



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

MISC. APPLICATIONS NO.47 OF 2014

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

ORDERS OF MANDAMUS

MICHAEL DAMSON MAHUGU.....APPLICANT

VERSUS

THE PS, MINISTRY OF INTERIOR & CO-ORDINATION

OF NATIONAL GOVERNMENT RESPONDENT

JUDGEMENT

1. By a Notice of Motion dated 11th February, 2014 the *ex parte* applicant herein, Michael Damson Mahugu, seeks an order for mandamus against the Respondent compelling the Respondent to settle the decretal sum of Kshs 2,647,019/= in terms of the decree in HC Misc. Civil Case No. 1375 of 2003.
2. The application was supported by a supporting affidavit sworn by the applicant herein on 4th February, 2014.
3. According to the applicant, on or about on 6th February, 1987 he was arrested and taken to Bondeni Police Station, Menengai Police Station and Kabete Police Station up until 8th February, 1987, when he was removed from Kabete Police Station blind folded and taken to Nyayo House Basement Cells which were not a gazette Police Station.
4. In his view his fundamental rights and freedoms were contravened and grossly violated by Special Branch Police Officers and other Kenyan Government servants, agents, employees and institutions for 39 days at Nyayo House Torture Chambers and thereafter in Kenyan Prisons.
5. He then filed Originating Summons at the High Court Miscellaneous Civil Case No. 1375 of 2003 for compensation against the Attorney General for damages and compensation in respect thereof and Justice Mumbi Ngugi awarded him the sum of Shillings Kshs, 2, 000,000/= and the amount outstanding 19th July 2012 to 8th October 2013 which remains unpaid despite having served the Respondent with a certified decree, certificate of costs and certificate of order against the Government is Kshs 2,555,446/= made up as follows:

Amount as in decree	Kshs	2,000,000.00
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Taxed costs	Kshs	262,843.00
Interest	Kshs	292,843.00

6. The applicant therefore sought that the Principal Secretary Ministry of Interior and Coordination of National Government be committed to civil jail for a period not exceeding 6 months if he fails to pay the sum of Kshs 2,555,446.00 within 14 days of service of the order herein.
7. The application was, not surprisingly unopposed by the Respondents.
8. I have considered the application, the verifying affidavit as well as the documents on record.
9. In High Court Judicial Review Miscellaneous Application No. 44 of 2012 between the **Republic vs. The Attorney General & Another ex parte James Alfred Koroso**, I expressed myself as hereunder:

“...in the present case the ex parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from *mandamus*, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done he will forever be left baby sitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of the Constitution which enjoins the State to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his/her lawful rights which have been decreed by a Court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under Article 129 of the Constitution executive authority derives from the people of Kenya and is to be exercised in accordance with the Constitution in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit....The institution of judicial review proceedings in the nature of *mandamus* cannot be equated with execution proceedings. In seeking an order for *mandamus* the applicant is seeking, not relief against the Government, but to compel a Government official to do what the Government, through Parliament, has directed him to do. The relief sought is not “execution or attachment or process in the nature thereof”. It is not sought to make any person “individually liable for any order for any payment” but merely to oblige a Government officer to pay, out of the funds provided by Parliament, a debt held to be due by the High Court, in accordance with a duty cast upon him by Parliament. The fact that the Accounting Officer is not distinct from the State of which he is a servant does not necessarily mean that he cannot owe a duty to a subject as well as to the Government which he serves. Whereas it is true that he represents the Government, it does not follow that his duty is therefore confined to his Government employer. In *mandamus* cases it is recognised that when statutory duty is cast upon a Public Officer in his official capacity and the duty is owed not to the State but to the public any person having a sufficient legal interest in the performance of the duty may apply to the Courts for an order of *mandamus* to enforce it. In other words, *mandamus* is a remedy through which a public officer is compelled to do a duty imposed upon him by the law. It is in fact the State, the Republic, on whose behalf he undertakes his duties, that is compelling him, a servant, to do what he is under a duty, obliged to perform. Where therefore a public officer declines to perform the duty after the issuance of an order of *mandamus*, his/her action amounts to insubordination and contempt of Court hence an action may perfectly be commenced to have him cited for such. Such contempt proceedings are no longer execution proceedings but are meant to show the Court’s displeasure at the failure by a servant of the state to comply with the directive of the Court given at the instance of the Republic, the employer of the concerned public officer and to uphold the dignity and authority of the court.”

10. I adopt my reasoning in the said case and in the absence of any replying affidavit, I find merit in

- the Notice of Motion dated 11th February, 2014.
11. Accordingly, an order of mandamus is hereby issued directed to the Respondents compelling them to pay the ex parte Applicant through the applicant's advocates Kshs 2,647,019/= as sought.
 12. With respect to the prayer for committal, the same is premature at this stage.
 13. The costs of this application are awarded to the applicant.
 14. It is so ordered.

Dated at Nairobi this day 5th November, 2015

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Wandaka for the Applicant

Cc Patricia