REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E407 OF 2025

FAITH WAMBUI FRANCIS……...EXPARTE APPLICANT

VERSUS

PRINCIPAL SECRETARY,

STATE DEPARTMENT FOR PUBLIC WORKS……...1ST RESPONDENT

SOCIAL HEALTH AUTHORITY(SHA)……....2ND RESPONDENT

JUDGMENT

1. Pursuant to leave granted on 24th November, 2025 in JR E228 of 2025, the exparte applicant herein, Faith Wambui Francis filed the substantive Notice of Motion specifically brought under Order 53 Rules 3 and 4 of the Civil Procedure Rules, sections 8 and 9 of the Law Reform Act and Article 47 of the Fair Administrative Action Act.
2. The Notice of Motion which is dated 15th December, 2025 seeks the following orders:
    a) ***That an order of mandamus do issue compelling the 1st respondent to issue and release to the exparte applicant the requisite letter forwarding the claim for Last Expense and Group Life to the 2nd Respondent.***

b) That an order of mandamus be issued compelling the respondents to process the Last Expense and Group Life in favour of the Exparte applicant.

c) That the costs of this application be provided for.

3. The grounds upon which the application is predicated are that the late Justus Mworia Mbui who died on 16th September, 2019 was a civil servant working with the State Department for Public Works at the time of his demise.
4. That the deceased declared the exparte applicant herein as his next of kin as per the Government Human Resource Information System (GHRIS) and that therefore it is the exparte applicant who is solely entitled to the Last Expense and Group Life Cover for civil servants, following the demise of her husband.\
5. That the exparte applicant completed all the requisite forms as required and submitted the claim to the 1st respondent but that she was informed that she required a letter from the 1st respondent forwarding the claim for Last Expense and Group Life to the 2nd Respondent.
6. That she has followed up the matter with the 1st respondent to no avail hence this application, as there is no justification for failure to issue her with a letter forwarding the claims documents to the 2nd respondent for settlement of the claims.
7. She asserts that the refusal by the 1st respondent to issue her with a letter without any reasons despite certifying that the applicant herein is the next of

kin and an eligible beneficiary is unlawful, unreasonable, administratively unfair and contrary to the applicant's legitimate expectations hence, this Court should grant her the orders sought in the interest of justice.

8. The application is supported by an affidavit sworn by the exparte applicant although as a norm, all she required was a statutory statement which is the main pleading in support of the application for leave to apply. The supporting affidavit nonetheless rehashes the statutory statement and the grounds reproduced hereinabove, adding that she is the named next of kin for the deceased and that she lodged the claim because Article 7 of the Handbook for provision of comprehensive medical cover, Group Life Cover and Last Expense cover for civil servants, an excerpt which she annexed, according to her, provides that the claims were payable to the next of kin hence the 1st respondent should exercise its mandate and issue a letter to the 2nd respondent to process the claims.

Responses to the application

9. Opposing the application and the prayers sought, the respondents filed replying affidavits independently. The 1st respondent's replying affidavit is sworn by Irene Murando Shuma on 21st November, 2025 deposing that she is the Human Resource Management Assistant III at the 1st Respondent and admits that Justus Mworia Mbui was an employee of the 1st Respondent State Department. That he died on 16th September, 2019.

10. Responding to the exparte applicant's claims, the deponent states that the State Department did fill the required forms for processing of Last expense and Group Life Cover for the deceased on 14th October, 2019 and has annexed copies of those forms. That Paragraph 7.1 of the Group Life Cover does not require the 1st respondent to forward any letter to the 2nd respondent as alleged.
11. According to the 1st respondent, the forms forwarded to the Pensions Department had two beneficiaries of the deceased's estate namely, Ann Wambui Nyaruiru and Faith Wambui Francis the exparte applicant herein, both of whom were paid the death gratuity in respect of the deceased officer on 29th November, 2023 and that the alternative next of kin was Edwin Kirimi Mworia who was the son of the deceased.
12. The deponent annexed copies of a letter dated 29th November, 2023 and death gratuity forms forwarded to the Pensions Department and the next of kin forms. She denied the allegations that the 1st respondent had refused or failed to issue a letter as required by the 2nd respondent's predecessor handbook. In the letter, it was explained that the delay in submitting the claim forms was occasioned by a dispute between two families at Naivasha Court and it also confirmed that the deceased was also known by other alias names interchangeably.
13. The 2nd respondent filed a replying affidavit sworn by Dr Mercy Mwangangi, the Chief Executive Officer of the 2nd Respondent (SHA), The successor of

NHIF. Although the affidavit cites JR E228 of 2025, the latter was a chamber summons for leave which Justice Chigiti SC granted exparte. The confusion must have arisen because the applicant served upon the respondents both applications, which is the requirement under Order 53 of the Civil procedure Rules. The anomaly is excusable and therefore as no prejudice will be occasioned to any party, the said replying affidavit sworn on 18th November, 2025 is deemed to have been filed in these proceedings.

