



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 173 OF 2016

IN THE MATTER OF ORDERS 33 RULE 1 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF MANDAMUS

REPUBLICAPPLICANT

VERSUS

PRINCIPAL SECRETARY, MINISTRY OF HEALTH.....RESPONDENT

AND

SUSAN WAMAITHA KAMAUEXPARTE APPLICANT

JUDGMENT

1. By a Notice of Motion dated 22nd June 2016 and filed in court on the same day, the exparte applicant Susan Wamaitha Kamau (administratrix of the estate of the deceased David Kamau Muhia instituted Judicial Review proceedings for Orders of Mandamus against the Hon. Attorney General and the Medical Superintendent Rift Valley Provincial General Hospital seeking to compel the Respondents to pay her a sum of shs 396,261 due as at 9th June 2016 with further interest until payment in full.
2. The application also seeks for payment to be effected within 30 days of the dated of the order and in default, the exparte applicant be at liberty to commence committal proceedings against the respondent; and costs of the motion be provided for.
3. The application is grounded on the premises that there is judgment in Nakuru CMCC 327/2004 – David Kamau Muhia (now deceased) against the Honourable Attorney General and the Medical Superintendent Rift Valley Provincial General Hospital, delivered way back on 20th July 2006 in favour of the deceased David Kamau Muhia in the sum of kshs 128, 680 plus costs and interest which sum has now been calculated to be shs 396,261.00 as at 9th June 2016 but that despite demands for

payment, the Ministry of Health has refused to settle the same.

4. The Notice of Motion is also supported by the supporting affidavit of Susan Wamaitha Kamau and annexures which include certificate of death of the deceased plaintiff David Kamau Muhia, grant of letters of administration in Succession cause No. 1527/2015 in favour of the applicant herein Susan Wamaitha Kamau, pleadings in Nakuru CM CC 357/2004 together with pleadings, judgment, decree and certificate of costs and Certificate of Order against the Government pursuant to Order XXVIII Rule 3 of the old Civil Procedure Rules.

5. The applicant has also annexed copies of demand letters for the payment of decretal sum. In addition, the application is supported by statutory statement and verifying affidavit sworn by the applicant in support of an application for leave to apply for Judicial Review orders of Mandamus dated 12th April 2016 and the leave granted on 7th June 2016 by Honourable justice Odunga J.

6. The application for Judicial Review Orders is not opposed by the respondents.

7. The ex parte applicant's counsel appeared before me this morning and argued the application orally, urging the court to grant the orders as prayed.

8. Mr Munene counsel for respondents submitted that money was due and owing and left the matter to court to decide the fate of the Judicial Review application.

9. I have considered the Judicial Review application dated 22nd June 2016. I am satisfied that there is judgment and decree as well as certificate of order against the government in Nakuru CM CC 357/2004 in favour of the deceased David Kamau Muhia against the respondents herein which decree has neither been settled nor the judgment appealed against to date.

10. I am equally satisfied that leave to commence these judicial review proceedings against the government was granted on 7th June 2016 and the application was filed within 21 days granted by Honourable Odunga J.

11. I am evenly satisfied that despite demands by the applicant's counsel for settlement of the decree passed in the lower court, the respondents have not shown any intention or willingness to pay the decretal sum as decreed by the court nearly 10 years ago.

12. In the premises, I am satisfied that the applicant who is now the administratrix of the estate of the deceased David Kamau Muhia has made out a case for the grant of the prayers for Judicial Review orders of mandamus to compel the Principal Secretary, Ministry of Health to settle decree in Nakuru CM CC 357/2004.

13. Accordingly, I hereby grant the Judicial Review Orders of Mandamus compelling the Principal Secretary, Ministry of Health to settle decree in Nakuru CM CC 357/2004 and pay the said decretal sum to the applicant herein Susan Wamaitha Kamau which now stands at kshs 396,261 within the next 90 days from the date of this order.

14. In default, the ex parte applicant shall be at liberty to institute contempt of court proceedings to enforce the mandamus orders.

15. In view of the delay in filing of these proceedings, I order that each party do bear their own costs of these Judicial Review proceedings.

Dated, signed and delivered at Nairobi this 13th day of September 2016.

R.E. ABURILI

JUDGE