



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

JR. NO. 15 OF 2017

DR. SAMUEL KABERERE NJENGA.....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT

THE PRINCIPAL SECRETARY

MINISTRY OF HEALTH.....2<sup>ND</sup> RESPONDENT

RULING

**Introduction**

1. The Applicant sued the Respondents in ELRCC No. 450 of 2011 and obtained a Decree and Certificate of Costs totalling to Kshs.1,427,537.54 on 7.2.2013. Thereafter he was issued with the Certificate of Order against the Government dated 16.6.2016 which he served on the respondents on 22nd and 23rd June 2016 respectively. The said judgment debt was never impugned or stayed and on 13.3.2017 the applicant sought and obtained leave to apply for an order of Mandamus to compel the second respondent to pay the said Decreed sum of Kshs.1,427,537.54 plus interest as 12% since 7.2.2013 until payment in full to Gitau J. H. Mwara Company Advocates, within 30 days, of the Judgment herein.

2. The main motion was filed on 30.3.2017 and it is premised on the grounds set out on its body and the statement filed together with the application for leave. The main ground is that the decreed sum is still owing and it continues to accrue interest.

3. The application is not opposed by the respondents despite service having been effected. The application was disposed of by written submission which were highlighted on 9.4.2018.

**Analysis and Determination**

4. The issue for determination is whether the order sought should issue. There is no dispute that this Court entered judgment in favour of the applicant in ELRCC 450 of 2013, *Dr. Samuel Kaberere Njenga Vs Attorney General* where a total sum of Kshs.1,427,537.54 inclusive of costs was awarded. There is also no dispute that a certificate of order against the Government was issued on 16.6.2016 and served on the respondents on 22nd and 23rd June 2016. There is further no dispute that the said decreed sum has not been served despite the decree having not been impugned or stayed.

5. After considering the facts of this case, the decree, the certificate of order against the Government and the demand letter from the applicant's counsel annexed to the verifying affidavit, I find that the order of mandamus sought is merited. It is trite law that Court orders and decrees must be complied with since they are not mere suggestions or recommendations. Defying them is not only against public interest but it is unconstitutional to say the list.

**Disposition**

6. For the reasons stated herein above, I grant the order of mandamus as prayed in the Notice of Motion dated 21.3.2017.

**Dated, Signed and Delivered in Open Court at Nairobi this 19th day of June, 2018**

**ONESMUS N. MAKAU**

**JUDGE**