14. Dr. Mwangangi deposes that the exparte applicant has never submitted any forms or documentation for purposes of processing the claims relating to the deceased Justus Mbui Mworia and that neither has the 2nd respondent received any claim forms from the 1st respondent. According to the 2nd respondent, the exparte applicant had not submitted the mandatory documents to enable them process the claim and those documents include:

    a. A fully executed claim form;
    b. A certified copy of death certificate;
    c. Burial permit;
    d. Identity Card or surrender of the Identity Card for the deceased;
    e. Identity Card of the next of Kin;
    f. Pay slips for the next of kin
    g. Employer confirmation and benefit forwarding letter.

15. The 2nd respondent's deponent deposes that the 2nd respondent Authority has established clear internal mechanisms, procedures and channels for lodging

claims, all of which are publicly known and routinely applied to all claimants pursuing Last Expense and Group Life, which mechanisms the exparte applicant had not exhausted as stipulate din the Social Health Insurance Act, the Authority's internal policies and general administrative law principles.

16. That had the exparte applicant submitted the required documents or invoked the internal mechanisms for resolving disputes, the matter could have been resolved without recourse to litigation. She deposes that accordingly, these proceedings are premature, misconceived and an abuse of court process.

17. It is further deposed that the Authority would only process and pay upon receipt of documents which are mandatory and to beneficiaries of deceased civil servants.

Submissions

18. The substantive notice of motion was canvassed orally on 10th February, 2026. Mr. Chiuri counsel for the exparte applicant restated the mandamus orders sought in the notice of motion dated 15th December, 2025. He submitted reiterated the contents of the grounds and supporting affidavit, maintaining that the applicant had completed all the required forms but that despite acknowledging her as the deceased's next of kin, the 1st respondent had refused to forward a letter to the 2nd respondent. That the documents

asked by the 2nd respondent are in custody of the 1st respondent and that both owe the applicant a statutory duty.

19. In response, Ms Gathenya counsel for the 1st respondent submitted that from the GRHIS, although the applicant is named as next of kin, a child is also named and that the delay in submitting the forms for the claims was occasioned by the failure of the applicant to include the child of the deceased as a beneficiary. That negotiations had been initiated to include the child of the deceased but the same were not successful hence the delay. That the applicant cannot claim to be the sole beneficiary even if she was named as next of kin, there being another named alternative next of kin Edwin Kirimi Mworia and that it is in the interest of justice that all named beneficiaries are included in the Group Life Cover and last expense benefits.

20. On behalf of the 2nd respondent, Ms Chesyna submitted agreeing with what Ms Gathenya had submitted and added that pension was paid to both the applicant and the other family after a protracted dispute and that once the parties agree, payment shall be effected.

21. In a rejoinder, Mr. Chiuri for the applicant submitted that the issues of pension are distinct from the Last expense and Group Life Cover and that distribution is neither here nor there. He cited Article 6 of the Human Resource Handbook for the 1st respondent stating that it provides for payment to the next of kin and that the child, Bonface is not listed as next of

kin hence he cannot be paid the last expense. He also cited Article 7 of the said Handbook.

22. I note that there are two persons named in the employer records, Edwin Kirimi Mworia as son and alternative next of kin and Bonface Mbui Mworia as child and dependant.

Analysis and Determination

23. I have considered the substantive notice of motion, the grounds in support, the statutory statement and the annextures thereto. I have also considered the replying affidavits fled by the two respondents and the respective parties' counsel's oral submissions.

24. In my humble view, the main issue for determination is whether the mandamus orders sought are available to the applicant. There are other ancillary questions that this Court will endeavour to answer, in resolving the above main issue. That said, it is important that I rehash the background to this matter before answering the questions that resolve the bigger issue.

25. It is undisputed that the applicant is the widow of a deceased Justus Mbui Mworia, a former employee of the 1st respondent State Department, challenging a decision by the Respondents regarding the distribution of Group Life and Last Expenses employment benefits, which were administered by the now defunct National Hospital Insurance Fund (NHIF), the predecessor of Social Health Authority, (SHA).

26. The applicant claims that the 1st respondent has refused to issue her with a letter addressed to the 2nd respondent to settle the claims. She relies on the 1st respondent's Human Resource Handbook which provides for payment of Last Expense benefits to the next of kin to cater for funeral expenses and the Group life benefits payable to the next of kin.

27. The 1st respondent on the other hand contends that the applicant wants to disinherit the son of the deceased, from another relationship, who was also listed as next of Kin/dependant as per the annexed GHRIS at page 6 of 7 section F where Mbui Bonface Mworia is named as a beneficiary for medical cover and as child, but only the applicant is named as next of kin. On the other hand, Edwin Kirimi Mbui is named as son in the particulars of next of kin, as an alternative next of kin.

