

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E360 OF 2025

DANIEL MURIITHI MUCHERU (Suing as a representative in the Estate of SERAH NJAMBI KUNGÚ).....APPLICANT
AND

KENYA MEDICAL PRACTITIONERS AND DENTISTS COUNCIL(KMPDC).....RESPONDENT

AND

AIC KIJABE HOSPITAL.....1ST INTERESTED PARTY

DR. FAITH BONARERI ASETA.....2ND INTERESTED PARTY

JUDGMENT

1. Pursuant to leave granted on 11th November, 2025 in HC JR E128 of 2025, the applicant herein Daniel Muriithi Mucheru filed his substantive motion by way of Notice of Motion dated 16th November, 2025 on 18th November, 2025 seeking judicial review order of mandamus compelling the respondent, Kenya Medical Practitioners and Dentists Council to render its decision in KPMDC Disciplinary CASE No. 69 of 2022 between the applicant herein Daniel Muriithi Mucheru (suing as representative of the estate of the estate of the late Serah Njambi Kung'u) versus AIC Kijabe Hospital, Naivasha and Dr Faith Bonareri Aseta.
2. The application is supported by grounds in the statutory statement as filed together with the Chamber Summons for leave and verified by an affidavit sworn by the applicant on 16th September, 2025 and the annexures thereto.

3. From the onset, the respondent never appeared to defend the matter, despite service of the application being effected upon them. Both the interested parties appeared through counsel and conceded to the application.
4. Circumstances giving rise to these proceedings are that following the demise of Serah Njambi Kung'u on 5th May, 2022 following alleged complications during a Caesarean section at AIC Kijabe Hospital Naivasaha, attributed to alleged negligence of the interested parties herein, the applicant lodged a complaint with the KMPDC on 11th June, 2022 and the case was registered as Disciplinary case No. 69 of 2022.
5. That the said complaint was duly heard and concluded on 23rd February, 2022 after which the parties complied with the Council's directive to file written submissions and they were informed that a decision would be rendered within sixty days. Since then, no ruling has been delivered despite requests made to the Council on when the said ruling will be delivered.
6. The applicant avers that the respondent being a statutory body, is mandated to receive and hear disciplinary complaints against medical practitioners expeditiously and fairly and that its failure to render a decision since 2022 constitutes an administrative inaction and in violation of Article 47 of the Constitution and the Fair Administrative Action Act, 2015.
7. Further, that the delay in delivering the ruling in a matter which was heard and concluded in 2022 is inordinate, unjustified, unreasonable and prejudicial to the family of the deceased as it denies them closure and justice.

8. In her oral submissions made in support of the application, Counsel for the applicant reiterated the prayers and grounds as pleaded adding that the applicant has no alternative remedy.
9. The interested parties' counsel was present in court during the oral hearing and were recorded as having no objection to the application being allowed as prayed.

Analysis and Determination

10. I have considered the application, grounds and annexures thereto and the main issue is whether the application is merited. The applicant seeks for mandamus to compel the respondent to perform its statutory duty to render a ruling in a disciplinary case which was fully heard in 2022.
11. The respondent is a statutory body established under section 3 of the **Kenya Medical Practitioners and Dentists Act, Cap 253 Laws of Kenya -the Act**. The section provides:

3. Establishment of the Council

(1) There is established a Council to be known as the Kenya Medical Practitioners and Dentists Council.

(2) The Council shall be a body corporate with perpetual succession and a common seal and capable, in its corporate name, of—

(a) suing and being sued;

- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property; and*
- (c) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act as may lawfully be done or performed by a body corporate.*

12. The functions of the Council, under the Act are stipulated 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.*

13. Section 4A. of the Act provides for Committees of the Council among them:

- (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.

14. Section 15 of the Act empowers the Council to register health institutions.

15. Concerning disciplinary proceedings, section 20 of the Act provides an elaborate process as follows, which procedure includes consequences of a medical practitioner, dentist or health institution being found culpable in disciplinary proceedings:

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 present in the inquiry.

16. From the above statutory provisions, it is apparent that the respondent is the statutory body mandated to receive, hear and determine complaints of professional misconduct on the part of medical practitioners, dentists and against health facilities and institutions.

17. In this case, the respondent received and considered a complaint of alleged medical negligence against the interested parties herein in June 2022 and parties closed their submissions, awaiting a decision and reasons for the decision. The parties had not received any feedback from the respondent despite written and physical inquiries as to when the decision would be rendered as at the time of hearing this case and reserving it for judgment.

18. On the legal consequences of failure by the Council to render a decision in a complaint which has been heard, the Act does not prescribe timelines within which the Council must render the decision.

19. However, the absence of express timelines does not confer upon the Council the liberty to decline without reasons, ignore, or indefinitely delay the exercise of its statutory mandate.

20. The Council, being a statutory body exercising public power, is bound by Article 47 of the Constitution (fair administrative action); Article 232 (values and principles of public service); as well as the Fair Administrative Action Act, 2015. In my view, a failure or refusal to render a decision within a reasonable time amounts to unlawful administrative inaction.

21. Section 2 of the Fair Administrative Action Act defines "**administrative action**" to include-

(a) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(b) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.

22. Additionally, the Act defines "***decision***" to mean any administrative or quasi-judicial decision made, proposed to be made, ***or required to be made, as the case may be.*** The Act also defines "***failure***", ***in relation to the taking of a decision, to include a refusal to take the decision.***

23. Section 4 of the Fair Administrative Action Act provides for the procedure for administrative actions as follows:

4. Administrative action to be taken expeditiously, efficiently, lawfully etc.

(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) Every person has the right to be given written reasons for any administrative action that is taken against him.

(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard;

(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;

(d) a statement of reasons pursuant to section 6;

(e) notice of the right to legal representation, where applicable;

(f) notice of the right to cross-examine or where applicable; or

(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

(4) The administrator shall accord the person against whom administrative action is taken an opportunity to

(a) attend proceedings, in person or in the company of an expert of his choice;

(b) be heard;

(c) cross-examine persons who give adverse evidence against him; and

(d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.

(5) Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.

(6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the administrator may act in accordance with that different procedure.

24. Rule 10Y of the Rules made under the Kenya Medical Practitioners and Dentists Act, in respect of Disciplinary proceedings provides **for Decisions of the Committee.** The Rule states:

(1) After the hearing the complaint, the Committee may determine or order—

(a) that the complaint be dismissed;

(b) that the member be reprimanded;

(c) that the member be suspended from practice for a specified period not exceeding two years; or

(d) make such order as the Committee consider fit.

25. On the other hand, Rule 10Z provides that the Committee of the Council in its decision **must provide reasons for the decision**, The Rule states:

10Z. Reasons for Decisions

The Committee shall give reasons for reaching its decision, and each decision shall include—

(a) a statement of the findings of fact made from the evidence adduced, including, where applicable, any relevant government policy; and

(b) a statement of the laws and rules of law applied, and the interpretation thereof.

26. As earlier stated, although there is no provision for the timelines within which disciplinary proceedings should be considered and a determination

made, section, **58 of the Interpretation and General Provisions Act** provides as follows:

58 Provisions where no time prescribed

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.

27. It is therefore imperative that irrespective of the merits or outcome of the decision to be rendered by the Council, the Council is expected to consider a complaint filed with it by a complainant, against any one of its members or health facility or institution and determine with reasons for the decision, which an aggrieved party may challenge. That decision must be rendered within reasonable time in accordance with section 58 of the Interpretation and General provisions Act, aligning the time with Article 47 (1) of the Constitution which guarantees every person the right to fair Administrative Action that is expeditious, efficient, lawful, reasonable and procedurally fair.

28. Expedition is key in enhancing parties to disputes, access to justice as guaranteed in Article 48 while delay is abhorred by Article 159(2) (b) of the Constitution which stipulates that justice shall not be delayed.

29. Furthermore, delay denies parties whose rights to fair administrative action are alleged to be violated, another constitutionally guaranteed right to fair hearing as stipulated in Article 50(1) of the Constitution which guarantees every person the right to have any dispute that can be resolved by the

application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

30. In this case, the applicant lodged a complaint in June, 2022 which complaint was heard and what the respondent refused to do is to render a decision, with reasons. The delay of nearly four years is unreasonable and unacceptable. It amounts to delayed and denied justice.

31. Therefore, on whether mandamus is available to the applicant, an order of mandamus lies to compel the performance of a public duty where a statutory body has failed or refused to perform or act.

32. **The Halsbury's, "Laws of England", Halisham Edition, Vol. IX, 744, para 1269, Cited in Tan Bug Tain v. Collector of Bombay, AIR 1946 Bom 216 at p. 255 states:**

"The writ of mandamus is a high prerogative writ 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 Court, 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 supply 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 and no specific legal remedy for enforcing such right and it may issue in cases where although there is an alternative legal remedy, yet such mode of redress is less convenient, beneficial and

effectual".¹² "Mandamus will be appropriate to compel a tribunal to exercise a jurisdiction which it possesses but declines to exercise"¹³ and again Halsbury says, "The Court will as a general rule and in exercise of its discretion, refuse an order of Mandamus when there is an alternative specific remedy, beneficial and effective."

