



REPUBLIC OF KENYA



**KENYA LAW**

THE NATIONAL COUNCIL FOR LAW REPORTING

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**Gicheru (Suing as Personal Representative to the Estate of Esther Wangechi Muchiri – Deceased) v County Government Of Nyeri & another (Judicial Review E009 of 2022) [2023] KEHC 3518 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3518 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
JUDICIAL REVIEW E009 OF 2022  
M MUYA, J  
APRIL 27, 2023**

**BETWEEN**

**JOSEPH MUCHIRI GICHERU (SUING AS PERSONAL REPRESENTATIVE TO THE ESTATE OF ESTHER WANGECHI MUCHIRI – DECEASED) APPLICANT**

**AND**

**COUNTY GOVERNMENT OF NYERI ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY SECRETARY COUNTY GOVERNMENT OF**

**NYERI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Background**

1. On September 20, 2022 leave to file judicial review proceedings were granted by this court.  
The notice of Motion dated the 28<sup>th</sup> day of September 2022 seeks an order for *mandamus* directed against the Respondent herein, the County Government of Nyeri and the County Secretary – Nyeri County Government, to compel them to proceed and pay out the decretal sum of Ksh 1,851,100/- being general damages, costs and interest in Nyeri CMCC No309 of 2016 whose Judgement was delivered on June 30, 2021, and accruing interest and costs.
2. The grounds are that the applicant instituted a suit in Nyeri Civil Case No 309 of 2016 against the Respondent and or his driver seeking for Judgement for special damages general damages under both the *Law Reform Act* and the *Fatal Accidents Act*, Costs and Interest.
3. On 30<sup>th</sup> day of June 2021 Hon. Kagendo delivered Judgment in favour of the applicant and was awarded a sum of Kshs 1,500,000/= for pain and suffering loss of expectation for life and loss of dependency plus costs assessed at Kshs 276,100/= and Interest.



4. A certificate of order against the Respondent was issued on 9<sup>th</sup> June 2022 but the Respondent refused and or ignored to settle the same.
5. That this ignorance and or refusal prompted the applicants to seek leave of the court to commence these Judicial Review proceedings to compel the Respondent to pay the applicant.

### **Analysis and determination**

6. The Respondent concedes that the applicant did follow the right procedure as set out in section 21 of the Government Proceedings Act.
7. The only departure, as they argue is that the allegation that they ignored and or refused to settle the decretal amount is not true.

The motor vehicle, subject of the primary suit was insured by monarch insurance company limited and they were the ones required to settle the decretal amount.

8. It is the contention by the Respondents that the applicant was quite aware of the correspondence between the Respondents and the insurer.
9. That the Respondents were not granted enough and or reasonable time to comply.
10. Further the applicant has had another adequate remedy at his disposal, the declaratory suit by the 1<sup>st</sup> Respondent against the insurer, that the applicant has received substantial payments from the Respondents insurer, if not all.
11. Reliance is placed in the case of Republic v Principal Secretary, Ministry of internal Security and another exparte Schon Noorani & another (2018) eKLR where it was held:-

“*mandamus* is an equitable remedy that serves to compel a public authority to perform its public legal duty, and it is a remedy that controls procedural delays. The test for *mandamus* is set out in the case of *A potex Inc v Canada (Attorney General)* and was also discussed in *Dragan v Canada (minister of Citizenship and immigration)*. The eight factors that must be present for the writ to issue are:-

1. There must be a public legal duty to act;
2. The duty must be owed to the applicants
3. There must be a clear right to the performance of that duty, meaning that;
  - a. The applicants have satisfied all conditions precedent; and
  - b. There must have been
    - i. A prior demand for performance .
    - ii. A reasonable time to comply with the demand, unless, there was outright refusal, and
    - iii. An express refusal, or an implied refusal through unreasonable delay.
    - iv. No other adequate remedy is available to the applicants.
    - v. The order sought must be of some practical value or effect.
    - vi. There is no equitable bar to the relief sought.



vii. On a balance of Convenience *mandamus* should lie.

12. The court notes that the Judgment was delivered in June, 2021. The Respondent has not settled the decretal sum. The certificate of order was served on March 31, 2022 and a declaratory suit filed on July 25, 2022.
13. It is the contention by the Respondents that their insurer has made payments.
14. The amount paid if any is not disclosed. I find the application for an order of *mandamus* has merit and it's allowed as prayed. Full payment to be effected within 30 days from today.

**RULING READ AND DELIVERED IN OPEN COURT THIS 27<sup>TH</sup> DAY OF APRIL, 2023.**

**HON JUSTICE MARTIN M. MUYA**

**JUDGE**

In the presence of:

Mr. Kimonyo.....Applicant

.....1<sup>st</sup> Respondent

.....2<sup>nd</sup> Respondent

Court Assistant: Kinyua