28. The other undisputed fact is that one, Mbui Bonface Mworia is listed as a dependant in the form annexed by the 1st respondent employer and Edwin Kirimi Mworia is named as alternative next of kin. However, the applicant argues that issues of pension gratuity are different from Last Expense and Group Life Cover benefits. The 1st respondent contends that the pension dues were shared with the deceased's son, albeit the applicant had initially refused to accept the fact of his dependency and therefore a beneficiary at first and that the dispute was protracted before final payment was effected.

29. The 2nd respondent SHA, which ought to release the benefits claims, denies that it has received the claim forms and documentation as required under the

law and policies governing its disposal of such benefits and asserts that once it receives the documentation required, it will settle the benefits.

30. I note that the son to the deceased, who is listed as a dependant, but not being the applicant's child, and whose interests the 1st respondent appears to be protecting, is not a party to these proceedings and has therefore not filed any response to the application for judicial review.

31. The big question is whether such a dispute, touching on entitlement to benefits, absence of a person of interest and who may directly be affected by any payments being made excluding him and whom the 1st respondent claims has a beneficial interest thereto, can properly be resolved through judicial review proceedings and more specifically, by way of mandamus. The other questions are whether the failure to join the deceased's son is fatal to the application; and finally, whether this Court may rely on prior determinations relating to pension and gratuity to determine the dispute on merit.

32. On whether questions of entitlement to benefits can be determined within judicial review proceedings, it is now settled that scope of judicial review in proceedings brought under Order 53 of the Civil Procedure Rules is concerned not with the merits of a decision, but with the legality, rationality and procedural fairness of the decision-making process.

33. The purpose of judicial review was set out by the Court of Appeal in the case of **Municipal Council of Mombasa -vs- Republic & Umoja Consultants Ltd [2002] eKLR** as follows:

> ***"Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters….The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself- such as whether there was or there was not sufficient evidence to support the decision."***

34. In **Republic -vs- Kenya National Examinations Council Ex Parte Gathenji & Others [1997] eKLR,** the Court of Appeal explained the principles applicable for an order of mandamus to issue as follows:

> ***"…what is the scope and efficacy of an Order of Mandamus? Once again, we turn to Halsbury's Laws of England, 4th Edition Volume 1 at page 111 Paragraph 89. The learned treatise says:***
>
> > ***"The order of mandamus is of 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 not 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… 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. In **Republic -vs- The Commissioner of Lands & Another Ex Parte Kithinji Murugu M'agere [2012] eKLR** it was held that an order of mandamus is to be employed to enforce the performance of a public duty which is imperative, not optional or discretionary, with the authority concerned. Further that an order of mandamus may be issued to enforce a mandatory duty which may not necessarily be a statutory duty but which has *"a public element"* which may take any form.

36. In **Republic -vs- Town Clerk, Kisumu Municipality Ex Parte East African Engineering Consultants [2007] 2 E.A,** the Court stated that an order of mandamus compels a public officer to act in accordance with the law. As such the court will only issue an order of mandamus where it concludes that it is the only decision lawfully open to the public body and there is no other legal remedy available to remedy the infringement of a legal right.

37. From the above judicial pronouncements, and others not cited, an order of mandamus issues to compel the performance of a public duty imposed by law. However, the order does not lie where the duty is unclear; where there is an alternative effective remedy and I add that where the right claimed is contested.

38. The Applicant in these proceedings seeks mandamus orders against both respondents, on the basis that the two respondents have, in the case of the 1st respondent, failed to issue a letter to the 2nd respondent an employer confirmation letter and pay slips which are in the possession of the 1st respondent for the 2nd respondent to pay the Last expense and Group Life Cover benefits to the applicant who is next of kin and who is the declared eligible beneficiary of the said benefits.

39. The applicant maintains that the issue of pension having been shared with the other named dependant son of the deceased is distinct from the benefits

being claimed and she insists that Dispute is one that involves the respondents performing their public duties.

40. Before I fully determine this question of whether mandamus is the appropriate remedy in the circumstances described above, I shall first determine the question of whether judicial review is the appropriate remedy where there exists an effective alternative dispute resolution mechanism.

41. The 2nd respondent strongly opposed the applicant's application, maintaining that it had not received any documentation requiring that it settles the claims and secondly, that the application herein was premature because there are established internal dispute resolution mechanisms for resolving such disputes which the applicant has by passed.

42. The established legal principle is that where an alternative and more appropriate remedy exists, the Court will ordinarily decline to exercise its judicial review jurisdiction.

43. In this case, **Part VIII of SHA Act** is on **Dispute Resolution Tribunal** and section 43 of the Act provides that:

> ***(1)A person aggrieved by a decision made under this Act may, within one month from the date of the decision, appeal to the Dispute Resolution Tribunal for a review of such decision.***
>
> ***(2) The Tribunal may uphold, reverse, revoke or vary the decision of the Board appealed under subsection (1).***

(3)A person who is not satisfied with an order made by the Tribunal under subsection (2) may appeal to the High Court within twenty-one days from the date the order is made.

44. Section 44 establishes the Dispute Resolution Tribunal and states:

44(1) <u>There is established a Tribunal to be known as the Dispute Resolution Tribunal for the purpose of hearing and determining complaints, disputes and appeals in accordance with this Act or any other written law.</u>

45. The applicant complains that the 2nd respondent has refused to perform its public duty to process and pay her the Last expense and Group Life Cover benefits due to her as the declared next of kin for the deceased Justus Mbui Mworia. Under the intestate Succession children are recognized as automatic beneficiaries of a deceased person's estate, whether maintained by their parents or not at the time of the parents' demise.

46. Section 2 of the Fair Administrative Action 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 while "failure", in relation to the taking of a decision, includes a refusal to take the decision.

47. The alleged failure to process payment by the 2nd respondent is therefore a failure to take an administrative action and is therefore governed by the Act, which implements Article 47 of the Constitution. Furthermore, the applicant

brought the application under Article 47 of the Constitution, among other statutory and regulatory provisions.

48. Section 9 of the Fair Administrative Action Act provides that:

(1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.

2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under subsection (1).

(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.

(5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.

49. Section 44 of the SHA Act establishes the Dispute Resolution Tribunal to hear and determine complaints against the Authority while section 43 provides that a person aggrieved by a decision made under this Act may, within one month from the date of the decision, appeal to the Dispute Resolution Tribunal for a review of such decision. The decision of the Tribunal is appealable to the High Court as a matter of right within the stipulated period.

50. On exhaustion of remedies, Courts have over time held that failure to exhaust the available alternative dispute resolution mechanism is fatal to the case where a party invokes the original jurisdiction of the Court. In **MUTANGA TEA & COFFEE COMPANY LTD vs SHIKARA LIMITED & MUNICIPAL COUNCIL OF MOMBASA [2015] e KLR** which decision was rendered on 31st July 2015 after the enactment of the Fair Administrative Action Act, 2015 which came into effect on 17th June, 2015, the Court of Appeal in dealing with the question of failure to exhaust the alternative dispute resolution mechanism stated as follows:

"We have carefully considered the provisions of the PPA and we do not see the basis of the argument that it contemplates the possibilities of some aggrieved parties sidestepping the provided elaborate dispute

resolution procedures and taking their grievances directly to the High Court. Throughout the PPA refers to "any person aggrieved by a decision". That aggrieved person, in our view, includes the owner of an adjacent property like the present appellant. In our reading of section 41(3) of the PPA against the other provisions of the Act, a person who is supposed to be served with a copy of the application for change of user or for development and is not so served is an aggrieved party within the meaning of the Act and is entitled to resort to the dispute resolution mechanism provided under the Act to agitate his grievance. He is not entitled to ignore the provisions of the Act and invoke the original jurisdiction of the High Court.

The EMCA takes a similar approach on matters of the Environment. Section 58 as read with the Second Schedule overrides all provisions of other laws (including the PPA) and requires any person undertaking, among others, a project involving an activity out of character with its surrounding, or a structure of a scale not in keeping with the surroundings or entailing major changes in land use to first undertake an environment impact assessment. Under the Environmental (Impact Assessment and Audit) Regulations 2003, in undertaking an environment impact assessment, all persons likely to be affected by the project must be consulted. In section 31 the Act establishes the Public Complaints Committee whose functions, among

other things, is to investigate any allegations or complaints against any person relating to the condition of environment.

Like under the PPA, any person aggrieved by a decision of the Director General, of NEMA or of any of its Committees has a right of appeal to the National Environment Tribunal under section 129(2) of EMCA, which may confirm, set aside, or vary the impugned decision and make such order as it may deem fit. A decision of the Tribunal is, under section 130 appealable to the High Court.

The real question then becomes whether an aggrieved party can ignore these elaborate provisions in both the PPA and the EMCA and resort to the High Court, not in an appeal as provided, but in the first instance.

This Court has in the past emphasized the need for aggrieved parities to strictly follow any procedures that are specifically prescribed for resolution of particular disputes. SPEAKER OF THE NATIONAL ASSEMBLY V. KARUME (supra), was a 5(2)(b) application for stay of execution of an order of the High Court issued in judicial review proceedings rather than in a petition as required by the Constitution. In granting the order, the Court made the often-quoted statement that:

"[W]here there is a clear procedure for the redress of any particular grievances prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed."

(See also KONES V. REPUBLIC & ANOTHER EX PARTE KIMANI WA NYOIKE & 4 OTHERS (2008) 3 KLR (ER) 296).

It is readily apparent that in those cases the Court was speaking to issues of the correct procedure rather than of the correct forum for resolution of a dispute. However, we entertain no doubt in our minds that the reasoning of the Court must apply with equal force to require an aggrieved party, where a specific dispute resolution mechanism is prescribed by the Constitution or a statute, to resort to that mechanism first before purporting to invoke the inherent jurisdiction of the High Court.

The basis for that view is first that Article 159 (2) (c) of the Constitution has expressly recognized alternative forms of dispute resolution, including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. The use of the word "including" leaves no doubt that Article (159(2)(c) is not a closed catalogue. To the extent that the Constitution requires these forms of dispute resolution mechanisms to be promoted, usurpation of their jurisdiction by the High Court would not be promoting, but rather, undermining a clear constitutional objective. A holistic and purposive reading of the Constitution would therefore entail construing the unlimited original jurisdiction conferred on the High Court by Article 165(3)(a) of the Constitution in a way that will accommodate the alternative dispute resolution mechanisms.

Secondly, such alternative dispute resolution mechanisms normally have the advantage of ensuring that the issues in dispute are heard and determined by experts in the area; and that the dispute is resolved much more expeditiously and in a more cost-effective manner. In RICH PRODUCTIONS LTD. V. KENYA PIPELINE COMPANY & ANOTHER, PETITION NO. 173 OF 2014, the High Court explained why it must be slow to undermine prescribed alternative dispute resolution mechanisms thus:

"The reason why the Constitution and the law establish different institutions and mechanism for dispute resolution in different sectors is to ensure that such disputes as may arise are resolved by those with the technical competence and the jurisdiction to deal with them. While the Court retains the inherent and wide jurisdiction under Article 165 to supervise bodies such as the 2nd respondent, such supervision is limited in various respects, which I need, not go into here. Suffice to say that it (the court) cannot exercise such jurisdiction in circumstances where parties before it seeks to avoid mechanisms and processes provided by law, and convert the issues in dispute into constitutional issues when it is not."

On the same reasoning, this Court, in REPUBLIC V. THE NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY, CA NO. 84 OF 2010 upheld a decision of the High Court, which declined to entertain a

judicial review application by a party who had a remedy, which he had not utilized, under the National Environment Tribunal. The Court reiterated that where Parliament has provided an alternative remedy in the form of a statutory appeal procedure, it is only in exceptional circumstances that an order of judicial review will be granted. More recently in VANIA INVESTMENT POOL LTD. V. CAPITAL MARKETS AUTHORITY & 8 OTHERS, CA NO 92 OF 2014 this Court also upheld a decision of the High Court in which the court declined to entertain a judicial review application by an applicant who had failed to first refer its dispute to the Capital Markets Appeals Tribunal established by the Capital Markets Act.

We are therefore satisfied that the learned judge did not err by striking out the appellant's suit and application which sought to invoke the original jurisdiction of the High Court in circumstances whereas the relevant statutes prescribed alternative dispute resolution mechanisms and afforded the appellant the right to access the High Court by way of appeal, which mechanisms he had refused to invoke. To hold otherwise would, in the circumstances of this appeal, be to defeat the constitutional objective behind Article 159(2)(c) and the very raison d'etre of the mechanisms provided under the two Acts.

What we have stated above also sufficiently disposes of the appellant's contention that the High Court failed to invoke its inherent jurisdiction

or abdicated its jurisdiction. It also answers the applicant's contention that the failure to follow the prescribed dispute resolution mechanism was a mere technicality curable under Article 159 (2) (d) of the Constitution. Granted the express constitutional principle under which the dispute resolution mechanisms provided by the PPA and the EMCA are underpinned, it cannot be claimed that lack of compliance with those mechanisms is a mere technicality."

51. In **Speaker of the National Assembly v Karume [1992] KLR 21,** the Court of Appeal observed that where the Constitution or an Act of Parliament provides a clear procedure for redress, that procedure should be strictly adhered to. This position has been reaffirmed in many later decisions. In **Geoffrey Muthinja & Another v Samuel Muguna Henry & 1756 Others [2015] eKLR**, the Court of Appeal emphasized the importance of allowing statutory bodies to exercise the mandates given to them by statute before the courts are invited to intervene.

