

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
JUDICIAL REVIEW NUMBER E006 OF 2025

IN THE MATTER OF AN APPLICATION BY AGNES GATWIRI
MURUGA FOR ORDERS OF MANDAMUS

AND

IN THE MATTER OF THE CIVIL PROCEDURE RULES ORDER 53

AND

IN THE MATTE ROF MERU CMCC NO. 108 OF 2019 BEFORE THE
CHIEF MAGISTRATE’S COURT AT MERU

AND

IN THE MATTER OF PART IV OF THE GOVERNMENT
PROCEEDINGS ACT

AND

IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT

AGNES GATWIRI MURUGA.....EXPARTE
APPLICANT

VERSUS

ATTORNEY GENERAL.....1ST
RESPONDENT

PRINCIPAL SECRETARY MINISTRY OF INTERIOR AND
COORDINATION OF NATIONAL GOVERNMENT.....2ND
RESPONDENT

RULING

1. Before me is an application dated 6th March 2025 which seeks the following orders: -
 - a) That this Honourable court be pleased to issue an order of Mandamus compelling the 1st and the 2nd respondents to settle the decree issued in Meru CMCC No. E109 of 2019, with interest from the date of judgment until full payment.
 - b) THAT the costs of this application be awarded to the applicant.
2. The Application is supported by the applicant affidavit and statement of facts dated 6th March 2025.
3. In a nutshell, the applicant states that she is the personal representative of the estate of KELVIN MAINA (deceased) who died in a road accident on 21st October 2018 along Nanyuki-Isiolo road, where the 2nd respondent's motor vehicle registration number GKB 935T collided with the deceased's motorcycle registration number KMDE 885S. That subsequently she filed a civil suit in Meru CMCC No. E109 of 2019 seeking general and special damages under the Fatal Accidents Act and the Law Reform Act.
4. The ex-parte applicant further avers that Judgement was entered in her favour for Kshs 1,582,000/- plus costs and interest totaling to Kshs. 1,943,480/- at the time of filing the application. That no appeal was filed against the lower court's judgement. That a

certificate of order against the Government was issued but the decree has not been satisfied.

5. The Applicant further avers that she sought leave to file the present application, which leave was granted.

6. The respondents opposed the application through the grounds of opposition dated 1st April 2025. They set out the following grounds;
 - a) THAT the Notice of Motion Application seeking the order of Mandamus against the Respondents is misadvised since the Respondents have not failed, neglected and/or refused to pay the decretal sum to the Ex-parte Applicant.
 - b) THAT the 2nd Respondent requested for budgetary allocation to compensate the Ex-Parte Applicant in this matter in the 2023/2024 financial year but did not receive the allocation and has once again requested for allocation to settle the decree in this financial year 2024/2025 but is yet to receive the allocation.
 - c) THAT it is in the public domain that the government of the Republic of Kenya is currently in a financial crisis occasioned by many factors and therefore the allocation of funds for settlement of the decretal sum in the 2023/2024 financial year was not possible despite the Respondents willingness to compensate the Ex-Parte Applicant.

- d) THAT the Finance Bill 2024 was withdrawn in its entirety thereby scuttling Government's plans to raise revenue to cater for its financial obligations and this affected all its financial obligations including the compensation herein.
- e) THAT the Respondents are ready and willing to comply with their statutory duties in the compensation of the Ex-Parte Applicant once they receive the requisite budgetary allocations.
- f) THAT this Honourable Court should allow the Respondents and the Government as a whole time for budgeting, allocation and payment of the compensation through the procedures provided for in law.
- g) THAT the Notice of Motion Application is misconceived and an abuse of the process of the court.

Submissions by the Ex parte Applicant

7. It was submitted that the conduct of the respondents is clearly aimed at frustrating and denying the ex parte applicant her rightful compensation. She called upon to intervene to prevent injustice. Cited to support the submission was the decision of the Court of Appeal in **Mls Portreitz Maternity Vs James Karanga Fabia, Civil Appeal No. 63 of 1997** where it was held:

Litigation must come to an end It is a rule to counter the all-too-human propensity to keep trying until something gives. It is meant to provide rest and closure, for endless litigation and agitation does linle more than vex and add to costs. A successful

litigant must reap the fruits of his success and the unsuccessful one must learn to let go.

8. For the respondents, it was submitted that the following issues arose for determination;
 - a) *Whether the Respondents have unreasonably neglected and/or refused to pay the decretal sum to the Exparte applicant.*
 - b) *Whether the court should allow the Respondents an extension of time to comply.*
9. It was argued that the respondents have a duty to obey court orders. They cited the legal principles guiding the issuance of an order of mandamus as set out in the case of **Republic v County Government of Siaya & 2 others; Olute (Exparte Applicant) [2024] KEELRC 1868 (KLR).**
10. I have perused the application, the statement of fact and the supporting affidavit. The requisite leave was duly obtained prior to the Ruling of the application.
11. The respondents don't really dispute that there is a decree of the lower court that they have not satisfied. They confirm that the 2nd respondent has made the formal requisition for funds.
12. If I get the respondents well, they are merely seeking time to pay the decretal sum.

13. The certificate of order against the Government under Order 29 Rule 3 of the Civil Procedure Rules was issued on 15th November 2023. The same was served upon the respondents a day later. The decree has not been satisfied almost 2 years later. The ex-parte applicant was thus justified in approaching this court for relief.

14. In the circumstances I allow the application as prayed.

15. Costs to the ex-parte applicant.

Dated, Signed & Delivered at **Meru** this **5th** day of **November 2025**.

**H.M. NYAGA
JUDGE**