's Court Civil Suit No.174 of 2013 wherein the ex-parte applicant was awarded Kshs.1,949,630, general damages plus interest thereon and costs of Kshs.202,175.
3. The Government, despite demand and a certificate of order being issued, failed to pay hence the present application.

The Ex-parte Application seeks for the following:

- (a) An order of *Mandamus* directed at the respondent compelling him to pay the Applicant the sum of Kshs.2,697,701.40 being the decretal amount in civil suit No.174 of 2013 at the Chief



Magistrate's Court at Murang'a, as per the certificate of order against the Government dated April 1, 2016 together with interest from October 8, 2015 until payment in full.

- (b) That costs of this Application be provided for.
4. The said Application is supported by a verifying affidavit of Nelly Wangari Mwangi sworn on May 24, 2019 and a statutory statement dated May 10, 2019.
 5. The applicant's case is that she did obtain Judgment against the respondent in a Murang'a Chief Magistrate's Civil suit No.174 of 2013 being award of damages. She went ahead and obtained the decree and certificate of costs. She served the certificate of orders of costs against the Respondent but the respondent has failed to satisfy the decree.
 6. She has annexed the plaint, the decree and certificate of order against the Government.
 7. The respondent did not file any Reply or submissions in response.
 8. The applicant opted to rely on her written submission. The submission reiterates the averments in the affidavit and statutory statement. The applicant has also relied on several theories.

Determination

9. I have considered the applicant's Notice of Motion, the verifying affidavit and statutory statement. I have also considered the annexures forming part of the Application.
10. The applicant was granted leave on 20/5/2019 and filed this Application on May 27, 2019.
11. The circumstances under which an order of *Mandamus* may be issued were set out in *Republic v Kenya National Examination Council – ex parte Gathengi & others*, Civil Appeal No.234/1996, the Court of Appeal cited with approval *Halisbury's Law of England*, 4th Edition Vol. 7 page 111 and stated:

“The order of Mandamus is the most extensive remedial nature and it is in form, a command issuing from the High Court of Justice, directed to any person, corporation or tribunal requiring him or them to do some particular things therein specified which appertain to his or her office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue to the end that justice may be done, in all case where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative legal remedy yet that mode of redress is less convenient, beneficial and effective”.

This principles mean that an order of *Mandamus* compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

12. On the other hand, section 21(1) of the *Government Proceedings Act* provides as follows:

“Where in any civil proceedings by or against the Government on in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government or against the government department of against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty one days from the date of the order, or in case the order provides for the payment of costs and the costs require to be taxed at any



time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order.”

Section 21(3) provides that “if the order provides for payment of money by way of damages or otherwise, or any costs, the certificate should state the amount payable and the accounting officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled, or to his advocate the amount appearing on the certificate to be due to him together with interest, if any, lawfully due thereon

13. The applicant has attached a decree and a certificate of order against the Government issued by a competent court, the respondent has been duly notified. There has been no explanation forthcoming from the respondent as to why the decree has not been satisfied, for the last 8 years. There is no other remedy available therefore save the remedy of mandamus.
14. The application is merited and consequently;
 - (a) An order of *Mandamus* is hereby issued compelling the Permanent Secretary of the Ministry of Interior and Coordination of National Government to pay the applicant the sum of Kshs.2,697,701.40 being the decretal sum in the civil suit No.174 of 2013 at the Chief magistrate’s Court in Murang’a as per the certificate of order against the Government dated April 1, 2016 together with costs and interest from October 8, 2015 until payment in full.
 - (b) Costs of this application to the applicant.

DATED , SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 21ST DAY OF MARCH , 2023

S. CHIRCHIR,

JUDGE

In the presence of :

