



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 58 OF 2017

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF LAW REFORM ACT

AND

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF MANDAMUS

REPUBLICAPPLICANT

VERSUS

THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND

CO-ORDINATION OF NATIONAL GOVERNMENT.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

JAMES ODEMBA OKONGO.....EX PARTE APPLICANT

JUDGMENT

1. The ex parte applicant herein **JAMES ODEMBA OKONGO** is the decree holder against the Government of Kenya in Constitutional petition No. 104/2009. A decree in the above matter was issued on 21st March 2016, certificate of costs issued on 29th August 2016 and Certificate of Order Against the Government issued on 8th September 2016.

2. On 1st April, 2016, the applicant demanded for settlement of the decretal sum followed by a letter dated 15th April 2016. On 6th April 2016 the 2nd respondent **THE HON. ATTORNEY GENERAL** wrote to the advocates for the applicant asking for documents including certified copy of judgment of 1st November 2013, decree, certificate of order against the government and certificate of costs. The above documents were supplied to the Attorney General on 16th September 2016 and a reminder sent on 3rd November 2016. To date, the decree has not been settled.

3. The application dated 15th February 2017 seeks for Judicial Review orders of mandamus directed

at the 1st respondent **The Principal Secretary Ministry of Interior and Co-ordination of National Government** compelling him to settle decree in Constitutional Petition No. 104/2009. The amount due is kshs 6,988,034 as per the attached decree.

4. The application is opposed by Mr Ogozo counsel for the respondents who nonetheless states through grounds of opposition filed and oral submissions that the respondents are willing to settle the decree and only need time to do so due to the budgeting procedures. Further, that the Ministry is working with the National Treasury to ensure that the decretal sum is settled. In addition, it was submitted that the Ministry has not refused to pay the decretal sum but that if more time is given, then settlement will be made after going through the budgetary processes.

5. The application was argued by Mr Magina advocate for the applicant reiterating the grounds as contained in the statutory statement accompanying Chamber summons application for leave and supported by the annexures to the verifying affidavit.

6. I have carefully considered the application for mandamus and the grounds of opposition together with the parties' advocates oral submissions.

7. The only issue for determination is whether the order of mandamus is available to the applicant.

8. Mandamus issues to compel a performance of a public or statutory duty. In this case, the legal duty to be performed by the 1st respondent is settlement of a decree of the court in Petition No.104/2009 as per judgment of Honourable Lenaola J (as he then was) delivered on 1st November 2013. There is no appeal against that judgment and the court record shows that the applicant has complied with Section 21 of the Government Proceedings Act, Cap 40 Laws of Kenya. There is no other way of compelling payment of the decretal sum other than by these Judicial Review proceedings as there can be no execution against the Government by way of attachment and sale of its assets which are public assets.

9. There is evidence on record that demand for settlement has been made and the respondents say they have not refused to settle. They need time. That being the case, I find and hold that the applicant has satisfied this court that he is entitled to the orders sought which I hereby grant as prayed for in the notice of motion dated 15th February 2017 as against the 1st Respondent Accounting Officer.

10. I award costs of these Judicial Review proceedings to the applicant to be paid by the 1st respondent.

11. The decretal sum to be settled within 120 days from the date hereof. In default, the applicant is at liberty to apply as appropriate.

Orders accordingly.

Dated, signed and delivered in open court this 10th April 2017.

R. E. ABURILI

JUDGE

In the presence of:

Mr Magina for the ex parte applicant

Mr Ogozo for the respondents

CA: Mohamed