52. In **Ndiara Enterprises Ltd v Nairobi City County Government [2018] KECA 825 (KLR)**, the Court of Appeal had this to say on resorting to alternative dispute resolution mechanisms provided for under the statute:

"The issues arising for determination in our view are, whether the High Court was the proper forum or had the requisite jurisdiction to hear and determine the judicial review application and whether an order of mandamus was available to the appellant in the circumstances of this

case. The appellant has impugned the High Court's finding that it lacked jurisdiction to determine its application. The appellant claimed that a public duty was imposed on the respondent by virtue of sections 29 and 30 of the PPA to comply with the appellant's demands. The said provisions provide as follows:

"29. Powers of local authorities Subject to the provisions of this Act, each local authority shall have the power-

(a) To prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;

(b) To control or prohibit the subdivision of land or existing plots into smaller areas;

(c) To consider and approve all development applications and grant all development permissions;

(d) To ensure the proper execution and implementation of approved physical development plans;

(e) To formulate by-laws to regulate zoning in respect of use and density of development; and

(f) To reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approval physical development plan.

30. Development permission

(1) No person shall carry out development within the areas of a local authority without a development permission granted by the local authority under section 33."

Where development approval is denied, section 33 of the Act gives a clear procedure for redress to an aggrieved person. The said section provides as follows:

"(3) Any person who is aggrieved by the decision of the local authority refusing his applications for development permission may appeal against such decision of the relevant liaison committee under section 13.

(4) Any person who is aggrieved by a decision of the liaison committee may appeal against such decision to the National Liaison Committee under section 15.

(5) An appeal against a decision of the National Liaison Committee may be made to the High Court in accordance with the rules of procedure for the time being applicable to the High Court."

Cognizant of the clear procedure for redress provided under the Act, the learned Judge refused to admit jurisdiction in determining the application on the basis that where a clear and specific procedure for redress of a grievance is provided, then that procedure should be strictly followed. The Judge cited the cases of <u>The speaker of The National</u>

***Assembly v Njenga Karume** (2008) 1 KLR 425, **Mutanga Tea & Coffee Company Ltd v Shikara Ltd & Anor** (2015) eKLR for that proposition.*

The appellant also alleged that the respondent's refusal or failure to demolish the illegal structures or to approve its plan for a perimeter wall infringed on its constitutional right to fair administrative action. It invoked sections 4, 7, 8, 9 and 11 of the FAA as the basis for which it sought the order of mandamus. However, the Judge noted that the High Court was expressly prohibited by section 9 (2) of the Act from reviewing "an administrative action or decision under the Act unless the mechanisms for appeal or review and all remedies available under any other written law are first exhausted. "The Act however gives the High Court power to exempt a person from the obligation to exhaust any remedy if the court considers such exception to be in the interest of justice. Faced with that scenario, the learned Judge delivered herself as follows;

"In addition under Section 9(2) of the Fair Administrative Action Act No. 4 of 2015, (1) the High Court or a subordinate court under Subsection (1) is expressly prohibited from and "shall not" review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

(3) The High Court or a subordinate court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under suction (1)

(4) Notwithstanding Subsection (3) the High Court or subordinate court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exception to be in the interest of justice …

64. From the above provisions of the law and decided cases, it is clear that even the Fair Administrative Action Act which the exparte applicant in this case claims has been violated mandates an applicant to show that they have exhausted the alternative remedies available under any other written law or avenue before resorting to court by way of judicial review. However, the onus is on the applicant to demonstrate to the court that there exist exceptional circumstances to warrant his or her exemption from resorting to the available remedies; and on application for such exemption.

65. In this case, no doubt, the applicant had an avenue for ventilating its grievances where the respondent refuses to approve the building plans. There is no evidence that the applicant lodged any such complaint or appeal to the Liaison Committee, the National Liaison Committee and or to the High Court. The Physical Planning Act

provides elaborate mechanisms for resolution of disputes relating to approval of development plans and therefore no party is permitted to bypass those mechanisms and jump into a judicial review Court to obtain orders which are discretionary."

We see no reason to warrant interference with those findings as in our view they are based on sound law and evidence. The record does not reflect any attempt by the appellant to first resolve its grievances against the respondent under the procedure provided for redress under PPA or FAA. There is no evidence that the appellant made any complaints in the nature of the respondent's refusal to approve its plans for construction of a perimeter wall to the liaison committee under section 13 of the PPA. It's clear that the appellant could only approach the High Court on appeal against the decision of the National Liaison Committee. Though the High Court can exempt a party from following such clear laid procedures for redress of grievances before approaching it in the noble interests of justice, the learned Judge rightly found that the appellant had failed to prove there were exceptional circumstances in its case to warrant such exemption. Indeed, there are no apparent exceptional circumstances to justify such exception and which exception was also not sought. The High Court's power to exercise its jurisdiction under Article 165 of the Constitution was therefore limited or restricted by statute in this instance as found by the Judge. The

appellant had complained before this Court that the learned Judge erred in failing to appreciate that though there exists an alternative procedure for redress, the same was less convenient, beneficial and effective in its circumstances. However, that argument must be taken as an afterthought. The same was never raised or pursued before the High Court thus denying the respondent the opportunity for rebuttal and denying this Court the benefit of the reasoning of the High Court on the same issue."

