



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Judicial Review 209 of 2011

IN THE MATTER OF: AN APPLICATION FOR MANDAMUS

AND

IN THE MATTER OF: MILIMANI CMCC NO.4865 OF 2005

BETWEEN

REPUBLIC..... APPLICANT

-VERSUS-

THE ATTORNEY GENERAL.....1ST RESPONDENT

THE PERMANENT SECRETARY PROVINCIAL ADMINISTRATION &

INTERNAL SECURITY2ND RESPONDENT

AND

PETER BOB OYOO.....EXPARTE APPLICANT

J U D G M E N T

Pursuant to leave granted on 22nd September 2011, the Applicant herein Peter Bob Oyoo filed a Notice of Motion on 27th September 2011 seeking an order of Mandamus against the Hon. Attorney General and

the Permanent Secretary, Provincial Administration and Internal Security (*herein after referred to as the 1st and 2nd Respondent respectively*) to compel them to pay the Applicant the whole decretal amount awarded to him in Milimani CMCC Case No.4865 of 2005 together with costs of the suit.

On perusing the notice of motion, the court has noted that there is a misdescription of the 2nd Respondent as from my knowledge, there is no ministry known as “**Provincial Administration and Internal Security**”. The 2nd Respondent’s proper description in my view is “the Permanent Secretary in the Office of the President, Provincial Administration and Internal Security”.

However, that slight misdescription of the 2nd Respondent does not affect the Applicant's case as the identity of the person sued as the 2nd Respondent is clear and unmistakable.

The application though served on the Respondents is not opposed as no replying affidavit or grounds of opposition were filed by either of the Respondents.

M/s Mbilo State Counsel instructed by the Hon. Attorney General appeared in court on 29th February 2012 and stated that the Respondents had opted not to oppose the motion since they intended to pay the monies demanded by the Applicant. However, by the time the application was scheduled for hearing on 31st July 2012, the Respondents had not effected payment.

The application is supported by the statutory statement dated 30th August 2011 and the verifying affidavit sworn by the Applicant on even date in which he clearly stated the nature of his claim against the Respondents in CMCC 4865 of 2005, the terms of the judgment awarded in his favour on 16th February 2011 and the fact that he served the 1st Respondent with a notice of the judgment and certificate of order against the Government. The same are annexed to the verifying affidavit as well as a certified copy of the judgment and decree extracted therefrom.

It is noted that the certificate of order against the Government and the decree have an endorsement on their face bearing the stamp of the State Law Office confirming service of the documents on the Hon. Attorney General on 20th September 2011.

It is also clear from the correspondence annexed to the Applicant's pleadings that several requests had been made to the Respondents to settle the decretal amount without success.

In view of the foregoing and considering that the application is not opposed and taking into account M/s Mbilo's claim that the 1st Respondent had in fact instructed the 2nd Respondent to effect payment of the decretal amount which instructions the 2nd Respondent evidently failed to comply with, I see no reason why the 2nd Respondent being the Accounting Officer in the ministry concerned should not be compelled to perform his public and statutory duty of satisfying the aforesaid decretal amount as required of him under Section 21 of the Government Proceedings Act.

In view of the foregoing, I am satisfied that the Applicant has demonstrated that he is deserving of the order of Mandamus in terms sought in this case. I consequently find merit in the Notice of Motion filed on 27th September 2011 and it is hereby allowed in terms of Prayer I. For the avoidance of doubt, the decretal amount the 2nd Respondent is to be compelled to settle is as shown in the certificate of order against the Government which is Kshs.1,799,632 together with interest at the rate of 12% per annum from 17th February 2011 until payment in full. The Applicant is also awarded costs of the suit.

Dated, Signed and Delivered by me at Nairobi this 10th day of October 2012.

C. W. GITHUA
JUDGE

In the presence of:

Florence – Court Clerk

Applicant in Person

N/A for 1st & 2nd Respondent