



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT AT MOMBASA

JUDICIAL REVIEW APPLICATION NO. 1 OF 2017

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW IN FORM OF ORDERS OF MANDAMUS AGAINST THE GENERAL MANAGER FINANCE, KENYA PORTS AUTHORITY THE CHIEF ACCOUNTANT, KENYA PORTS AUTHORITY AND THE MANAGING DIRECTOR, KENYA PORTS AUTHORITY

AND

IN THE MATTER OF: EXECUTION OF THE DECREE DATED 23RD OCTOBER 2017 FOR KSHS. 4,985,345.00 PLUS COSTS OF KSHS. 838,578.33 AND INTERSTS AT 14% PER ANNUM FROM DATE OF JUDGMENT TILL FULL PAYMENT IN THE EMPLOYMENT AND LABOUR RELATIONS COURT CAUSE NO. 215 OF 2014 (MOMBASA) INVOLVING CYRUS MAINA NJOROGE (CLAIMANT) AND ATTORNEY GENERAL (1ST RESPONDENT) AND KENYA PORTS AUTHORITY (2ND RESPONDENT)

BETWEEN

CYRUS MAINA NJOROGEAPPLICANT

VERSUS

1. THE GENERAL MANAGER OF KENYA PORTS AUTHORITY
2. THE CHIEF ACCOUNTANT OF KENYA PORTS AUTHORITY
3. THE MANAGING DIRECTOR OF KENYA PORTSAUTHORITY.....RESPONDENTS

Rika J

Court Assistant: Benjamin Kombe

Munyithya, Mutugi, Umara & Muzna Company Advocates for the Applicant

Addraya Dena Advocate for Respondents

RULING

1. The Applicant Cyrus Maina Njoroge, is a former Employee of State Corporation, Kenya Ports Authority (KPA). He brought Cause No. 215 of 2014 against the KPA, claiming to have been unfairly dismissed. He was successful in his Claim, and granted compensation for unfair termination; terminal benefits; and general damages for malicious prosecution, added-up at Kshs. 4,985,345. The Judgment was delivered on 17th February 2017. The Applicant was granted costs, which were subsequently taxed, and Certificate of Costs issued on 14th September 2017.

2. There are no orders staying execution of decree, but to-date, more than 1 year after Judgment was delivered, the State Corporation has declined to satisfy decree.

3. The Applicant sought leave to apply for orders of mandamus against the Principal Officers of KPA named above. Leave was granted on 7th November 2017.

4. On 1st December 2017, it was agreed in Court by Counsel for the respective Parties that the substantive Application, is determined based on the Pleadings, Affidavits, Documents and Submissions filed by the Parties.

The Court Finds:-

5. Parties do not dispute that there is a Judgment in favour of the Applicant, against KPA, in Cause No. 215 of 2014.

6. There are no orders staying execution of the said Judgment, more than 1 year after its delivery.

7. The KPA filed an Application for Stay of Execution at the Court of Appeal, did not attend Court when the Application was listed for hearing, and the Court of Appeal, stood over generally the Application.

8. The Court is satisfied the 3 Respondents are the proper Officers, who should be compelled to pay the decretal sum.

9. The Applicant has satisfied the Court that his Application is fully merited.

IT IS ORDERED:-

a) An order of mandamus is hereby issued, compelling the Respondents, jointly and severally, to pay the sum of Kshs. 6,289,223.33 due and owing on account of Employment and Labour Relations Court Cause No. 215 of 2014, Cyrus Maina Njoroge v. Attorney General and Kenya Ports Authority.

b) No order on the costs of this Judicial Review Application.

Dated and delivered at Mombasa this 20th day of March 2018.

James Rika

Judge