



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

JUDICIAL REVIEW NO. 19 OF 2019

REPUBLICAPPLICANT

VERSUS

ATTORNEY GENERAL..... INTERESTED PARTY

THE PERMANENT SECRETARY

MINISTRY OF TOURISMRESPONDENT

FANUEL INZIRA MASANOEX PARTE APPLICANT

RULING

The application dated 4th December 2019 was brought by way of Judicial Review. It is an application for an Order of Mandamus to compel the Respondent to pay the decretal amount which was awarded by the trial court, to the Exparte Applicant.

1. The Interested Party, (The **ATTORNEY GENERAL**) acknowledges as follows;

“The order of mandamus is of a most extensive remedial nature and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified, which appertains to his or their 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 cases 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 the mode of redress is less convenient beneficial and effectual”

2. In the case before me, the Exparte Applicant obtained judgment in his favour, in **FANUEL INZIRA MISANGO Vs GILBERT OMBIJA OMUONDO & THE ATTORNEY GENERAL, NYANDO SPMCCC NO. 184 OF 2013.**

3. Judgment was delivered on 14th October 2014, and the Court awarded Damages in the sum of Kshs 936,060/=, together with interest thereon.

4. Thereafter, the court awarded a Certificate of Costs, in the sum of Kshs 162,778/=.

5. Based on the Decree and the Certificate of Costs, the Exparte Applicant became entitled to recover the sums awarded to him.

6. The duty to make payment vests upon the Respondent.

7. When the Respondent failed, for whatever reason, to remit payment to the Exparte Applicant, the latter is seriously prejudiced.

8. Therefore, I find the continued non-compliance with the Decree and the Certificate of Costs is detrimental to the Exparte Applicant.

9. Contrary to the submissions by the Hon. Attorney General, it was not erroneous for the Applicant to seek order of mandamus, to compel the Respondent to remit payment of the sums due.

10. The Respondents say that they are aware of the Judgment which was entered against them, and that they will make payment “*subject to*

the availability of funds.” It would be a mockery of justice if this Court were to tell the Applicant to just continue waiting until such time as the Respondents feel they are ready to make payment.

11. The Applicant has already waited for almost 7 Years! He should not be made to wait any longer. Accordingly, I do hereby issue an order of Mandamus, directed at the Permanent Secretary, Ministry of Tourism, to pay the decretal amount together with interest thereon, and the costs which were awarded to the Exparte Applicant.

12. The said Respondent is hereby commanded, by this order of Mandamus , to remit payment within the next 60 Days.

13. Costs of the application dated 4th December 2019 are awarded to the Exparte Applicant, and shall be met by the Respondent.

DATED, SIGNED AND DELIVERED AT KISUMU

THIS 22ND DAY OF SEPTEMBER 2021

FRED A. OCHIENG

JUDGE