



IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO.72 OF 2010

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF
MANDAMUS**

AND

IN THE MATTER OF NAKURU H.C.C.C.NO.244 OF 2003

BETWEEN

**GRACE WAIRIMU KARIUKI (Suing as the Administrator of the
Estate of the late**

BERNARD MUNGAI MBURU).....APPLICANT

VERSUS

**PERMANENT SECRETARY OFFICE OF THE PRESIDENT,
PROVINCIAL ADMINISTRATION AND INTERNAL
SECURITY.....RESPONDENT**

RULING

The applicant, Grace Wairimu Kariuki is the administratrix of the estate of the late Bernard Muigai Mburu, who died as a result of fatal gunshot wounds unlawfully inflicted by a police officer. After a full trial, this court (Mugo, J) awarded to the estate Kshs.7,010,736/= in general and special damages plus costs and interest.

A decree was extracted and together with certificate of costs and certificate of order against the Government were served upon the Attorney General for settlement. It is averred that at the time the present application was brought, the decree had not been satisfied, prompting the applicant to seek, in the

instant application that the Permanent Secretary, Office of the President, Provincial Administration and Internal Security be compelled, by mandamus to settle the decree.

The motion was served upon the Attorney General who filed grounds of opposition to the effect that the notice to the Registrar is defective; that the applicant has no *locus standi* to file this application or receive the payment sought; that the respondent is non-existent; that mandamus is not an efficacious remedy; that the case for mandamus has not been made out and that an appeal has been preferred against the judgment in question.

These grounds were not canvassed as the respondent's counsel did not attend the court on the hearing date. What is not disputed is the fact that there is a valid decree of this court which has not been satisfied. Having only filed grounds of opposition, no evidence has been presented that the respondent has challenged the judgment on appeal. Certificates under **section 21** of the **Government Proceedings Act** and **Order 28 rule 3** of the revoked **Civil Procedure Rules** (now **Order 29 rule 2** of the **2010 Rules**) were served upon the Attorney General.

An order of mandamus will issue to compel the performance of a public duty imposed on a person or body by a statute and where the person or body has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.

This is the import of the authorities cited by the applicant's counsel. See also the **Kenya National Examination Council Vs. Republic Exparte Geoffrey Gathenji Njoroge and others**, Civil Appeal No.266 of 1996.

The foregoing conditions having been satisfied, it is ordered that there will be an order of mandamus and the respondent is hereby compelled by mandamus in terms of the motion dated 29th June, 2010 to settle the decretal sum forthwith.

I award costs to the applicant.

Dated, Delivered and Signed at Nakuru this 16th day of March, 2011.

W. OUKO

JUDGE