



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW MISCELLANOUS APPLICATION NO. 192 OF 2018

IN THE MATTER OF AN APPLICATION FOR ORDERS OF MANDAMUS

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

PERMANENT SECRETARY, MINISTRY OF STATE FOR PROVINCIAL

ADMINISTRATION AND INTERNAL SECURITY.....RESPONDENT

THE HON ATTORNEY GENERAL.....INTERESTED PARTY

EX PARTE:

EUSTACE WAMURIA MAHINDA

JUDGMENT

The Application

1. The Ex Parte Applicant herein, Eustace Wamuria Mahinda, (hereinafter “the Applicant”), was the Plaintiff in the in CMCC Number 413 of 2011, which suit was heard and determined on the 26th June 2012 in his favour. The Respondent and Interested Party herein were the Defendant and Interested Party in the said suit.

2. The Applicant filed a Notice of Motion dated 14th May 2018, in which he seeks the following orders:

a) An Order of mandamus directed against the Permanent Secretary, Ministry of State for Provincial Administration and internal Security, to compel the Court Decree and Certificate of Costs in Nairobi High Court of Kenya Miscellaneous Civil Application Case Number 404 of 2012, and to pay the Ex-parte Applicant a sum of Kshs 767,771.44 together with interest thereon at the rate of 12% till payment in full with effect from 12th September 2012

b) That costs be borne by the Respondents.

3. The application is supported by the grounds on its face thereof together with the verifying affidavit of Elizabeth W Mahinda sworn on the 14th day of May 2018. Basically she deposes that she is the sole administrator of the Applicant. That a decree and certificate of costs for Kshs 767, 771/44 was drawn and served upon the Attorney General who was also notified, but refused to settle the decree and certificate of costs to date.

4. According to the Applicant, this necessitated their advocates to secure the certificate of order against the Government. That failure to honour the decree is contemptuous by the state against judicial process and ought to be countenanced. Based on legal advice he contended that the decree has not been honoured by the Attorney General in spite of the service as deposed to.

5. The Applicant in his submissions reiterated that the gist of the application is that there is judgement in favour of the applicant dated 12th September 2012 for Kshs767,771/= with costs and interests at Court rates from 12th September 2012 until payment in full. Further, that the Judgement, decree, certificate of Costs and certificate of Order against the government are produced and shown to the Court. That the Respondents have not filed any pleadings to show the same are fake or forgery neither do they say whether the same has been fully settled or

fully paid.

6. Therefore based on the foregoing the decree is not settled and are entitled to pursue the application as filed as there is no other method of executing against the Government other than through the application of mandamus as directed above. They pointed out that the only issue is that the decree continues to accrue interests and further costs which are borne by the Kenyan public making it very unfair to the overburdened tax payer.

The Determination

7. The Respondents did not file a response despite requesting for, and being given the opportunity to do so by the Court. Therefore the Applicant's application is essentially unopposed.

8. However, and this fact notwithstanding, this Court after perusing the Statement of Facts and Verifying Affidavit in support of the Applicants Chamber Summons application for leave to commence judicial review proceedings dated 14th May 2018, noted that it is stated therein that the Applicant was the Plaintiff and Decree Holder in CMCC Number 413 of 2013, and that his claim therein was successful and judgment was entered in his favour in the sum of Kshs 767,771.44 all inclusive.

9. Attached to the said Verifying Affidavit that was sworn on 14th May 2018 by Elizabeth W. Mahinda, was an "Annexure EWM-1", which was a decree issued by this Court in Nairobi High Court Miscellaneous Civil Application No. 404 of 2012 of the following orders issued in a judgment delivered by Majanja J. in the said suit on 13th May 2014:

a) That an order of mandamus be and is hereby issued directly at the Permanent Secretary Ministry of State for Provincial Administration and Internal Security to compel him to honour Court Decree and Certificate of Costs in Chief Magistrates Court Civil Case Number 413 of 2011 and pay the ex parte applicant a sum of Kshs 530,808/= together with interest thereon at the rate of 12% with effect from 4th March 2012 until payment in full.

b) That the ex parte applicant shall also have the costs of the suit assessed at Kshs 45,000/= all inclusive.

10. Also annexed as "Annexure EWM-3" was a Certificate of Order against the Government issued on 16th March 2015 by the Deputy Registrar of the High Court in the said suit for Kshs 767,771.44. The said sum is shown as being made up of the decretal sum of Kshs 530,808.00; costs of 45,000.00 and interest at 12% from 9/3/2012 to 9/3/2015.

11. In essence, the Applicant is seeking an order of mandamus in the present application, to enforce an earlier order of mandamus that was granted on the same judgment that is sought to be enforced by the present application, which is the judgment in CMCC Number 413 of 2011. He is thus seeking to enforce the same judgment twice, using two different decrees. This application is thus clearly in abuse of the Court process.

12. There is also an element of non-disclosure on the part of the Applicant of the circumstance's leading to the present application. The Applicant ought to have followed up on the enforcement of the orders that were granted in Nairobi High Court Miscellaneous Civil Application No. 404 of 2012, instead of bringing the present application.

13. In the premises, I find that the Applicant's Notice of Motion dated 14th May 2018 is brought in abuse of the court process and is accordingly struck out with nor order as to costs, and this file is hereby marked as closed.

14. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 3RD DAY OF DECEMBER 2018

P. NYAMWEYA

JUDGE