



Republic v Attorney General; Sigilai (Exparte Applicant) (Judicial Review Miscellaneous Application E005 of 2024) [2024] KEELRC 2495 (KLR) (11 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2495 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E005 OF 2024
AN MWAURE, J
OCTOBER 11, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

THE HON ATTORNEY GENERAL RESPONDENT

AND

NOAH KIBET SIGILAI EXPARTE APPLICANT

RULING

1. The Ex-parte Applicant filed a Notice of Motion dated 22nd February 2024, seeking orders that:
 1. an Order of Mandamus be and is hereby issued to compel the Attorney General to pay to the ex-parte Applicant a sum of Six Hundred Thousand (Kshs. 600,000) plus costs and interest thereon at court rates (12% p.a) from the 30th May 2014, the date of the award, to the date of payment in full, the sum being the decretal sum arising out of Milimani Employment and Labour Relations Cause No. 426 of 2013, *Noah Kibet Sigilai v The Attorney General*.
 2. an Order of this Honourable Court be granted compelling the Respondent to pay the costs of this Application.

Ex-parte Applicant’s Case

2. The Ex-parte Applicant avers that judgment was entered against the Respondent in Milimani Employment and Labour Relations Cause No. 426 of 2013, *Noah Kibet Sigilai v The Attorney General* in the sum of Kshs. 600,000 plus costs and interest thereon at court rates as from the 30th May 2014 till payment in full.



3. The Ex-parte Applicant avers that on 6th June 2014, the Respondent's counsel, Mrs. Irari Faith Mercy wrote a letter to the Deputy Registrar requesting certified copies of proceedings and judgment to enable her file an appeal which documents were furnished by the Court but no appeal or application for stay of execution has been filed by the Respondent 11 years later.
4. The Ex-parte Applicant avers that he has been requesting for payment of the sum awarded plus interest but has been informed that despite the judgment having been entered and imploring the Respondent to make good the claim, the Respondent has refused, declined and/or defaulted to pay the decretal sum.
5. The Ex-parte Applicant avers that he seeks to adopt as exhibit the letter dated 7/8/2019 from Patricia Chibole, State Counsel for the Respondent herein, requesting the documents from his advocates on record to enable the Respondent effect payment and the letter dated 28/8/2019 from his advocates forwarding the said documents to the office of the Respondent to effect settlement of the accrued sum and interest at Kshs.1,097,459.86 as at August 2019.
6. The Ex-parte Applicant avers that the Respondent will not pay the decretal sum unless this court issues an order of mandamus against the Respondent as prayed for in the Application filed herein since no payment has been made despite the decree and Certificate of Order against the Government having been extracted and duly served upon the Respondent.
7. The Ex-parte Applicant is an elderly man with underlying medical conditions facing serious financial constraints as he had budgeted for and expected the whole decretal amount to have been paid by now as it has been over 11 years since the case was filed first.

Analysis and Determination

8. The main issue for determination is whether the Ex-parte Applicant is entitled to the order of mandamus sought herein.
9. Justice Mativo J elaborated the legal threshold for grant of orders of mandamus in *Republic v Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another* [2018] eKLR as follows:

“Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in *Apotex Inc. v Canada (Attorney General)*, [23] and, was also discussed in *Dragan vs. Canada (Minister of Citizenship and Immigration)*. [24] The eight factors that must be present for the writ to issue are:-

- i. There must be a public legal duty to act;
- ii. The duty must be owed to the Applicants;
- iii. There must be a clear right to the performance of that duty, meaning that:
 - a. The Applicants have satisfied all conditions precedent; and
 - b. There must have been:
 - i. A prior demand for performance;
 - ii. A reasonable time to comply with the demand, unless there was outright refusal; and



- iii. An express refusal, or an implied refusal through unreasonable delay;
- iv. No other adequate remedy is available to the Applicants;
- v. The Order sought must be of some practical value or effect;
- vi. There is no equitable bar to the relief sought;
- vii. On a balance of convenience, mandamus should lie.”

10. To determine whether the Ex-parte Applicant is entitled to the order of mandamus sought against the Respondent to compel it to pay the decretal sum together with interest, the Court is guided by the decision in *Republic v Attorney General Ex partes Miriam Wairimu Wambugu & another* [2021] eKLR which held:-

“The issues therefore that require to be determined are firstly, whether the Respondents are under a public duty and obligation to satisfy the orders issued in favour of the ex parte Applicants, and secondly, if so, whether the ex parte Applicants are entitled to the relief they seek.

Section 21 of the *Government Proceedings Act* in this regard provides as follows as regards the requirements to be met in the enforcement of orders as against Government organs in civil proceedings:

“(1) Where in any civil proceedings by or against the Government, or in proceedings in connection 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 any such order as aforesaid 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 aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, 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.”

12. Execution proceedings against a government or public authority under the *Government Proceedings Act* can only be as against the accounting officer or chief officer of the said government or authority, who is under a statutory duty to satisfy a judgment made by the Court against that body. This was also the holding in *Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security [2012]* where Githua J. held as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the *Government Proceedings Act*. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the *Government Proceedings Act* (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon.”

13. As to whether the Respondent herein is under a duty to pay the subject decretal sums, an order of mandamus is normally issued when an officer or an authority by compulsion of law or statute is required to perform a duty, and that duty, despite demand in writing, has not been performed. It is not disputed in the present application that judgment was entered in favour of the ex parte Applicants in HCCC No. 661 of 2007 as against the Respondent. The ex parte Applicant in this respect annexed copies of the Certificates of Order Against the Government issued in her favour against the 1st Respondent, for the decretal sum of Kshs 40,613,835.20= inclusive of interest awarded until



16th May 2019, and costs taxed at Kshs 957,720=.

The ex parte Applicants also brought evidence to show that they made demands and requests for payment which have not been heeded to by the Respondent.”

14. In the instant application, it is not disputed that the judgment was entered against the Respondent in Milimani Employment and Labour Relations Cause No. 426 of 2013, Noah Kibet Sigilai v The Attorney General in the sum of Kshs. 600,000 plus costs and interest thereon at court rates as from the 30/5/2014. The certificate of orders was issued on 26th August 2019.
15. The Respondent has never filed any appeal since then and neither has any court orders been reviewed. Further, the Ex-parte Applicant has proven before this court that he is demanding payment from the Respondent and further obtaining a decree and Certificate of Order against the Government which were duly served upon the Respondent as provided by the law.
16. In view of the foregoing, the Ex-parte Applicant is entitled to the order of mandamus sought herein to compel the Attorney General to pay the ex-parte Applicant a sum of Kenya Shillings Six Hundred Thousand (600,000/=) plus costs and interest at court rates (12 % p.a) from 30th May 2014 to the date of payment in full and so the application is granted.
17. The costs of this application to also be paid to the Applicant.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 11TH DAY OF OCTOBER, 2024.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

