

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW APPLICATION NO. E.340 OF 2025**

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

**VERSUS**

**THE MEDICAL PRACTITIONERS & DENTISTS**

**COUNCIL.....RESPONDENT**

**JUDGMENT**

1. Irene Muthoni Wanjau is the ex parte applicant. By her notice of motion dated 29/10/2025 filed pursuant to leave granted on 22<sup>nd</sup> October, 2025, she seeks judicial review order of mandamus to issue compelling the respondent Kenya Medical Practitioners and Dentists Council to deliver its Ruling in Disciplinary case No. 9 of 2021 which the respondent is alleged to have failed to deliver, three years post hearing of the case.
2. The grounds upon which the application is predicated are contained on the face of the notice of motion, the statutory statement and the supporting affidavit sworn by Irene Muthoni Wanjau on 28<sup>th</sup> October, 2025.
3. The applicant's case which was uncontroverted as the respondent despite service of the application for leave and the substantive notice of motion as

demonstrated by the affidavits of service and hearing notices filed into court as evidence of service.

4. The applicant's case is that on 28th 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 Periscope surgery at the Nairobi South Hospital that led to the perforation of the applicant's mother's small intestines occasioning her death.
5. That on 3rd November, 2021, the matter was heard and all parties were directed to file their submissions by 10th December, 2021 which they did.
6. That no ruling date was given and therefore on 4th 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.
7. Other letters of inquiry were written on 9th May 2023 and that on 17th 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 28th March 2024 when the respondent again wrote an email to the applicant stating that all pending rulings would be delivered on or before 19th April 2024.
8. To date, no such ruling has been rendered hence these proceedings.
9. The applicant asserts that the failure to render a decision in a 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.

10. At the hearing of the substantive notice of motion on 2/12/2025, the applicant's counsel intimated to court that she had received a call from the respondent's representative to the effect that the decision in the Disciplinary case No. 9 of 2021 would be delivered before the end of November, 2025, but that the same had not been delivered.

11. The respondent Kenya Medical Practitioners and Dentists Council is established under section 3 of the Medical Practitioners and Dentists Act Chapter 253 of Laws of Kenya. The functions of the Council are spelt out in section 4 of the Act as follows:

#### ***4. Functions of the Council***

***The functions of the Council shall be to—***

- (a) establish and maintain uniform norms and standards on the learning of medicine and dentistry in Kenya;***
- (b) approve and register medical and dental schools for training of medical and dental practitioners;***
- (c) prescribe the minimum educational entry requirements for persons wishing to be trained as medical and dental practitioners;***
- (d) maintain a record of medical and dental students;***

- (e) conduct internship qualifying examinations, preregistration examinations, and peer reviews as deemed appropriate by the Council;*
- (f) inspect and accredit new and existing institutions for medical and dental internship training in Kenya;*
- (g) license eligible medical and dental interns;*
- (h) determine and set a framework for professional practice of medical and dental practitioners;*
- (i) register eligible medical and dental practitioners;*
- (j) regulate the conduct of registered medical and dental practitioners and take such disciplinary measures for any form of professional misconduct;*
- (k) register and license health institutions;*
- (l) carry out inspection of health institutions;*
- (m) regulate health institutions and take disciplinary action for any form of misconduct by a health institution;*
- (n) accredit continuous professional development providers;*
- (o) issue certificate of status to medical and dental practitioners and health institutions; and*
- (p) do all such other things necessary for the attainment of all or any part of its functions.*

12. Section 4A of the Act makes provision for the Council establishing Committees and it states:

#### **4A. Committees of the Council**

**(1) The Council shall constitute the following committees—**

**(a) training, assessment, registration and human resources committee;**

**(b) disciplinary and ethics committee whose mandate shall include—**

**(i) conducting inquiries into complaints submitted to it;**

**(ii) regulating professional conduct;**

**(iii) ensuring fitness to practice and operate;**

**(iv) promoting mediation and arbitration between parties; and**

**(v) at its own liberty, recording and adopting mediation agreements or compromise between parties, on the terms agreed;**

**(c) inspections, licensing, finance and general purposes committee; and**

**(d) audit and risk committee.**

13. Section 20 of the Act is dedicated to Disciplinary proceedings and it provides as follows:

#### **20. Disciplinary proceedings**

**(1) Any person who is dissatisfied with any professional service offered, or alleges a breach of standards by a registered or licensed person under this Act, may lodge a complaint in the prescribed manner to the Council.**

**(2) The Council may, or through a committee appointed for that purpose, inquire into any complaint of professional misconduct, malpractice or any breach of standards.**

*(3) Upon an inquiry held by the Council to determine the complaint made under subsection (2), the person whose conduct is being inquired into shall be afforded an opportunity of being heard, either in person or through a representative.*

*(4) For purposes of proceedings at any inquiry held under this section, the Council may administer oaths, enforce the attendance of witnesses and production of books and documents.*

