

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D32199
W/kmb

_____AD3d_____

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
SHERI S. ROMAN, JJ.

2011-04820

DECISION, ORDER & JUDGMENT

In the Matter of Rosemary Chinye Okolie Toriola,
petitioner, v Timothy J. Flaherty, etc., respondent.

Rosemary Chinye Okolie Toriola, Corona, N.Y., petitioner pro se.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Roberta L. Martin of
counsel), for respondent.

Proceeding pursuant to CPLR article 78, inter alia, in the nature of mandamus to compel the respondent Timothy J. Flaherty, a Justice of the Supreme Court, Queens County, to determine a motion made by the petitioner in an underlying proceeding entitled *Matter of Toriola v Doar*, commenced in that court under Index No. 20556/09, and application by the petitioner for poor person relief.

ORDERED that the application for poor person relief is granted to the extent that the filing fee imposed by CPLR 8022(b) is waived, and the application is otherwise denied; and it is further,

ORDERED that the branch of the petition which is to compel Timothy J. Flaherty, a Justice of the Supreme Court, Queens County, to determine a motion made by the petitioner in the proceeding entitled *Matter of Toriola v Doar* is dismissed as academic, without costs or disbursements, as that motion was determined by the Supreme Court on April 28, 2010; and it is further,

ADJUDGED that the petition is otherwise denied and the proceeding is otherwise dismissed on the merits, without costs or disbursements.

August 30, 2011

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The extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act, and only where there exists a clear legal right to the relief sought (*see Matter of Legal Aid Socy. of Sullivan County v Scheinman*, 53 NY2d 12, 16). The petitioner has failed to demonstrate a clear legal right to the relief sought.

RIVERA, J.P., FLORIO, DICKERSON and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court