



**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: GICHERU, LAKHA & O'KUBASU J.J.A
CIVIL APPEAL NO. 29 OF 2001**

BETWEEN

THE REPUBLIC APPELLANT

AND

SIMON QUIGGREY OGILA RESPONDENT

**(Being an appeal from the Ruling and Order of the High
Court of Kenya at Nairobi (Justice Sheikh Amin)
dated 14th April, 1999**

in

H.C.MISC. APPLICATION NO. 98 OF 1999)

JUDGMENT OF THE COURT

This is an appeal from the ruling of the High Court (Amin, J) delivered on 14th April, 1999 in High Court Misc. Civil Application No.98 of 1999. The ruling by Amin J was as follows-

"Having considered the application before me I find that the decree was duly sealed and signed by the Deputy Registrar of this Court on 6.2.98. An application for Review was made to the Judge by the Respondent and I note that on 1st October, 1998 the application of Review was dismissed by Hon. Lady J. Aluoch. On the totality of the facts deponed before t he court and on consideration of the submissions I am of the view that the application now before the court is well merited. The prayer sought are accordingly granted".

In order to appreciate the effect of the above ruling a brief history of this dispute is necessary. The respondent herein one Simon Quiggrey Ogila sued the Attorney General (on behalf of the Government of Kenya) claiming that he had been retired from service contrary to the laid down regulations and in breach of his contract of employment. The respondent further claimed that he had suffered loss and damages and prayed for judgment against the Attorney General for special as well as general damages plus interest and costs of the suit. The suit was heard and respondent was finally successful as the High Court (Aluoch, J) entered judgment in his favour in the sum of Shs.55,680/- plus costs and interest. Having obtained judgment against the Attorney General the respondent sought to execute that judgment by way of application for mandamus.

In the ex parte application brought by way of Chamber Summons pursuant to Order LIII rule 1 of Civil Procedure Rules the respondent herein sought:-

"(i)Leave to apply for an order of Mandamus directed to the Permanent Secretary Ministry of Agriculture at Kilimo House Nairobi as the accounting officer of the said Ministry of Agriculture, Livestock and Marketing to make payment to Mr. Simon Q Ogila the Decree amount of Kshs.2,526,217.90 plus interest which all together amounted to Kshs.3,488,430.50 as at 4 .1.1999 in respect of Decree against the said Permanent Secretary in H.C.C.C No.4218 of 1990 Simon Q Ogila versus the Attorney General. (ii)An order that costs of this application be paid by the respondent which application is founded on the annexed statutory statement and verifying affidavit of Simon Q Ogila and other reasons to be presented at the hearing hereof" .

In the statement accompanying the application for leave the relief sought is indicated as follows:-

"(i)Order of Mandamus directed to the Permanent Secretary, Ministry of Agriculture, Livestock and Marketing compelling the said Permanent Secretary to make payment of the amount shown in the Decree marked SQ1.

(ii)That in default of payment the Permanent Secretary Ministry of Agriculture, Live stock and Marketing as the accounting officer thereof to be committed to Civil Jail for his failure to meet this Court's decree.

(iii)An order that costs of this application be borne by the Respondent".

It was that application for mandamus that was granted by Amin J and hence this appeal.

The appellant (Attorney-General) filed a memorandum of Appeal in which he set out 13 grounds of appeal. When the appeal came up for hearing on 8th November, 2001 Mrs. Madahana for the appellant submitted that their main complaint against the ruling of Amin J was that the learned Judge issued an order of mandamus and yet section 21 of Government Proceedings Act had not been complied with. The second complaint was that the decree did not comply with the ruling of the court as it (decree) contained figures which had not been granted in the judgment.

We have given this matter careful consideration and in our view the appeal can be disposed of by reference to section 21 of the Government Proceedings Act (Cap.40 Laws of Kenya) which provides:-

"21.(1) Where in any civil proceedings by or against the Government, or in proceedings in connexion with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty - one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order: Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney -General.

(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the accounting officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:

Provided that the court by which the order is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may

order any such direction to be inserted therein. (4) Save as provided in this section, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government of any money or costs, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs".

The above sets out clearly the procedure to be followed in satisfaction of orders against the Government. The order sought by the respondent herein was against the Permanent Secretary in what was then known as the Ministry of Agriculture, Livestock and Marketing. Since a certificate had not been applied for pursuant to the above provision of the Government Proceedings Act then clearly, the learned Judge was in error when he granted the application for an order of mandamus.

Perhaps, it may be necessary to mention the fact that we have dealt with Civil Appeal No. 28 of 2001 in which the parties are the same as in this appeal. In the Civil Appeal No 28 of 2001 we allowed it with an order to the effect that the order of review and all consequential orders were set aside. As the ruling by Amin J was a consequential order to what Aluoch J had ruled, then it follows that this appeal must be allowed.

In conclusion, we would say that considering the merits of this appeal and in view of our judgment in Civil Appeal No. 28 of 2001 the inevitable result is that this appeal is allowed and the order of mandamus against the appellant is hereby set aside. Costs of the appeal are awarded to the appellant.

Dated and delivered at Nairobi this 30th day of November, 2001.

J.E. GICHERU

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JUDGE OF APPEAL

A.A. LAKHA

.....
JUDGE OF APPEAL

E. O. O'KUBASU

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR