

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
JUDICIAL REVIEW APPLICATION NO. E003
OF 2025
IN THE MATTER OF ORDER 53 RULE 1,2 &3 OF THE CIVIL
PROCEDURE RULES

AND

IN THE MATTER OF APPLICATION FOR LEAVE FOR AN
APPLICATION FOR JUDICIAL REVIEW ORDER OF
MANDUMUS

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE LAW REFORMS ACT CAP 26

AND

IN THE MATTER OF ORDERS EMANATING FROM THE
DECREE ISSUED IN CHIEF MAGISTRATE COURT AT
BUNGOMA IN MCC 559 OF 2018

ANDREW WAFULA WANGILA

**(Suing as administrator and personal representative of
the estate of**

HELLEN MULONGO MUSANGA- Now deceased..... 1ST

APPLICANT

DAVID TOILI MUSANGA

(Suing as administrator

and personal representative of the estate of

HELLENMULONGOMUSANGA-Now **deceased)**

..... **2ND APPLICANT**

VERSUS

COUNTY GOVERNMENT OF BUNGOMA**1ST**

RESPONDENT

BUNGOMA COUNTY EXECUTIVE

COMMITTEE MEMBERS FINANCE.....**2ND**

RESPONDENT

JUDGMENT

1. The Notice of Motion for determination is the application dated 16th June, 2025, in which the Applicant seeks the following orders:

- a. That orders of Mandamus do issue to the Respondents to pay the sum of Ksh. 3,157,036/- being the decretal sum and costs of Kshs 238, 223/- making a total of Kshs 3,396,249/= being damages plus interest and costs awarded plus interest and costs awarded by Bungoma MC CMCC no. 559 of 2018. In default of the same the 2nd Respondent be committed to civil jail till payment in full.*
- b. That the court be at liberty to make such further orders it deem fit to meet the ends of justice*
- c. That incidental costs to the suit be in favour of the applicant.*
- d. That an order of mandamus do issue to the Respondents to pay for the costs of this application*
- e. That the Respondent to meet the costs incurred in this application.*

2. The Application is based on the grounds set out on its face and on the supporting affidavit dated 16th June, 2025, in which the Applicant has averred that he is the administrator of the estate of Hellen Mulongo Musanga (now deceased), who was involved in a road traffic accident on 22.5.2017 with the 1st Respondent's motor vehicle, registration number 39CG 016 A, along the Kimilili - Chwele road at the BBC Lutonyi area, and, as a result, the deceased sustained fatal injuries. The co-administrator, the 2nd applicant herein (DAVID TOILI MUSANGA), filed the case against the 1st Respondent through Bungoma CMCC NO. 559 OF 2018. That judgment was delivered in favour of the applicants against the Respondent for the sum of Ksh. 2,687,936/=, which is alleged to have accrued interest of Ksh. 469,036/= as at 18.2.2024, and costs, which were assessed by the court at Kshs. 238,223/=, making a total of Kshs. 3,395,259/-. They annexed a decree and a certificate of costs dated 26.6.2024.
3. The applicants aver that they served an order on 22.7.2024, together with the decree, which includes a notice for satisfaction of the order dated 4.6.2024, upon the Respondent. That 21 days have since lapsed and the decree so issued has not been satisfied by the Respondents.
4. They further state that after the lapse of 21 days from the service of the certificate of costs, the decree and the certificate order against the respondents, they filed an application to commence these Judicial Review proceedings vide Bungoma JR Misc. no. E001 of 2025, and that leave was granted to file Judicial Review proceedings against the Respondent.

5. They claim that the Respondents have declined, refused and disobeyed the orders for the satisfaction of the decree and the certificate of costs, thereby showing impunity, and that the Respondents continue to disregard the court order and the decree, together with the certificate of costs, which continue to attract interest. They have left the applicants and the estate in pain and in a highly disadvantaged position. Thus, we seek an order of mandamus to force the Respondents to pay.
6. In their grounds of opposition dated 3rd November, 2025, the Respondents claim that the application is incompetent, frivolous, vexatious, scandalous, bad in law, and an abuse of court process. The Respondents further state that during the trial proceedings the applicant appeared with the advocate for Africa Merchants Co. Limited, which is the insurer on record. They claim that the advocate for the said insurer was rightly on record on behalf of the Respondents, as they had paid premiums to the said insurer. The application is premature, as the applicant has never notified that he had any pending issues with the insurer. They aver that the applicant willfully failed to inform the Respondents of any pending issues with the insurer. The prevailing status quo is that the applicant had directly engaged the insurer and had not raised any concerns over the same with the Respondents.

ANALYSIS AND DETERMINATION

7. I have considered the Notice of Motion application dated 16th June 2025, together with the rival affidavits and submissions, to

determine whether it has merit. The issues for determination are as follows.

