



Republic v Medical Superintendent and Nursing Officer in Charge, Nyahururu District Hospital & 2 others; Karimi (Suing as the legal representative of the Estate of Eunice Wangui Waithaka) (Exparte) (Judicial Review Miscellaneous Application E281 of 2023) [2024] KEHC 15426 (KLR) (4 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15426 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E281 OF 2023**

PN GICHOHI, J

DECEMBER 4, 2024

IN THE MATTER OF THE JUDGMENT DELIVERED ON 28TH FEBRUARY 2021 BY HON. L. ARIKA IN NAKURU CHIEF MAGISTRATE’S COURT CIVIL CASE NO. 1138 OF 2016 – JOSEPH MURIITHI KARIMI (SUIING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF EUNICE WANGUI WAITHAKA) -VS- MEDICAL SUPERINTENDENT AND NURSING OFFICER IN CHARGE, NYAHURURU DISTRICT HOSPITAL

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO COMMENCE JUDICIAL REVIEW PROCEEDINGS FOR AN ORDER OF MANDAMUS

BETWEEN

REPUBLIC APPLICANT

AND

MEDICAL SUPERINTENDENT AND NURSING OFFICER IN CHARGE, NYAHURURU DISTRICT HOSPITAL 1ST RESPONDENT

THE COUNTY SECRETARY, COUNTY GOVERNMENT OF LAIKIPIA 2ND RESPONDENT

THE COUNTY EXECUTIVE COMMITTEE MEMBER IN CHARGE OF FINANCE COUNTY GOVERNMENT OF LAIKIPIA 3RD RESPONDENT

AND

JOSEPH MURIITHI KARIMI (SUIING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF EUNICE WANGUI WAITHAKA) EXPARTE



RULING

1. Under a certificate of urgency, and through the firm of Elizabeth Wangari & Co. Advocates, the Applicant filed an Ex- Parte Chamber Summons dated 07/08/2023 seeking orders: -
 1. Spent.
 2. That the ex-parte Applicant be granted leave to apply for an order of Mandamus directed to the 2nd and 3rd Respondents to compel them to pay the sums specified in the Certificate of Order against Government issued on the 13th April 2023 following entry of judgment against the 1st Respondent in Nakuru Chief Magistrate's Court Civil Case No. 138 of 2016 on 26th February, 2021.
 3. That the costs of this application be provided for.
2. The grounds are on the face of the application and emphasised in the Supporting Affidavit sworn by the Applicant on 22/08/2023. In a nutshell, the Ex-parte Applicant states that he had sued the 1st Respondent in Nakuru Chief Magistrate's Court Civil Case No. 138 of 2016 seeking judgment against the 1st Respondent for: -
 - a. General damages under *Law Reform Act* and the *Fatal Accidents Act*.
 - b. Special damages of Kshs. 454,330/=.
 - c. Damages for loss of consortium.
 - d. Costs of the suit.
 - e. Interest on (a), (b), (c) and (d) above at court rates until payment in full.
 - f. Any other or further relief that the court may deem fit and just to grant.
3. He states that the Attorney General entered appearance for the 1st Respondent and filed a defence. After full hearing, the trial court delivered its judgment in favour of the ex-parte Applicant.
4. Dissatisfied, the 1st Respondent filed an appeal against that judgment. The ex-parte Applicant subsequently obtained a decree and a Certificate of Costs as well as a Certificate against the Government which he served on the office of the Attorney General. He states that the Appeal was dismissed on 18th April 2023 for want of prosecution.
5. While stressing on the mandate of the 2nd and 3rd Respondent, the ex-parte Applicant states that despite being served with the Certificate of Order Against the Government, decree and Certificate of Costs on the Attorney General, the 2nd and 3rd Respondents have willfully and deliberately failed to comply with the said judgment.
6. He therefore states that it has now become necessary to compel them to pay and if leave is not granted as prayed, the ex-parte Applicant stands to suffer greatly in the circumstances.

Determination

7. It is apparent that the even though application for leave is usually ex-parte, the Applicant went to great lengths and proceeded to serve this application on the Attorney General and the 2nd and 3rd Respondents.



8. Indeed Order 53 of the Civil Procedure Rules which deals applications for Judicial Review provides that: -

- “(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefore has been granted in accordance with this rule.
- (2) An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.
- (3) ...
- (4) If on the hearing of the motion the High Court is of the opinion that any person who ought to have been served therewith has not been served, whether or not he is a person who ought to have been served under the foregoing provisions of this rule, the High Court may adjourn the hearing, in order that the notice may be served on that person, upon such terms (if any) as the court may direct.
- (5) ...
- (6) On the hearing of any such motion as aforesaid, any person who desires to be heard in opposition to the motion and appears to the High Court to be a proper person to be heard shall be heard, notwithstanding that he has not been served with the notice or summons, and shall be liable to costs in the discretion of the court if the order should be made.”

9. In this case, only the 2nd and 3rd Respondents appeared in Court and sought time to file a response but none was filed. There was no attendant or response from the 1st Respondent too.

10. From the application, the affidavit, statement and annexures thereto, this Court has noted the diligence by the ex-parte Applicant in pursuing the fruits of his judgment delivered more than three years ago. It is clear that the Respondents are not keen on paying the ex-parte Applicant any time soon unless compelled to do so.

11. For those reasons, this Court grants the following orders: -

1. Leave be and is hereby granted to the ex-parte Applicant to file a substantive application for an order of Mandamus within twenty-one (21) days.
2. Costs will await the outcome of the substantive application.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 4TH DAY OF DECEMBER, 2024.

PATRICIA GICHOCHI
JUDGE

In the presence of:

Ms Wangari for Applicant

N/A for the Respondents

Ruto Court- Assistant