*(5) The Council shall regulate its own procedure in disciplinary proceedings.*

*(6) Where after an inquiry, the Council determines that a person is guilty, the Council may—*

*(a) issue a caution or reprimand in writing;*

*(b) direct a medical practitioner or dentist to undergo remedial training for a period not exceeding twelve months;*

*(c) direct the medical practitioner or dentist be placed on probation for a period not exceeding six months;*

*(d) suspend, withdraw or cancel the practicing licence of a medical practitioner or dentist for a period not exceeding twelve months;*

*(e) suspend, withdraw or cancel the licence of a health institution or a section of the health institution for a period not exceeding twelve months;*

*(f) permanently remove the name of a medical practitioner or dentist from the registers under section 5(3); or*

*(g) in addition to the penalties stipulated in paragraphs (a), (b), (c), (d), (e) or (f), impose a fine which the Council deems appropriate in the circumstance.*

*(7) A person or health institution whose licence has been withdrawn or cancelled under subsection (6), shall forthwith surrender the license to the Council.*

*(8) A person or health institution whose name has been removed from the register under subsection (6)(f) shall forthwith surrender the registration certificate to the Council.*

*(9) A person aggrieved by a decision of the Council made under subsection (6) may, within thirty days from the date of the decision of the Council, appeal to the High Court.*

*(10) Notwithstanding the provisions of section 3A (5), the Council shall not remove the name of a person from the register under subsection (6) unless at least seven members of the Council are present in the inquiry.*

14. From the above statutory provisions, it is clear that the respondent is a statutory body established under an Act of Parliament and with the mandate and or statutory duty of among others:

***4 (j) regulate the conduct of registered medical and dental practitioners and take such disciplinary measures for any form of professional misconduct.***

15. Section 20 of the Act mandates the Council to receive complaints in the prescribed form from any person who is dissatisfied with any professional service offered, or alleges a breach of standards by a registered or licensed person under this Act.
16. In considering the complaint, the Council may, or through a committee appointed for that purpose, inquire into any complaint of professional misconduct, malpractice or any breach of standards.
17. The section provides for the procedure of handling the said complaints against medical professionals and a person aggrieved by a decision of the Council made under subsection (6) of section 20 may, within thirty days from the date of the decision of the Council, appeal to the High Court.
18. Section 20 of the Act therefore contemplates a decision being rendered by the Council after hearing both the complainant and the medical professional against whom the complaint is made.
19. In this case, from the facts of the case provided by the applicant, a complaint was lodged against Dr Bernard Ndungu and Nairobi South Hospital following a botched surgery of the applicant's mother leading to a fatality. The complaint was received, parties heard and a decision was reserved but to date, since 2021, no decision has been rendered despite the parties filing

their written submissions in December, 2021 after a hearing on 3<sup>rd</sup> November, 2021

20. The applicant's counsel has exhibited many letters written to the respondent inquiring on when the decision will be rendered without any success hence these proceedings.

21. Article 47 of the Constitution guarantees every person the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. In addition, the Article mandates that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

22. To implement the above Article, Parliament in 2015 enacted the Fair Administrative Action Act to give effect to the rights in clause (1) of the Article.

23. Section 7 of the fair Administrative Action Act provides for institution of proceedings and states that:

***(1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to***

***(a) a court in accordance with section 8; or***

***(b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.***

24. Under section 7(2) of the FAA Act-

***(2) A court or tribunal under subsection (1) may review an administrative action or decision, if-***

***(a) the person who made the decision-***

***(i) was not authorized to do so by the empowering provision;***

***(II) acted in excess of jurisdiction or power conferred under any written law;***

***(III) acted pursuant to delegated power in contravention of any law prohibiting such delegation;***

***(iv) was biased or may reasonably be suspected of bias; or***

***(v) denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;***

***(b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with; (c) the action or decision was procedurally unfair;***

***(d) the action or decision was materially influenced by an error of law;***

***(e) the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;***

***(f) the administrator failed to take into account relevant considerations;***

***(g) the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;***

***(h) the administrative action or decision was made in bad faith;***

*(i) the administrative action or decision is not rationally connected to the purpose for which it was taken;*

*(ii) the purpose of the empowering provision;*

*(iii) the information before the administrator; or*

*(iv) the reasons given for it by the administrator;*

*(J) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;*

*(k) the administrative action or decision is unreasonable;*

*(l) the administrative action or decision is not proportionate to the interests or rights affected;*

*(m) the administrative action or decision violates the legitimate expectations of the person to whom it relates;*

*(n) the administrative action or decision is unfair; or*

*(o) the administrative action or decision is taken or made in abuse of power*

25. Section 2 defines a decision as "*decision*" means any administrative or quasi-judicial decision made, proposed to be made, or required to be made, as the case may be. The section also defines failure as "failure", in relation to the taking of a decision, includes a refusal to take the decision.

