



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW APPLICATION NO. 35 OF 2013

REPUBLIC.....APPLICANT

-VERSUS-

THE PRINCIPAL SECRETARY MINISTRY OF ENVIRONMENT,

WATER AND NATURAL RESOURCES.....1<sup>ST</sup> RESPONDENT

KENYA FOREST SERVICE.....2<sup>ND</sup> RESPONDENT

EXPARTE CHARLES GITAH KAMAU.....SUBJECT

RULING

1. Pursuant to leave granted on 29<sup>th</sup> January 2014, the applicant filed the notice of motion application dated 3<sup>rd</sup> February 2014 seeking an order for mandamus to compel the Principal Secretary of the Ministry of Environment Water and Natural Resources to pay Kshs. 345,720/= to satisfy the decretal sum, costs, and interests in Nakuru SRMC No.2164 of 1996.

2. The application is premised on the following grounds:-

a. Judgment against the Attorney General was entered on 26<sup>th</sup> October 2005.

b. The Principal Secretary Ministry of Environment, Water, and Natural resources has a legal duty to satisfy the decretal sum costs and interests in Nakuru SRMCC No. 2164 of 1996 which to date remains unpaid.

3. The application is supported by the affidavit sworn by Charles **Gitahi Kamau** who averred that judgment was entered on 26<sup>th</sup> October 2005 for general damages of Kshs. 200,000/=, special damages 1,000/=, costs and interest from 26<sup>th</sup> October 2005 to 26<sup>th</sup> October 2011 of Kshs. 144,720/= totaling a sum of Kshs. 345,720/=.

4. The application was amended to include Kenya Forest Service on 4<sup>th</sup> August 2017.

5. In response, the Ministry of Environment and Natural Resources filed a replying affidavit on 17<sup>th</sup> May 2017 sworn by **Faith T. Pesa**. She averred that the subject motor vehicle GKQ 413 does not belong to the Ministry of Environment and Natural Resources but to Kenya Forest Industry Training Institute, which is under Kenya Forest Service.

6. She further averred that Kenya Forest Service filed a notice of preliminary objection on 22<sup>nd</sup> January 2018 on the following grounds: -

a. That the 2<sup>nd</sup> Respondent was established as a state corporation in 2007 under the provisions of the **Forest Act 2005** (now repealed) long after the alleged incident occurred.

b. That the applicant does not have any claim against the 2<sup>nd</sup> Respondent and if any it shall vest in the Government pursuant to the provisions of the **Forest Act 2005** (now repealed).

c. That this suit has been brought to this court with clear disregard of the law and an abuse of the court process.

## **EX-PARTE APPLICANT'S SUBMISSION**

7. The exparte applicant submitted that the ex-parte applicant was cycling along Njoro - Nakuru road on the right-hand side when motor vehicle registration number GKQ 413 was overtaking him and one of the logs fell from the cabin of the lorry and run across the road, hit the subject causing injuries.

8. The exparte applicant instituted civil suit Nakuru SRMCC No. 2164 of 1996 and judgment was delivered in his favor on 26<sup>th</sup> October 2005 as follows:-

**i. General damages Kshs. 200,000/=,**

**ii. Special damages 1,000/=,**

**iii. Costs and interest from 26<sup>th</sup> October 2005 to 26<sup>th</sup> October 2011 of Kshs. 144,720/=**

**iv. Total award..... Kshs. 345,720/=.**

9. The exparte applicant submitted that the 1<sup>st</sup> respondent despite being served with the decree has failed to honor the decretal sum and the Principal Secretary is under a legal or statutory duty under **Section 21 (3) Government Proceedings Act** to satisfy the decree, costs, and interests and urged this Court to grant an order of mandamus.

## **ANALYSIS AND DETERMINATION**

10. I have analyzed the applicant's averments and the submissions herein and what I consider to be in issue is whether the applicant has met the threshold to grant the orders.

11. **Section 21 of the Government Proceedings Act** provides as follows: -

**“(1)Where in any civil proceedings by or against the Government, or 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 favor of any person against 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:**

**Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.**

**(2) A copy of any certificate issued under this section may be served by the person in whose favor the order is made upon the Attorney – General.**

**(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so 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 by the certificate to be due to him together with interest, if any, lawfully due thereon:**

**Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.**

**(4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.”**

12. The applicant argued that judgment was issued in his favor in the sum of Kshs. 345,720/= on 26<sup>th</sup> October 2005. He issued a notice to the Ministry of Environment and Natural Resources. They filed a reply and notice of preliminary objection.

13. **Record show that judgment was issued in the year 2005, a period of over 15 years yet the same has not been satisfied. Majanja, J in Republic vs. Town Clerk of Webuye County Council & Another HCCC 448 of 2006 stated as follows:-**

**“...a decree holder's right to enjoy fruits of his judgment must not be thwarted. When faced with such a scenario the Court should adopt an interpretation that favors enforcement and as far as possible secures accrued rights. My reasoning is underpinned by the values of the Constitution particularized in Article 10, the obligation of the court to do justice to the parties and to do so without delay under Article 159 (2) (a) & (b) and the Applicant's right of access to justice protected under Article 48 of the Constitution.”**

14. A decree having been issued by court. The respondent has a duty to satisfy the decree as was stated in **Republic =Vs= Kenya National Examination Counsel ex parte Gathenji & Others, (1997) eKLR** as follows: -

**“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from 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 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 that mode of redress is less convenient, beneficial and effectual.”**

15. The judgment herein remains unsatisfied for around 15 years now. The exparte applicant deserve to be paid the decretal amount to enable him enjoy fruits of successful litigation; the exparte applicant has demonstrated reason to compel the respondent to pay the decretal amount.

**16. FINAL ORDERS**

**1. I hereby issue an order of mandamus directing the 2<sup>nd</sup> respondent to pay exparte applicant decretal amount of kshs 345,720/=.**

**2. Compliance of order 1 above within 45 days from the date of this ruling.**

**3. COSTS OF THIS APPLICATION TO THE EXPARTE APPLICANT.**

**RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2021**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Jenifer - Court Assistant

Mr. Mbiyu Counsel for the for Applicant

Mr. Ondieki Counsel for 1<sup>st</sup> Respondent

Laura Yego Counsel for 2<sup>nd</sup> Respondent