



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW 99 OF 2011

IN THE MATTER OF: AN APPLICATION ON BEHALF OF HERMAN ONAMU LIKHOKHO FOR LEAVE TO APPLY FOR ORDERS OF MANDAMUS DIRECTED TO THE 1ST RESPONDENT

**REPUBLIC.....
..... APPLICANT**

VERSUS

**THE PERMANENT SECRETARY, (PROVINCIAL ADMINISTRATION & INTERNAL SECURITY).....1ST RESPONDENT
THE ATTORNEY GENERAL.....2NDRESPONDENT**

EXPARTE

HERMAN ONAMU LIKHOKHO

J U D G M E N T

The Exparte Applicant herein Herman Onamu Likhokho moved this court by way of Notice of Motion dated 25th November 2011 seeking orders of mandamus to compel the 1st Respondent, the Permanent Secretary in the Office of the President (Provincial Administration and Internal Security) to pay him the decretal amount awarded to him in CMCC No.3521 of 2003 previously HCC 1322 of 2002 together with all accrued interest from the date of filing suit in the case of general damages and from the date of judgment in the case of special damages until payment in full.

Though the application was served on the Respondents, it is not opposed as the Respondents did not file either a replying affidavit or grounds of opposition. Instead, the Attorney General appearing for the Respondents informed the court through several State Counsels when case was fixed for mention that he had opted not to oppose the Applicant’s motion as he had already advised the relevant ministry to pay the Applicant the decretal amount. Payment was however not effected by 4th June 2012 when case was fixed for hearing and upon application by the Applicant’s counsel which was not opposed by the Respondents, case was fixed for judgement.

From the pleadings filed by the Applicant herein and annexures to his verifying affidavit sworn on 21st

April 2011 and more particularly the decree marked “HOL 2” and certificate of order against the Government marked “HOL 3”, there is no doubt that the Applicant was awarded a principal sum of Kshs.430,000 and costs ascertained at Kshs.59,370 in CMCC No.3521 of 2003 previously HCC.No.1322 of 2002 which was to accrue interest at the rate of 12% from 17th June 2004 until payment in full.

The decretal amount and costs were to be paid by the two defendants in the suit jointly and severally. The Hon. Attorney General had been sued as one of the Defendants in the suit on behalf of the Commissioner of Police. The Applicant has averred in his verifying affidavit that the certificate of order against the Government was duly served on the Attorney General in compliance with Section 21 of the Government Proceedings Act and that despite making several demands for payment, the 1st Respondent has failed and/or refused to settle the decretal amount and interest accruing thereon.

These facts as well as the fact that the Attorney General never lodged an appeal against the judgment entered by the lower court in favour of the Applicant have not been disputed by the Respondents.

In the circumstances, I find that the 1st Respondent being the accounting officer responsible for the Police Department in the Ministry of State in the office of the President has failed and/or refused to perform his statutory duty under Section 21(3) of the Government Proceedings Act to pay the Applicant the monies lawfully due to him as decreed in CMCC 3521 of 2004.

The purpose or objective of the order of mandamus is to provide a remedy to an aggrieved party who has suffered a legal injury by reason of a public body or public officer refusing or neglecting to perform a public duty imposed by statute to the detriment of the Applicant.

In this case, the Applicant has proved that the 1st Respondent has deliberately failed and/or refused to settle the decretal amount and interest awarded in his favour in CMCC 3521 of 2004 for a period of 8 years. The 1st Respondent did not respond to the Applicant’s motion and therefore no reasons have been advanced for his failure to satisfy the said decretal amount for such a long time. Secondly, the Applicant’s claim that he has made repeated demands for payment has not been disputed. The Applicant has therefore demonstrated that he is deserving of the orders of mandamus as prayed in his application dated 28/11/11. The application is therefore allowed with costs in terms of Prayer I.

However, as indicated in the certificate of order against the Government, interest on the decretal amount inclusive of costs should be and shall be calculated at the rate of 12% from 17th June 2004 until payment in full. It is so ordered.

DATED, SIGNED and DELIVERED by me at Nairobi this 4th day of July, 2012.

C. W. GITHUA
JUDGE

In the presence of:

Florence - Court Clerk

N/A for Applicant

N/A for 1st Respondent

N/A for 2nd Respondent

