



REPUBLIC OF KENYA



**Wanjau v Kenya medical Practitioners and Dentists Council (Judicial Review Application E275 of 2025) [2025] KEHC 14794 (KLR) (Judicial Review) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14794 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E275 OF 2025  
RE ABURILI, J  
OCTOBER 22, 2025**

**BETWEEN**

**IRENE MUTHONI WANJAU ..... APPLICANT**

**AND**

**KENYA MEDICAL PRACTITIONERS AND DENTISTS  
COUNCIL ..... RESPONDENT**

**RULING**

1. The applicant Irene Muthoni Wanjau by her chamber summons dated 28<sup>th</sup> August 2025 seeks leave of this Court to apply for judicial review orders of mandamus to compel the respondent Kenya Medical Practitioners and Dentists Board to render its ruling in Complaint No. 9 of 2021 four years post the hearing of the same. She also prays for costs of the application.
2. The application is predicated on the statutory statement and the verifying affidavit sworn by the applicant on 28<sup>th</sup> August 2025 and annexures thereto which include several requests in writing made to the respondent by the applicant, for delivery of the ruling to no avail.
3. The application was served upon the respondent who has not appeared or filed any response thereto.
4. I have considered the application as filed and argued orally by counsel Ms Mugasia, reiterating the contents of the application and the grounds contained in the statutory statement. The issue for determination is whether the applicant has demonstrated that she has an arguable case for determination on merit, granted the leave sought. Differently put, has the applicant met all the conditions precedent for grant of leave to apply for mandamus?
5. The applicant's case is that on 28<sup>th</sup> January 2021, she lodged a complaint against Dr. Bernard Ndung'u of Nairobi South Hospital and the Nairobi South Hospital, with the Respondent herein following an



- alleged medical negligence during a Periscopic surgery at the Nairobi South Hospital that led to the perforation of the applicant's mother's small intestines occasioning her death.
6. That on 3<sup>rd</sup> November, 2021, the matter was heard and all parties were directed to file their submissions by 10th December, 2021 which they did.
  7. No ruling date was given and therefore on 4<sup>th</sup> March 2022, the applicant wrote an inquiry letter asking the respondent to indicate the ruling date but that to date, no ruling date has been given.
  8. Other letters of inquiry were written on 9<sup>th</sup> May 2023 and that on 17<sup>th</sup> May 2023, the respondent wrote an email in response indicating that all pending rulings would be delivered by end of June 2023 but nothing was forthcoming until 28<sup>th</sup> March 2024 when the respondent again wrote an email to the applicant stating that all pending rulings would be delivered on or before 19<sup>th</sup> April 2024.
  9. To date, no such ruling has been rendered hence these proceedings.
  10. The applicant asserts that the failure to render a decision in matter which was heard violates her right to fair administrative action guaranteed under Article 47 of *the Constitution* and section 7(2) of the *Fair Administrative Action Act*, 2015 which guarantee expeditious, reasonable and efficient administrative action.
  11. In *R vs. Communications Commission of Kenya & 2 Others Ex Parte East Africa Televisions Network Ltd.* Civil Appeal No. 175 of 2000 [2001] KLR 82; [2001] 1 EA 199, the Court of Appeal stated that leave should be granted if, on the material available, the Court considers, without going into the matter in depth, that there is an arguable case for granting leave.
  12. In *Re Bivac International SA (Bureau Veritas)* [2005] 2 EA 43 (HCK), the High Court stated:

“Application for leave to apply for orders of judicial review are normally ex parte and such an application does restrict the Court to threshold issues namely whether the applicant has an arguable case, and whether if leave is granted, the same should operate as a stay. Whereas judicial review remedies are at the end of the day discretionary, that discretion is a judicial discretion and, for this reason a court has to explain how the discretion, if any, was exercised so that all the parties are aware of the factors which led to the exercise of the Court's discretion. There should be an arguable case which without delving into the details could succeed and an arguable case is not ascertained by the court by tossing a coin or waving a magic wand or raising a green flag, the ascertainment of an arguable case is an intellectual exercise in this fast growing area of the law and one has to consider without making any findings, the scope of the judicial review remedy sought, the grounds and the possible principles of administrative law involved and not forget the ever expanding frontiers of judicial review and perhaps give an applicant his day in court instead of denying him....Although leave should not be granted as a matter of routine, where one is in doubt one has to consider the wise words of Megarry, J in the case of *John vs. Rees* [1970] Ch 345 at 402. In the exercise of the discretion on whether or not to grant stay, the court takes into account the needs of good administration.”
  13. From the facts presented before this Court, it is the view of this court that the application as intended is not frivolous. It is arguable and as to its merits, the Court will have the opportunity to hear the parties at the substantive stage if they choose to participate in these proceedings, since the respondent was served with the application but chose not to enter any appearance or file a response in opposition to the application for leave to apply.



14. I however note that there are other persons who are named in the Complaint who are interested parties to the case and therefore it is important that they are brought on board at the substantive stage to enable them ventilate their grievances if any. These are the respondents in the stated Complaint, Dr. Bernard Ndung'u and the Nairobi South Hospital. This directive is in line with Order 53 Rule (2) of the Civil procedure Rules which provides that:
  - (2) The notice shall be served on all persons directly affected, and where it relates to any proceedings in or before a court, and the object is either to compel the court or an officer thereof to do any action in relation to the proceedings or to quash them or any order made therein, the notice of motion shall be served on the presiding officer of the court and on all parties to the proceedings.
15. In my view, the interested parties stated herein above are directly affected by the decision pending in the Complaint.
16. Accordingly, I allow the chamber summons dated 28<sup>th</sup> August 2025 and grant leave to the applicant file judicial review proceedings seeking for mandamus against the respondent seeking to compel the respondent to deliver a ruling in Complaint No. 9 of 2021.
17. The substantive notice of motion shall be filed and served on the respondent and the interested parties Dr. Bernard Ndung'u and the Nairobi South Hospital within twenty-one (21) days of today.
18. The main motion shall be lodged in a new and fresh file.
19. Costs if any shall be in the main motion.
20. This file is accordingly closed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF OCTOBER, 2025**

**R.E. ABURILI**

**JUDGE**

