



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CIVIL APPLICATION NO. 331 OF 2019

IN THE MATTER OF: AN APPLICATION BY DAVID NGUGI MBUGUA

AND

IN THE MATTER OF SATISFACTION OF A DECREE AND CERTIFICATE OF

COSTS OF THE CHIEF MAGISTRATE'S COURT AT NAIROBI (MILIMANI)

DATED 17TH DECEMBER 2013 IN CIVIL CASE NO. 1221 OF 2009

BETWEEN

DAVID NGUGI MBUGUA.....APPLICANT

VERSUS

THE PRINCIPAL SECRETARY, MINISTRY OF SPORTS & HERITAGE

(CURRENTLY: AMB. KIRIMI P. KABERIA).....RESPONDENT

RULING

1. David Ngugi Mbugua, the applicant herein, took out the motion dated 24th July 2019 in which he sought for the following orders:

(a) THAT this honourable court do grant an order of Mandamus directed to the Principal Secretary, Ministry of Sports and Heritage (currently: Amb. Kirimi P. Kaberia) to compel him to pay or cause to be paid in accordance with Laws of Kenya to DAVID NGUGI MBUGUA the sum of ksh.131,332/= plus interest at 12% until payment in full this being the decretal amount in Nairobi Chief Magistrate's Court Civil Case no. 1221 of 2009.

(b) THAT the costs of this application be awarded to DAVID NGUGI MBUGUA.

2. The motion is supported by the statement of facts and the facts deponed in the verifying and supporting affidavits sworn by the applicant. The motion was served upon the respondent and upon the office of the Attorney General on 13th August 2019 and 20th August 2019 respectively. The respondent and the Attorney General's office did not deem it fit to respond to the motion prompting this court to permit the applicant to prosecute the motion exparte.

3. It is the submission of the applicant that he was awarded damages in the sum of ksh.83,800 with costs and interest vide Nairobi C.M.C.C. no. 1221 of 2009 for the injuries he sustained when he was knocked down by motor vehicle registration no. GKA 310M along Thika Road on 14.3.2009.

4. The applicant averred that the respondent was served with the relevant judgment notices and the decree together with the certificate of costs but the decree remains unsettled. The respondent's inaction prompted the applicant to take out these proceedings seeking to compel the Principal Secretary, Ministry of Sports and Heritage, being the ministry's accounting officer to pay the amount.

5. It is argued that the accounting officer has continued to withhold the funds without any good cause instead of releasing the same to the applicant.

6. Having considered the material placed before this court and having further considered the oral submissions of the applicant's advocates, it is apparent that the applicant was hit and injured by motor vehicle registration no. GKA 310M while he was walking along Thika Road on 14.3.2009. The applicant sued for damages before the Chief Magistrate's Court, Milimani, Nairobi.

7. The respondent filed a defence to deny the applicant's claim.

Hon. Kipkorir, learned Resident Magistrate heard the suit and in the end she gave judgment favour of the applicant and against the respondent vide her judgment delivered on 14.10.2013.

8. The applicant attached to the supporting affidavit a copy of the judgment and the resultant decree which shows that as of 14.10.2013 the principal sum plus interest stood at ksh.85,067/= while costs was assessed at ksh.46,295/= making the outstanding amount to be kshs.131,362 which amount the applicant now prays to this court to issue an order directing the ministry's accounting officer compelled to pay.

9. It is apparent that there is no appeal to challenge the decretal sum. There is equally no reason given by the accounting officer as to why he has failed to pay the applicant to settle the decree. Ambassador Kirimi P. Kaberia was identified as the current Principal Secretary, Ministry of Sports & Heritage.

10. In the end, I am convinced that the applicant's motion has merit. It is allowed as prayed. Consequently an order of mandamus is issued and directed against Ambassador Kirimi Kaberia, Principal Secretary, Ministry of Sports and Heritage, compelling him to pay or cause to be paid a sum of kshs.131,332/= being the decretal sum in Nairobi C.M.C.C no. 1221 of 2009 to David Ngugi Mbugua with the accrued interest.

11. The applicant is awarded costs of the motion.

Dated, signed and delivered at Nairobi this 1st day of November, 2019.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent