



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
JUDICIAL REVIEW NUMBER 39 OF 2011
IN THE MATTER OF AN APPLICATION FOR AN ORDER OF *MANDAMUS*
AND
IN THE MATTER OF JUDGMENT IN NAKURU CMCC NO. 264 OF 2004B BETWEEN
MARGARET L. ADEGO -VS- K.A.R.I. & ANOTHER
MARGARET L. ADEGO.....APPLICANT
VERSUS
ATTORNEY GENERAL RESPONDENT
RULING

1. Leave to bring these Judicial Review proceedings in the nature of an Order of *Mandamus* against the Honourable the Attorney General the Respondent to compel it to satisfy the judgment and decree of court in **Nakuru CMCC No. 264 of 2004** then in the sum of Kshs.1,067,125/= was granted on the 29th February 2012.

2. The substantive Notice of Motion application was then filed on the 15th March 2012 within the 21 days.

I have perused and considered the said application. It is accompanied by a statement of facts stating the nature of relief sought and the grounds on which the relief is sought. The applicant also swore an affidavit to verify the facts relied on. The notice of motion was served upon the respondent as required.

That is the procedure as provided under **Order 53 of the Civil Procedure Rules**.

3. The applicant has annexed to the application by way of exhibits to the affidavit the following documents; a copy of the Amended Plaint dated 28th September 1994 and a copy of decree dated 7th May 2008.

I have not seen a copy of the Judgment and the certificate of costs against the Government that should show and state the decretal sum including costs for which order the Respondent should be compelled to satisfy. These are important documents that ought to be furnished to the court for an Order of *Mandamus* to be issued.

4. In the case **Republic -vs- A.G. & Another, Exparte James Alfred Koroso(2013)e KLR**, the

procedure and requirements to be satisfied by a party seeking an Order of *Mandamus* was discussed at length.

It is the only writ that a party may apply to compel the Government to satisfy its legal duty issuing from an order of a court of law.

Section 21(4) of the Government Proceedings Act prohibits execution against the government leaving an applicant with only one option, an Order of *Mandamus*.

5. I have perused the court proceedings to satisfy myself whether the Respondent was served with the application dated 15th March 2012 being the substantive application under **Order 53 of the Civil Procedure Rules**. I have not seen any evidence of service at all.

There is however an affidavit of service of the hearing notice of the application filed on the 7th November 2016 which was received by the Respondent on the 15th September 2016.

6. When the application come up for hearing on the 7th November 2016, there was no attendance from the respondents office. The fact of none service of the application was not disclosed to the court, and no affidavit of service was filed by the applicant.

The applicant proceeded with the application as unopposed and relying on the statement of facts and the affidavit, urged the court to grant the orders sought.

7. As stated above, it is evident that the Respondent was not served with the substantive application dated 15th March 2012.

It would be against the rules of procedure and fair hearing if I proceed to determine the application without giving the respondent a chance to be heard on the same.

It is trite that service of any court process that a party brings against another must be served. Having said so, I decline to interrogate the merits or otherwise of the application and direct that the Respondent, the Honourable Attorney General be served with the substantive application dated 15th March 2012 and a fresh hearing date be taken at the registry.

It is so ordered.

Dated, signed and delivered in court this 12th Day of January 2017.

JANET MULWA

JUDGE