



**Republic v Ministry of Health & another; Oyugi (Exparte) (Application 136 of 2023)
[2024] KEHC 7513 (KLR) (Judicial Review) (24 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7513 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW**

APPLICATION 136 OF 2023

J NGAAH, J

JUNE 24, 2024

BETWEEN

REPUBLIC APPLICANT

AND

MINISTRY OF HEALTH 1ST RESPONDENT

**NATIONAL HOSPITAL INSURANCE FUND BOARD OF
MANAGEMENT 2ND RESPONDENT**

AND

NAPHTALLY BONDO OYUGI EXPARTE

JUDGMENT

1. The motion before court is dated 24 October 2023 and is expressed to be brought under section 3A and Order 53 rule 3 of the Civil Procedure Rules. The applicant seeks the order of mandamus against the two respondents. The prayer for the order is couched as follows:

“That an order of mandamus be directed at the 1st and 2nd Respondents compelling them to process and pay Last Expense and Group Life Claim to the Ex-parte applicant as the eligible beneficiary of the deceased.”

The applicant has also asked for costs of the application.

The application is based on a statutory statement dated 15 September 2023 and an affidavit sworn on even date verifying the facts relied on.

2. Mr. Oyugi has sworn that he is the administrator of the estate of one Jenipher Adoyo Oyugi (hereinafter, “the deceased”) who died on 28 February 2021. The grant of letters of administration of



- the deceased's estate was made on 28 June 2021. Prior to her death, the deceased was the 1st respondent's employee and that she had an insurance cover with the 1st respondent. The cover was described as a "Group Life Insurance and Last Expense Cover" and was administered by the 2nd Respondent.
3. Mr. Oyugi is aware that according to the records held by the 1st Respondent, he was the beneficiary of the deceased's Group Life Insurance and Last Expense Cover in the event of the deceased's death. For this reason, on 6 May 2021, he submitted to the 2nd Respondent a duly filled claim for Last Expense and Group Life Insurance - Civil Servants and Disciplined Service Medical Scheme for purposes of processing and payment. However, no response has been forthcoming from the 2nd respondent.
 4. According to Mr. Oyugi, the 2nd Respondent's inability to pay or offer any feedback on his claim is a violation of his right to administrative action that is expeditious, efficient, reasonable and procedurally fair. It is also the applicant's case that the actions of the 2nd Respondent in failing to act in discharge of a duty imposed under section 28 of the Public Service Superannuation Scheme Act, 2012 has resulted to unreasonable delay contrary to section 7 (2) (U) of the *Fair Administrative Action Act* No.4 of 2015.
 5. The conduct of the 2nd Respondent in neglecting or refusing to pay the deceased Last Expense and Group Life Insurance claim violates the applicant's legitimate expectations contrary to section 7 (2) (m) of the *Fair Administrative Action Act*. The 2nd respondent's conduct, it is sworn, amounts to improper, arbitrary and inefficient exercise of administrative power and discretion contrary to the law and the delay in making the payments is inordinate and unreasonable. In particular, it is contrary to Article 47 of *the Constitution* and the Fair Administrative Actions Act.
 6. Mr. Oyugi has sworn further that as a result of the delays and lack of communication from the Respondents, the dependants of the estate of the deceased have continued to suffer financially as they cannot meet their obligations including payment of school fees, rent and medical expenses. They have also suffered mental anguish due to the silence by the Respondents, not knowing whether their kin's benefits will be paid at all.
 7. Mr. E.G. Wachira has sworn a replying affidavit opposing the application. He has sworn that he is the Chief Executive Officer of the 2nd Respondent and, therefore, he is fully aware of the applicant's claim. He does not dispute that the applicant is the administrator of the deceased's estate and that the deceased was the 1st respondent's employee. As a matter of fact, he has sworn that he is aware that the deceased was the Chief Public Health Officer in Nakuru County at the time of her demise.
 8. As far as the date of submission of the claim for payment is concerned, Mr. Wachira has sworn that it was reported and "documented" on 6 May 2021. He has sworn further that the contract for Provision of Group Life, Last expense, benefits under the Work Injuries Benefits Act, cap. 236 and Group Personal Accident cover claim for Civil Servants and National Youth Service employees commenced from 15 April, 2021. As far as the applicant's claim is concerned, it emanated from a period when there was no Group life, Last expense, WIBA and GPA Insurance Covers for Civil Servants.
 9. Nonetheless, Mr. Wachira has sworn that, the 2nd Respondent confirmed that there are special conditions prescribed in Clause 4.2.3-part i, ii and iii of the contract which provide for processing of claims lodged prior to the commencement date. The applicant's claim falls within the period before 15 April 2021, where such claims were or are expected to be validated and forwarded to the National Treasury for allocation of funds before payments are made in accordance with a circular, apparently from the National Treasury, he has described as "Ref No: ZZ/ 436/01/TY2/ (110)" dated 13 June 2019.
 10. Upon receipt of the applicant's claim, the 2nd Respondent wrote to the National Treasury vide a letter dated 18 May 2022 attaching a debit note requesting settlement for last expense and Group Life claims



for 98 claimants, including the applicant's claim, from various ministries and state departments. The Respondents wrote reminders to the National Treasury respectively dated 2 September 2022 and 23 June 2023 attaching debit notes of Kshs 3,739,205,052/= requesting settlement of all the outstanding historical claims.