53. In this case, the applicant sued the 2nd respondent without first attempting to have the dispute resolved under the SHA Act as stipulated in sections 43 and 44 of the SHA Act. There is no reason for her by passing that procedure and taking this long, yet the matter would have been resolved by now. In hearing the dispute, all questions involving alleged refusal by the 1st respondent to write an employer confirmation letter and documents as well as the presence of the other alleged beneficiary would have been addressed once and for all.

54. In my view, the failure to resort to the alternative dispute resolution mechanisms provided for under the SHA Act renders these proceedings premature and incompetent as against the 2nd respondent. I so find and hold.

55. As against the 1st respondent, it has not been pleaded or demonstrated that there is an alternative dispute resolution mechanism which the applicant bypassed. However, the respondent raises an important dispute over whether the applicant herein is the sole beneficiary of the benefits accrued, where the

deceased employer named his son as a dependant in the GHRIS and the applicant as the next of kin.

56. This dispute leads this court to ask the question as to whether a next of kin can be said to be the sole beneficiary where there are other dependants listed by the employee who is deceased. In other words, did the listing of the applicant as next of kin make her the sole an absolute beneficiary of Last Expense and Group Life Cover benefits administered by SHA, the successor of NHIF, wherein the deceased also named his son as a dependant?

57. To answer the above question, I will briefly define who a next of kin is. The **Eighth Edition of the Blacks Law Dictionary** defines a next of kin to be ***"a person or persons closely related to a decedent (recently dead person) by blood or affinity."***

58. Thus, the term "next of kin" usually refers to a person's closest living relative(s). Individuals who count as next of kin include those with a blood relation, such as children, or those with a legal standing, such as spouses or adopted children.

59. In the Nigerian case of **JOSEPH v. FAJEMILEHIN O. O. & ANOR (2012) LPELR-9849(CA),** "*Next of Kin* was defined as follows:

> ***"Next of kin, by definition, is the person declared to be the nearest of kindred to the declarant; in this case the 2nd Respondent."***

"A person's next of kin often take(s) precedence over others in inheritance cases, especially where a person dies intestate. Inheritance rights use the next of kin relationship for anyone who dies without a will and no spouse or children.

"Surviving individuals may also have responsibilities during and after their relative's life. For example, the next of kin may need to make medical decisions if the person becomes incapacitated, or take responsibility for their funeral arrangements and financial affairs after their relative dies."

60. In the case of ***ONUKOGU v. NWOKOLO & ANOR (2021) LPELR-55185(CA*** the Appellate court held that a beneficiary of the deceased estate need not be a next of kin, but a legitimate inheritor of the deceased estate. The Court stated that:

"Section 3 of the Administration of Real Estate Law Cap 2 Laws of Kano State provide thus: 'When a person dies intestate possessed of real estate, the court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next of kin, shall be equally entitled to the grant with the next of kin.' This provision is replicated in most Administration of Real Estate Laws in most states in Nigeria.

When you state your next of kin to a financial institution, your financial assets do not immediately go to the next of kin. It simply means that they are the first point of contact if something should happen to you. The next of kin is supposed to be a trusted person that you know will do the right thing and ensure that all processes are done correctly. Under English Law and the Administration of Estate Laws of various states, the surviving spouse together with the children of the deceased inherits his estate to the exclusion of every other person. The parents of the deceased takes next after the surviving spouse and children, followed by brothers and sisters of the full blood, brothers and sisters of half-blood, grandparents, aunties and uncles of full blood relation to the parents of the deceased etc. This was the position in KEKEREOGUN & ORS V. OSHODI (1971) LPELR-1686(SC) subject however to contrary provisions under the Administration of Estate Laws of various states.

The Supreme Court explains how to determine the next of kin of a deceased as follows in the above-mentioned case:

"The rules governing the rights to administration in Nigeria in the circumstances of this case are the rules in England where death occurred there before 1926 and are set out on pages 166 and 167 of Williams on Executors and Administrators 13th Edition as follows:

'In the first place, the children and their lineal descendants to the remotest degree, and on failure of children, the parents of the deceased are entitled to the administration; then follow brothers and sisters, then grandfathers and grandmothers, then uncles or nephews, great-grandfathers and lastly cousins.

"When the contest is between one of the half blood, the whole blood is preferable in the grant of administration to the half-blood, though the majority of interests concur in the latter, unless material objections can be proved against the claimant of the whole blood."

In our view, there can be no question that as between the 1st, 2nd and 3rd defendants who are half-brothers of the deceased and the plaintiff who is his cousin, the 1st, 2nd and 3rd defendants as next-of-kin have the right to administration." Per CHARLES OLUSOJI MADARIKAN, JSC (Pp 7 – 8 Paras B` – A).

