



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Judicial Review 613 of 2004

IN THE MATTER OF: AN APPLICATION BY EUNICE NJERI MUYA & TERESA WANJIRU MUYA FOR LEAVE TO APPLY FOR AN ORDER OF JUDICIAL REVIEW (MANDAMUS) AGAINST THE PERMANENT SECRETARY, MINISTRY OF AGRICULTURE

BETWEEN

REPUBLIC.....APPLICANT

**-
VER
SUS-**

**THE
PERMANENT SECRETARY,**

MINISTRY OF AGRICULTURE.....RESPONDENT

EX-PARTE

1. EUNICE NJERI MUYA

2. TERESIA WANJIRU MUYA

J U D G M E N T

Pursuant to leave granted by Nyamu, J on 24th November 2004, the two Exparte Applicants herein filed a Notice of Motion on 14th December 2004 seeking orders of Mandamus against the Permanent Secretary, Ministry of Agriculture to compel him to pay the Exparte Applicants (**herein referred to as the Applicants**) through their advocates the sum of Kshs.1,028,808/90 being the decretal amount, costs and interests awarded to the applicants in CMCC No.265 of 1995 on 10th June, 1997. The Applicants also pray for costs of the suit.

The Application is supported by the statement of facts dated 18th May 2004 and the verifying affidavit sworn by the Applicants on 2nd July 2004.

The application is not opposed. Though it was served on the Respondent, no replying affidavit or grounds of opposition were filed on behalf of the Respondent. Instead the Record shows that on several dates when the matter was scheduled for mention, different state counsels instructed by the Hon. Attorney General for the Respondent attended the court and indicated that they had received instructions to settle the applicants' claim.

From the pleadings filed by the Applicants, It is clear that the Applicants claim against the Respondent arises from a judgement delivered in their favour in CMCC No.265 of 1995 on 10th June 1997. The decretal amount was Kshs.438,396/- together with costs assessed at Kshs.36,848/-. The principal amount and costs were to attract interest at court rates from the date of judgement until date of payment. This position is reflected in the certificate of order against the Government issued in the matter on 27th September 2002 and served on the Respondent in compliance with Section 21 of the Government proceedings Act.

The Applicants in the written submissions filed on their behalf by their advocates on record, the firm of Kamunye Gichigi & Co. Advocates have admitted having received payment from the Respondent on 22nd May 2006 in the sum of Kshs.915,488/-.

According to the Applicants, the amount then outstanding was as follows:

Principal amount	- Kshs. 940,983.84
Interest accruing from	
1/5/2004 - 22/5/2006	- <u>Kshs. 232,644.00</u>
TOTAL	= <u>Kshs.1,173,628.00</u>

After taking into account the monies received from the Respondent on 22nd May 2006, the Applicants are now seeking orders of Mandamus to compel the Respondent to pay the outstanding balance together with interest upto 23rd April 2010 which adds upto Kshs.379,465.57/-.

As this figure is not disputed by the Respondent and there cannot be any doubt from the foregoing undisputed facts that the Respondent has a public duty to pay the said sums of money due to the Applicants which the Respondent has failed or neglected to perform todate, I am satisfied that the Applicants are entitled to the order of mandamus as prayed.

I therefore allow the Notice of Motion dated 9th December 2004 and issue orders of mandamus directing the Respondent to pay the Applicants a sum of **Kshs.379,465.57** without any further delay. Considering that the amount involved is not substantial and that it has been outstanding since April 2010, I direct that the said payment be effected within a period of three months from today's date.

Each party to bear its own costs.

Dated, Signed and Delivered at Nairobi this 5th day of June, 2012.

C. W. GITHUA
JUDGE

In the presence of:

Florence – Court Clerk

N/A by parties though duly notified of Judgment date