



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

JUDICIAL REVIEW APPLICATION NO. 1 OF 2014

IN THE MATTER OF AN APPLICATION FOR MANDAMUS

AND

IN THE MATTER OF NAKURU CAUSE NO. 250 OF 2013

RASHID NDIEMA

v

PRINCIPAL SECRETARY, MINISTRY OF HEALTH AND ATTORNEY GENERAL

AND

IN THE MATTER OF THE REPUBLIC OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

AND

PRINCIPAL SECRETARY, MINISTRY OF HEALTH.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

Ex parte

RASHID NDIEMA.....SUBJECT

JUDGMENT

1. Rashid Ndiema (subject) sued the Principal Secretary, Ministry of Health and the Attorney General in Nakuru Cause No. 250 of 2013 and he stated the issues in dispute therein as, *retirement benefits, refund of house rent illegally deducted, payment of outstanding salary, Payment of special duty allowances, One month salary in lieu of 30 days notice.*

2. After hearing the Cause, Ongaya J delivered judgment on 9 May 2014, in which he awarded the subject

Kshs 811,112/- and costs. A decree was issued on 8 July 2014, and a Certificate of Order to Government was issued on the same day.

3. The subject made a demand of payment of the decretal sum and costs but this was not forthcoming.

4. Consequently, the subject lodged an application seeking leave to commence judicial review proceedings against the Respondents.

5. Ongaya J granted leave on 26 September 2014.

6. On 16 October 2014, the subject commenced the present proceedings seeking an order

This Honourable Court be pleased to issue an order of MANDAMUS to compelling the Principal Secretary Ministry of Health to satisfy the judgment and decree issued in NAKURU INDUSTRIAL COURT CAUSE NO. 250 OF 2013 RASHID NDIEMA V PRINCIPAL SECRETARY MINISTRY OF HEALTH & ATTORNEY GENERAL dated 9th May, 2014 and 8th July, 2014 respectively.

7. The motion was served upon the Respondents and on 27 November 2014, they filed Grounds of Opposition.

8. The motion was heard on the same day.

9. The subject's case is that the decree was served upon the Respondents on 28 July 2014, and 5 months down the line, payment had not been made despite no appeal being preferred against the decree.

10. For the Respondents, it was admitted in submissions that the Decree and Certificate of Order to the Government were served on 28 July 2014, and the issue of payment was being handled by the Ministry of Health. It was further submitted that there was no evidence the Respondents had declined to make payment and therefore the motion should be dismissed.

11. The Court has considered the motion, supporting affidavit of the subject, the statutory statement, the Grounds of Opposition and the submissions made by the parties and is satisfied that the Respondents were served with the Decree and Certificate of Order to Government but have not made payment, now some 7 months after service.

12. The Court therefore allows the motion and orders that an order of mandamus do issue compelling the Principal Secretary, Ministry of Health to satisfy the decree issued in Nakuru Cause No. 250 of 2013, *Rashid Ndiema v the Principal Secretary, Ministry of Health & Attorney General*.

13. The subject to have costs of the present motion.

Delivered, dated and signed in Nakuru on this 27th day of February 2015.

Radido Stephen

Judge

Appearances

For Subject: Mr. Namiti instructed by Maritim Omondi & Co. Advocates

For Respondents: Ms. Khatambi, Litigation Counsel, Office of the Attorney General