



Mutinda & another (Suing as the Administrators of the Estate of Samson Kyalo) v County Government of Kitui (Judicial Review 7 of 2024) [2025] KEHC 9479 (KLR) (1 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9479 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
JUDICIAL REVIEW 7 OF 2024
LW GITARI, J
JULY 1, 2025**

BETWEEN

FAITH MAWIA MUTINDA 1ST APPLICANT

BERNARD MUSYOKA KIONGO 2ND APPLICANT

SUING AS THE ADMINISTRATORS OF THE ESTATE OF SAMSON KYALO

AND

COUNTY GOVERNMENT OF KITUI RESPONDENT

RULING

1. The applicant Faith Mawia Mutinda filed the Notice of Motion dated 27/2/2024 seeking orders against the respondent, the County Government of Kitui that:
 1. That an order for Mandamus be directed to the County Secretary of the County Government of Kitui being its Accounting Officer compelling him to pay the sum of Kshs. 3,990,913/= (having complied with statutory proceedings laid out under Section 21 of the [Government Proceedings Act](#)) being the Decretal amount in Kitui High Court Civil Appeal No. E058 of 2023 at Kitui.
 2. That the court be at liberty to make such further and other orders that it deems fit to meet the ends of justice.
 3. That costs of and incidentals to this suit be in favour of the Applicant.
 4. That an order of Mandamus do issue to the Respondent to pay for the costs of this Application.
2. The application is based on the following grounds:
 1. Leave to commence these Judicial Review Proceedings was granted on the 8th February 2024.



- II. Since 29th of June 2023 when Judgment was entered for the applicant against the respondent herein for the sum of Kshs. 3,990,913/= together with costs and despite several reminders, the respondent has completely failed to settle the Decree herein.
- III. That it is in the interest of justice that the application be heard and prayers sought granted expeditiously.
3. The application is supported by the affidavit of the applicant, Faith Mawia Mutinda sworn on 27/2/2024. She depones that leave to commence Judicial Review proceedings was granted on 8/2/2024 as per the order of this court dated 15/02/2024 annexure FMMI. That the High Court at Kitui in Civil Appeal No. E058/2023 County Government of Kitui & Another v Faith Mawia Mutinda entered Judgment against the respondent on 29/6/2023 in the sum of Kshs. 3,990,913/= Annexure FMM 2(a) and a certificate of an order against the County Government was issued.
4. The applicant avers that she sent reminders to the respondent to satisfy the Judgment but the respondent has failed, refused and or neglected to settle the decretal sum amounting to Kshs. 3,990,913/=. That the County Secretary to the County Government of Kitui is under a public duty to make the said payment but has wrongfully refused to do so. It is on that basis that she has filed the application and urges the court to allow it.
5. The respondent was served with the Notice of Motion but has not filed a replying affidavit or grounds of opposition. Order 51 rule 14(1) of the Civil Procedure Rules provides that:
- “ Any person who wishes to oppose any application may file any one or a combination of the following documents:-
- a. A Notice of Preliminary Objection, and/or
 - b. Replying Affidavit, and/or
 - c. A Statement of Grounds of Opposition.
 - d. If a respondent fails to file to comply with Sub-rule (1) & (2), the application may be heard ex-parte.”
6. The application is not opposed. The applicant was granted leave to file this application. She has demonstrated that the respondent owes her Kshs. 3,990,913/= which it has failed to settle. The application should therefore be allowed to enable the applicant to realize the fruits of her Judgment.
7. I find that the application has merits. I order as follows:
1. An order of Mandamus do issue and be directed to the Secretary County Government of Kitui compelling him to pay a sum of Kshs. 3,990,913/= being the decretal sum in Kitui High Court Civil Appeal No. E058/2023.
 2. Costs to the applicant.

DATED, SIGNED AND DELIVERED AT KITUI THIS 1ST DAY OF JULY 2025

HON. LADY JUSTICE L. GITARI

JUDGE

