



**Mwangi & another v County Government of Nairobi (Application E106 of 2023)
[2024] KEHC 10311 (KLR) (Judicial Review) (21 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10311 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION E106 OF 2023
J NGAAH, J
AUGUST 21, 2024**

BETWEEN

JANE WAITHIRA MWANGI 1ST APPLICANT

JOSEPH MUIRURI MAINA 2ND APPLICANT

AND

COUNTY GOVERNMENT OF NAIROBI RESPONDENT

RULING

1. Before court is a chamber summons dated 25 April 2023 brought under Articles 10,22,23,47 and 232 of *the Constitution*; Sections 8 and 9 of the *Law Reform Act*, cap. 26; Sections 4 & 11 of the *Fair Administrative Action Act*, 2015 and Order 53 Rule 1(3) (4) of the *Civil Procedure Rules*. The Application seeks the following orders:

- “a. That ex parte this Application be certified as urgent and apt for hearing on a priority and leave be granted to the Applicants to apply for the following Judicial Review orders:
 - a. That an order of mandamus be and is hereby issued directing the Chief Officer Incharge of Finance Ministry of the County Government of Nairobi to cause payments of the decretal sum, plus interests and cost in respect of the judgment issued on 22nd May 2020 by Hon. L.t Lewa (Ms) Senior Resident Magistrate in Milimani Civil case number 2025 of 2019.



- b. That this Honourable Court be and is hereby pleased to issue directions necessary towards ensuring the expeditious disposal of this matter.
- c. That any other order that this Honourable Court will be pleased to issue in the circumstances.
- d. That Costs be in cause.”

The application is based on the statement dated 25 April 2023 and verified by the applicants’ own affidavit sworn on even date.

2. According to the applicants, the deceased, Ephantus Ngari Waithira was electrocuted along River Road in Nairobi. The applicants, being representatives of his estate, sued for special and general damages, amongst other prayers, in Milimani Civil Suit No.2025 of 2019. In a judgment delivered on 22 May 2020, the court awarded the applicants the sum of Kshs 1,250,000.00. Despite the decree and the certificate of order against government having been served upon the respondent’s accounting officers, they have ignored, neglected or refused to settle the decree hence the instant application.
3. The respondent opposed the application and swore a replying affidavit to that end. The affidavit was sworn on 1 March 2024 by Martha Karungari Wambugu who has introduced herself as the head of county treasury of the respondent. According to the respondent, the applicants have not complied with section 21 of the *Government Proceedings Act*, cap. 40 because they have not extracted a certificate of order against government or served it upon the Attorney General or Accounting Officer of the Government department concerned for the payment to be made.
4. What the Court would be concerned about at this stage of the proceedings is whether the applicants have made out an arguable case; in other words, whether it is a case which, upon consideration may merit the grant of the judicial review order of mandamus. The leave stage of the proceedings is not meant to determine whether or not the applicant’s case will succeed but whether it is arguable. Lord Diplock was of this opinion in *IRC V National Federation of Self-Employed and Small Businesses Ltd* (1982) 617, (1981) 2 ALL ER 93) where he suggested the following approach:

“ If, on a quick perusal of the material then available, the court thinks the application discloses what might on further consideration turn out to be an arguable case in favor of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him leave to apply for that relief.”

Thus, on this basis, the applicant only has to show not that it is, but that it might turn out to be, an arguable case.

5. In considering whether the applicants’ intended suit is arguable, my attention has been drawn to the affidavit of service of Keroka Ndegwa who has sworn that he is an advocate of this Honourable Court and that on 3 April 2023, he served a copy of certificate of order against the Government and a letter addressed to county attorney at Nairobi City Council Building, 11th Floor along City Hall way. Service of both the certificate and the letter was acknowledged by way of a stamp and signature on the applicant’s copy of the documents.
6. Based on the material before me, and without weighing in on the merits of the merits of the applicants’ intended suit, I am persuaded that the applicants have made out an arguable case which merits further consideration for grant of the order of mandamus. Accordingly, I hereby allow the applicants’ application and direct as follows:



- (a) Leave is hereby granted to the applicants to file a substantive suit for the order of mandamus to enforce settlement of the decree and the certificate of order against government issued in Milimani Chief Magistrates Court Civil Case No. 2025 of 2019.
- (b) The substantive motion shall be filed and served within seven days of the date of this ruling.
- (c) The response to the motion shall be filed and served within seven days of the date of service of the applicants' motion.
- (d) The suit shall be by heard by way of oral submissions on 15 October 2024.
- (e) the costs of this application shall abide the outcome of the suit.

Orders accordingly.

SIGNED, DATED AND POSTED ON THE CTS ON 21 AUGUST 2024

NGAAH JAIRUS

JUDGE

