



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 230 OF 2017

IN THE MATTER OF AN APPLICATION TO APPLY FOR AN ORDER OF MANDAMUS

AND

IN THE MATTER OF THE CHIEF MAGISTRATE'S COURT OF KENYA AT NAIROBI

CHIEF MAGISTRATE'S CIVIL CASE NO. 2137 OF 2011, STANLEY BUNDI -VS – HON. THE ATTORNEY GENERAL

BETWEEN

STANLEY BUNDI..... APPLICANT

VERSUS

PRINCIPAL SECRETARY MINISTRY OF INTERIOR &

CO-ORDINATION OF NATIONAL GOVERNMENT RESPONDENT

JUDGMENT

1. By a notice of motion dated 13th June 2017 and filed in court on 16th June 2017 pursuant to the leave of court granted on 29th May 2017, the ex parte applicant Stanley Bundi seeks from this court leave to institute Judicial Review proceedings for orders of mandamus compelling the Principal Secretary Ministry of Interior and Coordination of National Government to forthwith pay to the applicant, an amount of kshs 943,585.00 together with accrued interest thereon at the rate of 12% per annum until payment in full. The applicant also seeks for costs of the application.
2. The application which is not opposed by the respondent is based on the facts contained in the statutory statement and verifying affidavit sworn by Stanley Bundi on 4th May 2017.
3. The ex parte applicant's case is that he is in possession of a decree of the court in Milimani CMCC 2137/2011 wherein he had sued the Attorney General on behalf of the Ministry of Interior and Coordination of National Government.
4. The decretal sum awarded to the applicant by the court and as per the decree and certificate of order against the Government is kshs 620,000,000 which amount continues to attract interest at 12% per annum from 21st June 2011 to date and that as at 15th January 2017 when certificate of Order Against the Government was issued, the amount had reached kshs 943,585 inclusive of costs and interest and that the interest at 12% per annum continues to accrue on the awarded sum.
5. The applicant claims that it is the legal duty and obligation of the respondent to settle decree of a court as ordered and that the applicant had effected service of the decree, and certificate of order against the Government on the respondent but that the respondent had neglected to pay the decretal sum hence these proceedings.
6. When the matter came up for hearing, on each occasion, the respondent's counsels who appeared kept informing the court that they had requested for payment and that they had been supplied with a copy of judgment giving rise to decree. On 13th November 2011 they informed the court that they had notified the Ministry to pay after submitting to them a copy of judgment and that the Ministry was compiling all decrees against it for settlement although they had some liquidity issues hence they had sought more time to settle.
7. On the said latter date, the court granted the respondent 45 days to settle but by 6th February 2018 when the matter came up for hearing,

there was no report of settlement, with Miss Daido counsel for the respondent submitting that they had advised the Ministry to pay and that they needed more time to settle.

8. In my view, the only issue for determination is whether the applicant is entitled to the prayers sought.

9. The applicant has exhibited a decree and certificate of Order Against the Government as required under Section 21 of the Government Proceedings Act, Cap 40 Laws of Kenya, and served upon the same the Accounting Officer of the Ministry concerned. That fact is not controverted by the respondent.

10. As no execution against the Government can issue, the only mechanism available for the applicant to enforce decree of the court is by way of mandamus to compel the Accounting Officer responsible for the respective Ministry to settle the decree. The Accounting Officer is under a statutory duty under Section 21 of the Government Proceedings Act to settle decree of a court. That being the case, and as the applicant cannot carry with him a barren decree forever while the respondent keeps asking for time to pay in perpetuity, I find and hold that the applicant has demonstrated that he is entitled to Judicial Review order of mandamus sought.

11. Accordingly, I grant him mandamus compelling the Permanent Secretary/Accounting Officer. Ministry of Interior and National government to settle decree as shown by the certificate of Order Against the Government dated 15th February 2017 and Decree which was issued on 23rd March 2016 for the total sum of kshs 943,585.00 together with accrued interest at kshs 12% per annum until payment in full.

12. In order to prevent escalation of costs in this matter at the expense of the Kenyan tax payer, I order that each party shall bear their own costs of these Judicial Review proceedings.

13. The order of mandamus herein shall issue as decree of this court to be executed against the Principal Secretary Ministry of Interior and Coordination of National Government and the amount due to be settled within 60 days from the date hereof. In default, a notice to show cause to issue against Principal Secretary/Accounting Officer Ministry of Interior and Coordination of National Government to show cause why contempt of court proceedings should not be commenced against him/her.

14. Orders accordingly.

Dated, signed and delivered in open court at Nairobi this 6th day of March, 2018.

R.E. ABURILI

JUDGE

In the presence of:

Mr Ombwayo h/b for Mr Mwangi for the exparte applicant

Mr Munene h/b for Miss Daido for the Respondents

CA: Kombo