

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISCELLANEOUS APPLICATION 38 OF 2011

REPUBLIC.....APPLICANT

AGAINST

- 1. THE PERMANENT SECRETARY, MINISTRY OF ROADS**
- 2. THE PERMANENT SECRETARY, MINISTRY OF PUBLIC WORKS**
- 3. THE HONOURABLE ATTORNEY GENERAL.....RESPONDENTS**

EX PARTE.....MICHAEL MUSEMBI KIIO

R U L I N G

Before me is a Notice of Motion dated 17th March 2011 filed by Michael Musembi Kiio, seeking *mandamus* orders against the Permanent Secretary, Ministry of Public Works and Permanent Secretary, Ministry of Roads, to compel them to pay the decretal amount, costs and interest in Makueni SRMCC No. 147/2008. The application was filed under Order 53 Rule 3 (1) of the Civil Procedure Rules. It is supported by the statement filed with the Chamber Summons for leave, as well as the affidavit verifying the facts sworn by the *ex-parte* applicant on 8th March 2011, together with an affidavit also filed with the said Chamber Summons, annexing exhibits.

Though hearing notice was served on the Attorney General on 10th April 2012, nobody from the State Law office attended court on the hearing date which was 24th April 2012. The application therefore stands unopposed.

Since the application is not opposed, I find no justifiable reason not to allow the same. However, in allowing the application, I do not see the purpose of prayer 2. Consequently, I allow the application and grant prayers 1. Costs to the *ex-parte* applicant from the respondents.

Orders accordingly.

Dated and delivered at Machakos this 5th day of **July** 2012.

George Dulu

Judge

In presence of:-

Court clerk – Nyalo

Mr A.K. Mutua holding brief for Makau for Applicant