



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT

NAKURU

JUDICIAL REVIEW NO. 3 OF 2015

IN THE MATTER OF AN APPLICATION FOR LEAVE TO

APPLY FOR AN ORDER OF MANDAMUS

AND

IN THE MATTER OF GOVERNMENT PROCEEDINGS ACT,

CAP. 40, LAWS OF KENYA

AND

IN THE MATTER OF NAKURU INDUSTRIAL CAUSE NO.401 OF 2013

BETWEEN

DAVID WANYONYI.....APPLICANT

v

HON. ATTORNEY GENERAL.....1ST RESPONDENT

CHIEF OF DEFENCE FORCES.....2ND RESPONDENT

ARMY COMMANDER KENYA ARMY.....3RD RESPONDENT

RULING

1. For ruling is a summons application dated 18 May 2015 seeking

1. THAT this Honourable court be pleased to grant leave to the Applicant to institute an application for an Order of Mandamus compelling the Respondents to pay to the Applicant the sum of Kshs 15,672,537/-being the Decretal amount in industrial Case No. 401 of 2013, interest thereon at court rates from 17th October, 2014 until the date of full payment and costs of this matter.

2.

2. Before delving into the instant motion, the Court wishes to note that it had previously dismissed the summons for non-prosecution as the applicant's counsel had walked out of court without indicating where he was going.
3. The Court, in a ruling delivered on 22 January 2016 reinstated the instant application (dated 18 May 2015) after the applicant made an application on 15 June 2015.
4. On 7 April 2016, the parties agreed that the summons be determined on the basis of record and submissions to be filed.
5. The applicant filed his submissions on 13 April 2016, while the Respondents submissions which ought to have been filed by 21 April 2016 were only filed on 2 June 2016 (the Court has duly considered both submissions).
6. The applicant has a judgment in his favour which has not been satisfied by the Respondents and he intends to execute it through judicial review (mandamus).
7. It therefore cannot be said that the instant application lacks merit; is an abuse of the Court's process or is frivolous.
8. Although the Respondents have made reference to a pending appeal in their submissions, evidence of such was not placed before Court.
9. In the Court's view, orders 1 and 2 sought by the applicant in the summons dated 18 May 2015 are meritorious and are granted.
10. A substantial motion should be filed within 21 days from today.

Delivered, dated and signed in Nakuru on this 15th day of July 2016.

Radido Stephen

Judge

Appearances

For Applicant: Mr. Simiyu instructed by Simiyu & Co. Advocates

For Respondents: Mr. Kirui, Litigation Counsel, Office of the Hon. Attorney General

Court Assistant: Nixon