

**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW APPLICATION NO. E361 OF 2025**

1. **STEPHEN KILONZO**
2. **ERIC NGALI MUTINDA** (Suing as the legal representatives of the estate of **IRENE MUTINDA MASUNGWA OKOLA (DECEASED)**).....**APPLICANT**

**VERSUS**

**THE INSPECTOR GENERAL OF POLICE**.....**RESPONDENT**

**JUDGMENT**

1. Vide leave of court granted in JR E349 of 2025, the ex parte applicant herein filed the substantive Notice of Motion dated 21/11/2025 seeking judicial review orders of mandamus to compel the Respondent Inspector General of Police to settle decree and certificate of order against the Government in Milimani CMCC E2009 of 2021 amounting to Kshs 7,285,033.90 together with costs pus interest at court rates until payment in full. The applicant also seeks costs of these proceedings.
2. The Notice of Motion is supported by a statutory statement and supporting affidavit sworn by the 1<sup>st</sup> applicant Stephen Kilonzo on 11<sup>th</sup> November, 2025, annexing documents in support of the orders.
3. The applicants' case is that on or about the 28<sup>th</sup> March, 2018, one Irene Mutinda Masungwa Okola who is now deceased was a lawful pedestrian

along Uhuru Highway Parliament Building in Nairobi City when she was knocked down by a motor cycle registration number GK B 816Q as a result of which she sustained fatal injuries.

4. The applicants herein who are administrators of the deceased's estate filed suit for damages on 23<sup>rd</sup> March, 2021 vide Milimani CMCC E2009 of 2021, which suit was duly defended by the respondent herein and on 24<sup>th</sup> October, 2023, judgment was delivered in favour of the applicants against the respondent in the sum of Kshs 5,765,597.50 plus costs and interest.
5. That decree was drawn on 4<sup>th</sup> March, 2025 for Kshs 6,949,524 and subsequently, a certificate of order against the government was issued on 5<sup>th</sup> June, 2025 for the sum of Kshs 7,285,033.90. it is asserted that to date, the respondent has refused to settle the said decree despite demand hence these proceedings.
6. Annexed to the application are certificate of order against the government, decree and certificate of costs, judgment in the lower court by Hon. M.S.Kimani Principal Magistrate, defence filed by the respondents and a plaint, demand letter dated 24<sup>th</sup> July, 2025 and duly served upon the Attorney General on the same date attaching judgment, decree and certificate of order against the government as well as the ruling for leave to apply.

7. The respondent was served with the notice of motion but entered no appearance. The applicant prayed for mandamus at the oral hearing of the application on 23/2/2026.

**Analysis and Determination**

8. I have considered the application as pleaded and the accompanying documents. The issue for determination is whether the orders sought are available to the applicants.

9. Section 25 of the Government Proceedings Act as read with Order 29 Rule (2) (c) of the Civil Procedure Rules 2010 stipulates that no order is to be made concerning attachment of debts against the government. The procedure for executing decrees against the government is stipulated in the Government Proceedings Act. Section 21 specifies the procedure to follow is satisfaction of orders against the government. Sub section (4) states:

***Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.***

10. Since a decree holder is barred from executing against the government, the decree holder has the option of instituting judicial review proceedings and seek for an order of mandamus. This is the only remedy available to a decree holder against the government as was so stated in **Republic v Attorney General & another Exparte Stephen Wanyee Roki [2016] eKLR** where Odunga J held that:

*“It follows that the only remedy available to such a person is to institute judicial review proceedings and seek an order of mandamus compelling the County Government to settle the decree in question.”*

11. In this case, the applicants have demonstrated that they have a lawfully obtained judgment, decree, certificate of order against the government and have demanded for settlement by serving the said documents upon the Attorney General as mandated under section 21 of the Government proceedings Act. The applicants have no alternative remedy. There is no evidence that the decree and certificate of order against the government was settled. They have no other alternative remedy or means of executing decree against the government as the law bars execution against the government assets.

12. Section 21 of the Government Proceedings Act mandates the accounting officer of the relevant government agency to settle decree and certificate

of order against the government. The respondent is the accounting officer for the National Police Service and there is no contrary evidence.

13. In the premises, I find that the applicants have proved that they are entitled to the mandamus orders sought. I hereby issue mandamus compelling the respondent herein to settle decree and certificate of order against the government in Milimani CMCC E2009 of 2021 in the sum of kshs 7,285,033.90.

14. Decree for mandamus to issue and be served upon the respondent to settle.

15. Mention on to confirm the status of settlement.

16. The applicants shall have costs of these proceedings assessed at Kshs 50,000 to be settled together with the decree and certificate of order against the government.

17. Mention before the Judge on 6/5/2026 for further directions.

18. I so order.

**Dated, Signed and Delivered at Nairobi this 9<sup>th</sup> Day of April, 2026**

**R.E. ABURILI  
JUDGE**