- a. Whether the Respondent is statutorily bound to pay the decretal amount*
 - b. Whether the Applicant is entitled to the order of Mandamus.*
8. A County Government is a body corporate with the power to sue and be sued. It can be sued and held liable for breaches of statutory duties and obligations, for failing to fulfil contractual obligations, and for torts committed by its officers while performing their duties. This, however, is subject to statutory limitation with regard to the timelines required for filing a lawsuit, as provided for under the Limitation of Actions Act, and in compliance with the provisions of the Government Proceedings Act. This has not been controverted by the Respondent.
9. It is trite law that any execution against the government should be carried out through judicial review proceedings, which is the procedure correctly followed by the Ex parte Applicant under Order 53 of the Civil Procedure Rules.
10. It is also not in dispute that Hellen Mulongo Musanga (now deceased) was involved in a road traffic accident on 22.5.2017 with the 1st Respondent's motor vehicle, registration number 39CG 016 A, along the Kimilili - Chwele road in the BBC Lutonyi area, and as a result the deceased sustained fatal injuries.
11. The Respondent is charged with the duty or obligation to pay the Applicant the sum of Kshs. 3,395,259/-, being the decretal

sum, together with costs to the estate of the deceased, who are the Applicant.

12. According to the Applicant, when the Respondent failed to pay the said amount, it filed a suit at Bungoma CMCC NO. 559 OF 2018 in pursuit of compensation. On 26.6.2024, the Applicant obtained judgment in its favour against the Respondent for the said sum of Ksh. 2,687,936/=, together with costs fixed at Kshs. 238,223/= and interest in the sum of Ksh. 469,036/=, hence the total decree sum payable is Kshs. 3,395,259/-. The Applicant then notified the Respondent of the said judgment and demanded compensation. The Applicant went on to obtain a Certificate of Order of Costs against the Respondent and served the same upon the Respondent. Despite all these moves, the Respondent did not and has not responded to either.

13. An order of Mandamus is an equitable remedy provided for under Article 23(3) of the Constitution of Kenya, 2010, as well as under Order 53 of the Civil Procedure Rules. Article 23(3) of the Constitution provides as follows: “In any proceedings brought under Article 22, a court may grant appropriate relief, including:”

- a. a declaration of rights*
- b. an injunction;*
- c. a conservatory order;*
- d. a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;*

e. an order for compensation; and

f. an order of judicial review.

14. Order 53 of the Civil Procedure Rules states that applications for mandamus, prohibition and certiorari may be made only with leave. [Order 53, rule 1.]

1. No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.

2. An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.

15. The order of Mandamus compels a public body or official to perform a specific public duty that they are legally obliged to perform. For it to be issued, a party seeking it must demonstrate a specific legal right and the absence of any other effective and Government legal remedy.

16. In the case of *Republic -vs- Principal Secretary, Ministry of Internal Security & Another Exparte Schon Noorani & Another* [2018]eKLR, it was held as follows:-

“Mandamus is an equitable remedy that serves to compel a public authority to perform its public duty and it is then a remedy that controls procedural delays.”

17. In the present case, the Applicant has demonstrated, with evidence, that there is a public legal duty owed to the Applicant. The Applicant has also demonstrated that it made a prior demand for payment within a reasonable time, but no payment has been made by the Respondent in respect of the subject claim. Therefore, the duty to pay the debt owed has arisen in respect of the Respondent herein.

18. Like the County Government, the National Government is equally protected by the provision of Section 21(4) of the Government Proceedings Act, which requires that such an application be made after a Certificate of Order against the Government has been served upon it. In this regard, in the case of Republic -vs- County Government of Vihiga, Exparte Global Exhibitions Incorporated Ltd [2021]eKLR, the court held as follows:

“A party wishing to realize the fruits of a judgment or decree against the government must obtain a certificate of order against the government. The government pays against the certificate of order against it. It is a critical accounting instrument for the purpose of government finances and accounts. The centrality of the certificate of order against government, with respect to enforcement of money decrees against the government, whether at the national or at the county level, has been the subject of pronouncement by the courts.”

19. I find that the Applicant has correctly followed the procedure for initiating judicial review proceedings and has complied with Section 21 of the Government Proceedings Act. Accordingly, the

Notice of Motion dated 16th JUNE 2025 is meritorious. The argument that the matter is premature cannot stand.

The application is thus allowed in the following terms:-

- i. An Order of Mandamus is issued against the Respondent compelling the Respondent to honour the decree issued in Bungoma MC CMCC no. 559 of 2018 as sought in prayer (a) of the application dated 28.3.2025.
- ii. Costs of this application to be paid by the Respondents.

**Dated, signed and delivered virtually this 23rd Day of
April 2026.**

**R.E.OUGO
JUDGE**

In the presence of:

Applicant - Absent

Respondents - Absent

Wilkister - C/A