26. Section 7(3) prohibits the Court or tribunal from considering an application for the review of an administrative action or decision premised on the ground of unreasonable delay unless the court is satisfied that

- (a) the administrator is under duty to act in relation to the matter in issue;*
- (b) the action is required to be undertaken within a period specified under such law;*
- (c) the administrator has refused, failed or neglected to take action within the prescribed period.*

27. In this case, the applicant has come to court after about three years of begging for the delivery of the decision following the hearing of the complaint filed by her to the respondent but the respondent has refused, failed and neglected to deliver the decision within reasonable time.

28. In the view of this court, the administrative inaction by the respondent violates her legitimate expectations that a decision would be rendered on the complaint, following the hearing that took place in November, 2021.

29. Although section 20(5) of the Medical Practitioners and Dentists Act provides that the Council shall regulate its own procedure, section 4(1) of the Fair Administrative Action Act which echoes Article 47 (1) of the Constitution mandates that ***Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.***

30. Furthermore, section 6 of the Fair Administrative Action Act mandates that every person is entitled to be given reasons for the administrative action taken so as to enable them file an appeal or a review of that decision. It

follows that failure to make a decision after hearing the parties, deprives the parties an opportunity to appeal or review of the decision.

31. I have perused the Medical practitioners and Dentists Act and note that it does not prescribe the timeframe for disposal of complaints or even the time for delivery of a decision after hearing the complaint. However, section 58 of the Interpretation and General provisions Act provides that where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises. This provision, as old as it is, mirrors the constitutional guarantees under Article 47 of the Constitution and the Fair Administrative Action.

32. In this case, the respondent has since December 2021 refused to give the verdict of the hearing of the complaint and no reasons are given for the refusal. The refusal to deliver the ruling for over three years in my view violates the applicant's right to fair administrative action as guaranteed under Article 47 (1) of the Constitution and it also amounts to abuse of power conferred on the Council by statute. The delay is inordinate and denies justice to the parties to the complaint.

33. As to whether mandamus is available to the applicant as sought against the respondent, in **Shah vs. Attorney General (No. 3) Kampala HCCM No. 31 of 1969 [1970] EA 543** Goudie, J expressed himself, inter alia, as follows:

*“Mandamus is essentially English in its origin and development and it is therefore logical that the court should look for an English definition. Mandamus is a prerogative order issued in certain cases to compel the performance of a duty. It issues from the Queen’s Bench Division of the English High Court where the injured party has a right to have anything done, and has no other specific means of compelling its performance, especially when the obligation arises out of the official status of the respondent. Thus, it is used to compel public officers to perform duties imposed upon them by common law or by statute and is also applicable in certain cases when a duty is imposed by Act of Parliament for the benefit of an individual. Mandamus is neither a writ of course nor of right, but it will be granted if the duty is in the nature of a public duty and especially affects the rights of an individual, provided there is no more appropriate remedy. The person or authority to whom it is issued must be either under a statutory or legal duty to do or not to do something; the duty itself being of an imperative nature... In cases where there is a duty of a public or quasi-public nature, or a duty imposed by statute, in the fulfilment of which some other person has an interest the court has jurisdiction to grant mandamus to compel the fulfilment...”*

34. In this case, the Council is a statutory body as demonstrated herein above, established under an Act of Parliament and it is headed by the Chairman who

is appointed by the President. The Council essentially carries out public duties and when it receives and considers complaints which are even appealable to the High Court, it exercises quasi-judicial functions as contemplated in Article 165 (6) of the Constitution and therefore its actions or failures are amenable for judicial review of this Court in the circumstances described in this judgment, noting that no decision has been rendered, with reasons, capable of being appealed against to the High Court by any aggrieved party.

35. In **Kenya National Examinations Council vs. Republic Ex parte Geoffrey Gathenji Njoroge & Others Civil Appeal No. 266 of 1996 (CAK) [1997]** eKLR it was stated as follows concerning the order of mandamus:

*“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is*

*legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way... These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of mandamus compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what has already been done... Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons. In the present appeal the respondents did not apply for an order of certiorari and that is all the court wants to say on that aspect of the matter.*

36.The only remedy available to the applicant in this case is mandamus to compel the respondent to perform the statutory duty of rendering a decision in **Disciplinary Case No 9 of 2021.**

37.In the end, I am satisfied that the applicant has demonstrated that the respondent and, in this case, through its chairman, is under a statutory duty to render a decision following the hearing that took place in **Disciplinary case No 9 of 2021.**

38.I therefore allow the application dated 29<sup>th</sup> October, 2025 and issue judicial review order of mandamus compelling the chairman of the Kenya Medical practitioners and Dentists Council, to, within 14 days of service of this judgment, unless extended by this Court, render a decision in Disciplinary case No 9 of 2021 and in default, contempt of court proceedings to be commenced against him/her.

39.As the respondent did not participate in these proceedings and being a public quasi- judicial body, I make no orders as to costs.

40.Decree to issue.

41.File is closed.

42.I so order.

**Dated, Signed & Delivered at Nairobi this 15<sup>th</sup> Day of December, 2025**

**R.E. ABURILI  
JUDGE**

ORIGINAL