



REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

MISC. CIVIL APPLICATION NO. E006 OF 2021

IN THE MATTER OF AN APPLICATION FOR LEAVE BY PATRICK MAYU LUMBASI FOR ORDERS OF MANDAMUS

AND

IN THE MATTER OF THE CHIEF MAGISTRATES COURT AT BUNGOMA CIVIL SUIT NO. 605 OF 2016

BETWEEN

PATRICK MAYU LUMBASI.....PLAINTIFF

VERSUS

ROBERT MABELE MAYU.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

AND

**IN THE MATTER OF CIVIL PROCEDURE ACT CAP 21 LAWS OF KENYA, THE CIVIL PROCEDURE RULES, 2010 AND IN
THE MATTER OF LAW REFORM ACT CAP 26 LAWS OF KENYA**

AND

REPUBLIC.....APPLICANT

VERSUS

MINISTRY OF INTERIOR & COORDINATION

OF NATIONAL GOVERNMENT.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

EX-PARTE

PATRICK MAYU LUMBASI.....APPLICANT

AND

PRINCIPAL SECRETARY MINISTRY

OF INTERIOR & COORDINATION

OF NATIONAL GOVERNMENT.....INTERESTED PARTY

RULING

The ex-parte applicant in his application dated 22nd February, 2021 seeks to leave to apply for Judicial Review orders of mandamus against the interested party directing him to satisfy the decretal sum of Kshs 197, 040/= together with accrued interest in Bungoma CMCC 605/2016 and costs.

In the accompanying affidavit, he depones that he filed suit in the Bungoma Chief Magistrate's Court which was determined in his favour. Thereafter costs were taxed and he duly served the Attorney General with the certificate of order against the government and certificate of order for costs against the government.

He depones that a period of more than a year has lapsed and the interested party who is the chief accounting officer in the ministry is yet to satisfy the decree.

The Attorney General filed grounds of opposition that the application is prematurely before court, the applicant has not satisfied the conditions in Section 21 of the Government Proceedings Act and finally that the applicant has not furnished the Attorney General with the certified decree.

The application was disposed of by way of written submissions which have been carefully considered. The issue arising for determination is whether the applicant is entitled to the orders sought.

Section 21 of the Government Proceedings Act provides;

(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.

Under Order 29 Rule 3, any application under Section 21 for a direction that a separate certificate be issued with respect to costs ordered to be paid to the applicant shall be made to the court. The application may be made *ex parte*.

The copy of Certificate of Satisfaction Order accompanied by the judgment is served on the Accounting Officer, after endorsement by the Attorney General, by the decree holder. The certificate has to state the amount payable plus interest thereon.

The decree holder could obtain payment by the Attorney General writing to the proper accounts office instructing him to effect payment. Where the official refuses to pay, the judgment debtor can apply for an order of mandamus to the High Court directed to the public officer in question requiring him to do that for which he is under a public duty to do.

Having elaborated the procedure as above, the duty of this court is to interrogate whether the applicant has followed the above procedure to the latter.

The court has been referred to the decision in ***Permanent Secretary Office of the President Ministry of Internal Security & Another Exparte Nassir (2014)eKLR***. The authority is dissimilar to the instant to the extent that the applicant in that case sought to commit the Principal Secretary to civil jail. That is not the case in the instant application.

The court however associates itself with the findings of Odunga J. in the case of ***Republic v Attorney General & another Exparte James Alfred Koroso (2013) eKLR*** where the learned judge held;

It is the respondents' public duty to satisfy the applicant's decree and failure to do so attracts the court's discretion to issue an order of mandamus commanding them to do so.

The learned Judge went on to state;

In the present case the ex parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done he will forever be left baby-sitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of the Constitution which enjoins the State to ensure access to justice for all persons.

From the submissions on record, I am satisfied that the applicant has complied with the laid down procedure in pursuit of satisfaction of the decree by the government to no avail and this court cannot sit by the fence and watch the applicant pursue his rights fruitlessly. The court is satisfied that the applicant has established the grounds for the issue of the orders sought which are hereby issued as prayed.

The applicant shall have the costs of this application.

DATED AT BUNGOMA THIS 5TH DAY OF NOVEMBER, 2021

S. N. RIECHI

JUDGE