



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 226 OF 2005

TOM CHERUIYOT KIPNGETICH..... PLAINTIFF

VERSUS

HON. ATTORNEY GENERAL.....1ST DEFENDANT

ELDORET EXPRESS LIMITED..... 2ND DEFENDANT

JUDGMENT

Before court is the Notice of Motion dated 5/9/2016 seeking the following orders:

- “1. THAT summons to issue to the Principal Secretary Ministry of Interior Security to appear in person at the hearing of this proceeding***
- 2. THAT leave be granted to commence contempt proceedings against the Principal Secretary Ministry of Interior Security***
- 3. THAT an order be granted to compel the Principal Secretary – Ministry of Interior Security to pay the sum of Ksh 1,418,732/= being the decretal amount and interest thereon within fourteen (14) days from the date of this order***
- 4. THAT the costs of this application be provided for***
- 5. THAT such further and other relief be granted to the applicant as this court deems fit”.***

The genesis of this application was the **Civil Suit No. 226 of 2005** which was heard by the Hon. Judge Justice Martha Koome (as she then was) sitting at the High Court in Nakuru. The suit was a claim for damages arising from a fatal accident which occurred on 3rd December, 2002 along the Nairobi-Naivasha Highway at Kinungi area, which accident led to the death of one **RAEL JEPCHUMBA CHERUIYOT** (the deceased).

After hearing the matter Hon. Justice Koome delivered her judgment dated 1st April, 2009 in which she made an award of damages in the amount of Ksh 1,101,500/= apportioned 30% to be paid by the 2nd defendant whilst 70% was to be paid by the 1st defendant. The 2nd defendant did pay their 70% share of the award. However the 1st defendant being the Hon. Attorney General have not to date settled their 30% share.

Despite having been properly served with the present Notice of Motion the 1st defendant did not file any documents in reply and also failed to appear on the hearing date to defend and/or oppose the application. As such the court did direct that the matter proceed in their absence.

MR MALINZI counsel for applicant submitted that the decretal sum now due including interest is Ksh 1,418,718/=. The same has been outstanding since 2009. It was submitted that the applicant is entitled to the fruits of his judgment.

As stated earlier this application was not opposed. The averments made in the supporting affidavit remain uncontroverted. I have myself seen and perused the judgment dated 1st April, 2009 in which the original award was made. I have seen the decree dated 20th August, 2010 as well as the certificate of order against the Government dated 20th August, 2010.

I am satisfied that this application has merit and I do allow the same in the following terms-

“An order is hereby granted to compel the Principal Secretary, Ministry of Internal Security to pay the sum of Ksh 1,418,732/= being the decretal amount and interest thereon within sixty (60) days from the date of this order.”

I make no order on costs.

Dated in Nakuru this 17th day of February, 2017

No appearances by either party

Maureen A. Odero

Judge