"In view of the foregoing, there is nothing special about next-of-kin as far as succession is concerned. Next-of-kin is merely the first contact point if anything happens to you. He is someone empowered to make decisions for you in times of emergency or where you are not readily available or unable to make the decisions yourself. He is someone empowered to provide necessary information about you where needed

such as confirming your identity. He is also someone positioned to make medical decisions such as providing consent for a medical procedure. At best, what a next-of-kin can do after the demise of the deceased is perhaps to ensure that necessary steps are taken towards obtaining letters of administration from the probate. ***The typical Nigerian's conception of the term, "next-of-kin" is therefore erroneous. A next-of-kin can inherit only if he is named in a will as a beneficiary, or by his status he is entitled by law to inherit; but not actually because he is named as the next-of-kin of the deceased in a bank or place of work."***

61. ***"In the case of Mohammed v. Tijani (2021) LPELR-54215 (CA) the Court of Appeal per Cordelia Ifeoma Jombo-Ofo, JCA defined it to mean" the person declared to be nearest of kindred to the declarant. See Black's Law Dictionary and Chambers 20th Century English Dictionary.***

"To simplify the meaning to the man on the street, it means the person that is authorised by someone to take certain decisions or actions on his behalf and in his absence. Usually, the issue comes up after a person has died and he names someone as his next of kin in his personnel file with his employers. The next of kin must be any person that the person trusts. It could be a friend or a relation. It could even be an

incorporated entity. The next of kin is not a beneficiary but the person appointing him may also decide to compensate him for the work he has done pursuant to the appointment as next of kin.

"As a matter of reality, it is always advisable that one's next of kin should be that person that can easily be accessed and trusted enough to act in the absence of the person appointing him. There is no law that states that it is only one's spouse or children that can be named as next of kin. However, it is advisable that in cases of employment, one's spouse or relation should be named as next of kin. Next of kin is not the same thing as being given an inheritance; no, far from it. It is not a will where the testator states how his properties can be distributed. He is also not an Executor of a Will. The simplest definition of his task is that he is the person to be contacted in the event of any emergency."[emphasis added]

62. In Kenya, the employment benefits and insurance proceeds are governed by the terms of the relevant policy or scheme and the identification of beneficiaries therein. Courts have also emphasized the necessity of considering all beneficiaries before determining entitlement to such benefits.
63. However, in this case, which is not a succession cause, I shall not attempt to determine the question of entitlement as that would be outside the judicial review line. That said, it is important to note that Article 27 of the

Constitution provides for equality of all in terms of protection, benefits provided under the law, enjoyment of rights, fundamental freedoms and non-discrimination due to one's age, birth or health status among other grounds.

64. The Applicant seeks orders that would, in effect, exclude the deceased's son from any entitlement to the benefits in question yet, the son, whose rights stand to be directly affected, has not been joined in these proceedings. In my view, the omission is not a mere procedural technicality. It strikes at the very core of the dispute. This is because, the son is the biological child of the deceased and a person previously recognized as a beneficiary in related death gratuity proceedings; and is the person whose entitlement is being challenged by the applicant against the 1st respondent employer who recognizes the said son of the deceased as an eligible beneficiary.

65. For this Court to make a determination of the applicant's claim in the absence of the deceased's child, yet he was never alerted of these proceedings, would be to condemn him unheard. Such a course would offend the fundamental principles of natural justice, particularly the right to be heard.

66. Back to whether mandamus orders sought can issue in these proceedings, having set out the circumstances under which mandamus can issue, I find that Judicial review proceedings are ill-suited for resolving contested questions of private rights, especially where those rights arise under employment contract, insurance schemes, or succession law, with the latter

being the law under which questions of who is to benefit from an estate of a deceased are best answered.

67. The present dispute is not merely about the legality of the decision-making process; it is about who is substantively entitled to the benefits in issue. That is a matter requiring a full hearing, interpretation of the documents in possession of the employer, 1st respondent herein, adduction of evidence, possible cross-examination and participation of all affected parties.

68. In these circumstances, I restate that an order of mandamus will not issue where entitlement to a benefit is disputed between competing claimants, particularly where: The dispute involves determination of private rights; and necessary party, whose rights are directly affected, has not been joined in the proceedings. Where rights are contested, justice is not served by expediency, but by a process that allows all affected parties to be heard.

69. For the foregoing reasons, this Court makes the following orders:

    a. The application dated 15th December, 2025 is hereby dismissed.

    b. The Applicant is at liberty to pursue her claim in an appropriate forum.

    e. Each party shall bear their own costs.

70. This file is closed

71. Orders accordingly.

Dated, Signed and Delivered at Nairobi this 8th Day of April, 2026

R.E. ABURILI

JUDGE