33. The scope of mandamus in Kenya was authoritatively stated in **Republic v Kenya National Examinations Council ex parte Gathenji & Others [1997] eKLR**, where the Court of Appeal held that:

"The next issue we must deal with is this: What is the scope and efficacy of an ORDER OF MANDAMUS? Once again, we turn to HALSBURY'S LAW OF ENGLAND, 4th Edition Volume 1 at page 111 FROM PARAGRAPH 89. That learned treatise says:-

"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 and 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."

34. At paragraph 90 of the decision headed ***“the mandate”*** it is stated:

“The order must command no more than the party against whom the application is made 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.”

What do these principles mean? They mean that an order of mandamus will compel 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...”

35. The applicant prays for an order Mandamus to compel the respondents to render a ruling in a complaint that he lodged against the interested parties, alleging medical negligence on the part of the interested parties, leading the death of his kin. Mandamus is the only remedy available and will issue to compel a person or body of persons who has failed to perform a duty to the detriment of a party who has a legal right to expect the duty to be performed. Basically, Mandamus is a judicial command requiring the performance of a specified duty which has not been performed.

36. The duty imposed by section 20 of the Kenya Medical Practitioners and Dentists Act is to consider allegations of unprofessional services and render decisions. Failure to do so invites judicial review.

37. The applicant has no other alternative appropriate remedy. In **R (Regina) vs. Dudsheath, ex parte, Meredith [1950] 2 ALL E.R. 741, at 743, Lord Goddard C. J. said -**

"It is important to remember that "mandamus" is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it. "

38. Mandamus thus lies to compel the exercise of statutory power where a public body has failed or refused to act, though not to dictate the outcome of that exercise. The Court of Appeal in **Makupa Transit Shade Limited & Anor vs. Kenya Ports Authority & Another [2015] eKLR** stated as follows regarding the order of mandamus:

"What of the Order of mandamus" The general rule is that the issuance of mandamus is limited to where there is no specific legal remedy for enforcing it or the alternative legal remedy is less convenient, beneficial and effectual. Its scope against public bodies is limited to performance of a public duty where statute imposes a clear

and unqualified duty to do that act. However, if the duty is discretionary as to its implementation, then mandamus cannot dictate the specific way the decision will be exercised. 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. The applicant in addition has to show that it has a legal right to the performance of the legal duty by the party against whom it issues.”

39. In **Jotham Mulati Welamondi v Chairman, Electoral Commission of Kenya [2002] KEHC 1123 (KLR)**, the High Court stated that mandamus is the appropriate remedy for compelling a person to perform a duty imposed on him by statute which duty he has refused to perform to the detriment of the Applicant. Ringera J (as he then was) stated as follows:

“On whether or not an order for Mandamus could issue to Compel the Electoral Commission to perform a duty imposed upon it by the constitution, I am in agreement with the submission of counsel for the applicant that it would in appropriate circumstances. The authorities cited show that mandamus is the appropriate remedy for compelling a person to perform a duty imposed on him by statute which duty he has refused to perform to the detriment of the applicant. A fortiori it is should be an appropriate remedy to compel the performance of a constitutional duty.”

40. In **Republic v Commissioner of Lands ex parte Lake Flowers Ltd [2008]**

eKLR, the Court held that mandamus will issue to compel a public authority to exercise discretion where it has unlawfully declined or failed to do so, though not to dictate the manner of that exercise.

41. Applied to Cap. 553, the Council has a public and statutory duty to consider complaints by any person who is dissatisfied with any professional service offered, or alleges a breach of standards by a registered or licensed person under the Act.

42. Where the Council fails, refuses, or unreasonably delays to consider and or render decisions after hearing the complaints as was in the present case, an affected party has locus standi to seek judicial review and this Court may issue an order of mandamus compelling the Council to determine the complaint, without the Court directing the expected outcome.

43. In this case, there was reasonable time given to the respondent to render the decision after hearing the complaint in June, 2022, a decision whichever way as provided for under section 20 (6) of the Act. The respondent has failed to do so.

44. Accordingly, and in view of the above analysis, I find and hold that the applicant has established that he is entitled to the prayers sought, there being no other remedy available to him to cause the respondent to deliver the ruling with reasons.

45.I hereby issue judicial review order of mandamus compelling the respondent Kenya medical practitioners and Dentists Council (KMPDC) herein to, within 45 days of service upon it of this judgment, to render its decision in Disciplinary Case No. 69 of 2022 giving reasons for the decision in accordance with the law.

46.As this judgment is being delivered after the Respondent Council has delivered its decision, this judgment remains for record purposes only but with serious concerns that parties appearing before the Council with complaints have to come to Court to compel delivery of decisions long after the hearing of the complaints, which denies parties the right to fair administrative action is expeditious, efficient, lawful, reasonable and procedurally fair.

47.I however make no orders as to costs.

48.This file is accordingly closed.

Dated, Signed &Delivered at Nairobi virtually this 18th Day of February, 2026

**R.E. ABURILI
JUDGE**