11. In response, the National Treasury, vide a letter dated 14 August 2023, confirmed receipt of the debit notes but advised the Respondents that the budgetary allocation for the Financial Year 2023/24, was Kshs 2,100,161,945/= on Group Personal Insurance to cater for insurance covers for civil servants. To date the 2nd Respondent is yet to receive funds of Kshs 3,739,205,052/= from the National Treasury to settle the said claims, including the Applicant's claim. Mr. Wachira has confirmed that as a result of the delayed allocation of funds, the Applicant's claim and many others claims arising during the material period still remain outstanding. However, the 2nd respondent is following up on the budgetary allocation with the National Treasury to enable the said claims to be settled in the 2024/2025 financial year.
12. For all that the Mr. Wachira has said, it is apparent that the applicant's claim has not been disputed. Neither is it disputed that the applicant has made a demand for payment claim but, so far, it has not been settled. The reason given for what turns out to be the delay in settlement is that the National Treasury has not released the funds or that what was initially released for settlement of such claims was not sufficient to cover all the pending claims. The applicant's is one of those outstanding claims.
13. The only question for this Honourable Court to grapple with is whether a mandatory order would issue in these circumstances. A brief look at the explanation given of what this order entails will help in understanding whether it is available to the applicant. According to Halsbury's Laws of England/ Judicial Review (volume 61 (2010) 5th Edition)/5. Judicial Remedies/ (1) Introduction paragraph 689:

“A mandatory order is, in form, a command issuing from the High Court, directed to any person, corporation or inferior tribunal requiring him, or them, to do some particular thing specified in the command which appertains to his or their office and is in the nature of a public duty (See *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL). The breach of duty may be a failure to exercise a discretion, or a failure to exercise it according to proper legal principles.”

This is reiterated in paragraph 703 which states:

“A mandatory order is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or it to do some particular thing specified in the order which appertains to his or its office and is in the nature of a public duty... the purpose of a mandatory order is to compel the performance of a public duty, whether of an inferior court or tribunal to exercise its jurisdiction, or that of an administrative body to fulfil its public law obligations. It is a discretionary remedy.”

14. It is not in dispute that the respondents are public offices performing public duties. At the time material to this suit, the 2nd respondent was established under section 4 of the National Hospital *Insurance Act* cap. 255. This provision provides, inter alia, “there shall be established a Board to be known as the National Hospital Insurance Fund Board of Management”. The section also provides for the membership of the Board and, for purposes of suing and being sued, it says in section 4(3) (a) that it is a body corporate with perpetual succession “and shall in its corporate name, be capable of suing and being sued”.



15. The 2nd respondent's objects and functions are spelt out in section 5 of the Act and they include, receiving all contributions and other payments required by National Hospital Insurance Act to be made to the National Hospital Insurance Fund and to make payments out of the Fund to declared hospitals in accordance with the provisions of the Act. The functions are generally, public functions.
16. Some of the payments to be made out of the Fund are the entitlements under the life insurance policy maintained under section 6 (4), Public Service Superannuation Scheme Act No. 8 of 2012. Section 3 (1) of this Act establishes a scheme known as the "Public Service Superannuation Scheme" and according to subsection (2), the scheme is a retirement benefits scheme within the meaning of the Retirement Benefits Act (No. 3 of 1997). According to section 5 of the Public Service Superannuation Scheme Act, members of the scheme include a person who is employed in the public service on permanent and pensionable terms. By virtue of their membership, the members are under obligation to make a mandatory contributions to the scheme, deducted from their monthly emoluments. In addition to members' contributions, the Government is enjoined to "take out and maintain a life insurance policy that has disability benefits in favour of every member of the Scheme, for a minimum of five times of the member's annual pensionable emoluments."
17. According to section 30 of the Public Service Superannuation Scheme Act, if a member dies, his entitlements under the life insurance policy would be paid to his dependants or the executor or administrator of his estate. The section reads as follows:
30. Death of a member
- Where a member dies whilst in employment, the Administrator shall apply the entitlements of such member under the life insurance policy maintained under section 6 (4), in accordance with section 28 in favour of the dependants of the deceased or, in the absence of such dependants, to the executor or the administrator of the estate of the deceased.
18. As I understand the applicant, this is the legal basis upon which the claim against the respondents is founded. No doubt, if the payment of what has been described as "Last Expense and Group Life Claim" is payable under this provision of the law, then it is a public duty whose performance may be compelled by way of a mandatory order. Accordingly, public bodies which like the 2nd respondent, fail to perform their duty, a mandamus order may be issued to compel them to carry out the duty. This is what paragraph 706 of the Halsbury's Laws of England/Judicial Review (volume 61 (2010) 5th Edition)/5. Judicial Remedies/ (1) Introduction says. It reads as follows:
- “
- “706. Public duties by government officials.
- If public officials or public bodies fail to perform any public duty with which they have been charged, a mandatory (mandamus) order may be made to compel them to carry out the duty (See R v Metropolitan Police Comr, ex p Blackburn (No 3) [1973] QB 241, [1973] 1 All ER 324, CA; R v London Transport Executive, ex p GLC [1983] QB 484, [1983] 2 All ER 262, DC.)”
19. A demand for payment having been made and the 2nd respondent having failed to pay; no other evidence is required to demonstrate that the 2nd respondent has failed to perform a public duty with which it is charged under the provisions of the law to which reference has been made. This duty is to pay the applicant the "Last Expense and Group Life Claim" following the demise of Jenipher Adoyo Oyugi. A mandamus order would issue in such circumstances.



20. Accordingly, I hereby allow the applicant's motion dated 24 October 2023 to the extent that an order of mandamus is hereby issued against the Respondents, jointly and severally, compelling them to process and pay Last Expense and Group Life Claim to the ex parte applicant as the administrator or beneficiary of the estate of the late Jenifer Adoyo Oyugi. The applicant will also have costs of the application. It is so ordered.

SIGNED, DATED AND POSTED ON THE CTS ON 24 JUNE 2024

NGAAH JAIRUS

JUDGE

2J.R. NO. E136 OF 2023: JUDGMENT

