

Approved for tabling in the House.

But SNA
6/10/2021

REPUBLIC OF KENYA




THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE CONSIDERATION OF THE PETITION REGARDING SETTLEMENT OF AN
AWARD TO THE FAMILY OF THE LATE NANCY KHARWALI

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 OCT 2021	DAY: Wednesday
TABLED BY:	CHMR. DC - JUSTICE & LEGAL AFFAIRS HON. MUTURI KIGANO, MP
CLERK-AT THE-TABLE:	Samuel Kalama

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER 2021

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- Annexure 3:** Comments by the Office of the Attorney General and Department of Justice

CHAIRPERSON'S FOREWORD

The petition was conveyed to the house on Tuesday, March, 30th, 2021. This is in accordance with the provisions of Standing Order No. 225 (2) (a). The Petition relates to the compensation for the family of the late Nancy Kharwali following the court award in Nairobi CMCC No.2025 of 2013 filed by Mr. John Musotsi Wangusi, as the legal representative and administrator of the estate of Nancy Sarah Kharwali, against the Hon.Attorney General.

The Petition was referred to the Departmental Committee on Justice and Legal Affairs for consideration and thereafter report to the House.

In considering the Petition, the Committee, during its sitting, held on Wednesday 21st July, 2021 met with the petitioner Mr. John Musotsi Wangusi. The meeting was aimed at inquiring into the issues raised in the Petition. The Committee wrote to the Solicitor General for comments on the Petition and received response.

May I take this opportunity to express gratitude to Committee Members for their resilience and devotion to duty which made the consideration of the Bill successful. May I also appreciate the Speaker and Clerk of National Assembly for always providing guidance and direction to Committees in the discharge of their mandate. Finally, I commend the secretariat for exemplary performance in providing technical and logistical support to the Committee.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my duty to table before House the Report of the Committee on the petition.

Hon. Muturi Kigano, M.P.

Chairperson, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-
 - a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - b) Study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
 - c) Study and review all legislation referred to it;
 - d) Study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
 - e) Investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - f) Vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)
 - g) Examine treaties, agreements and conventions;
 - h) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - i) Consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and
 - j) Examine any questions raised by Members on a matter within its mandate.
2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the subjects of the Committee as follows-
 - a. Constitutional affairs;
 - b. The administration of law and Justice
 - c. The Judiciary;
 - d. Public prosecutions;
 - e. Elections;
 - f. Ethics, integrity and anti-corruption; and
 - g. Human rights.

1.2 Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

Chairperson

Hon. Clement Muturi Kigano, M.P.
Kangema Constituency

Jubilee Party

Vice Chairperson

Hon. Francis Tom Kajwang', M.P.
Ruaraka Constituency

Orange Democratic Movement (ODM)

Hon. Emmanuel Wangwe, M.P.
Navakholo Constituency

Jubilee Party

Hon. Junet Sheikh Nuh Mohamed, M.P.
Suna East Constituency

Orange Democratic Movement (ODM)

Hon. John Olago Aluoch, M.P.
Kisumu West Constituency

FORD-Kenya

Hon. George Peter Kaluma, M.P.
Homa Bay Town Constituency

Orange Democratic Movement (ODM)

Hon. Roselinda SoipanTuya, M.P.
County

Jubilee Party

Hon. Josephine Naisula Lesuuda, M.P Narok
Samburu West Constituency

KANU-Kenya

Hon.W. Kamoti Mwamkale, M.P.
Rabai Constituency

Orange Democratic Movement (ODM)

Hon. Zuleikha Hassan, M.P.
Kwale County

Orange Democratic Movement (ODM)

Hon. Jennifer Shamalla, M.P.
Nominated MP

Jubilee Party

Hon. Adan Haji Yussuf, M.P.
Mandera West Constituency

Economic Freedom Party (EFP)

Hon. John MuneneWambugu, M.P.
Kirinyaga Central

Jubilee Party

Hon. George Gitonga Murugara, M.P.
Tharaka Constituency

Democratic Party (DP)

Hon. Anthony Githiaka Kiai, M.P.
Mukurueni Constituency

Jubilee Party

Hon. Japheth Mutai, M.P.
Bureti Constituency

Jubilee Party

Hon. John Kiarie Waweru, M.P.
Dagoretti South Constituency

Jubilee Party

Hon. Anthony Oluoch, M.P.
Mathare Constituency

Orange Democratic Movement (ODM)

Hon. Robert Gichimu Githinji, M.P.
Gichugu Constituency
Jubilee Party

1.2 Committee Secretariat

4. The Committee secretariat comprises the following staff-

Mr. Abenayo Wasike
Principal Clerk Assistant
Lead Clerk

Mr. Denis Abisai
Deputy Director, Legal Services

Ms. Halima Hussein
Clerk Assistant II

Dr. Donald Manyala
Research Officer II

Mr. Omar Abdirahim
Fiscal Analyst II

Ms. Roselyne Ndegi
Serjeant-at-Arms I

Mr. Joseph Okongo
Media Liaison Officer

5. Minutes of sittings of the Committee on the consideration of the Petition are attached to this report as annexure 1.

CHAPTER TWO

2.0 CONSIDERATION OF THE PETITION BY THE COMMITTEE

6. The Committee commenced its consideration of the Petition by meeting with the Petitioner on 21st July, 2021. During the meeting, written and oral evidence was adduced as noted hereunder:-

2.1 Submissions by the Petitioner Mr. John Musotsi Wangusi

7. In his petition dated 29th July, 2021, Mr. John Musotsi Wangusi sought to draw the attention of the House to the following;
- (i). THAT, Ms. Nancy Sarah Kharwali was shot and killed by police officers on 22nd April, 2012 while washing clothes on the balcony of her residence on the 5th floor of Elin House in Dandora Phase 4, Nairobi, during an attempt by the police to control a riotous mob nearby.
 - (ii). THAT, following the incident, the uncle to Ms. Kharwali and who also serves as the administrator *ad litem* of her estate, namely John Musotsi Wangusi, filed civil Case No.2025 of 2013 seeking compensation for the wrongful killing.
 - (iii). THAT, on 16th May, 2019, the Milimani Commercial Court ruled that the police officers were culpable of gross negligence and awarded the family of the late Ms. Nancy Kharwali compensation totaling Ksh.3,325,200 and later issued a decree on 17th July, 2019 with added interest that increased the total award to Ksh.3,618,857.20.
 - (iv). THAT, to date, the Attorney General has failed to honour and effect the payment despite numerous reminders by the deceased's family.
 - (v). THAT, the late Ms. Kharwali who was the sole breadwinner, left behind a son (Erick Otieno) and a mother (Elizabeth Naliaka) who is single, deaf and dumb, and who are now suffering from abject poverty and misery, with the young Erick being unable to join college due to lack of college fees.
 - (vi). THAT, efforts to have the matter resolved by the Office of the Attorney General have not borne any fruit.

- (vii). The Petitioner prays that the National Assembly through the Departmental Committee on Justice and Legal Affairs investigates the matter in collaboration with the Office of the Attorney General, the urgent release of the compensation payment due to the family of the late Ms. Nancy Sarah Kharwali so as to mitigate their ongoing suffering.

2.2 Comments by the Office of the Attorney General and Department of Justice

8. The Office of the Attorney General and Department of Justice appeared before the Committee and made oral submissions on the petition during the committee sitting on 21st July 2021. Further, the Solicitor General made written submissions to the committee that;
- (i). The plaintiff filed the suit against the Attorney General as the legal representative and administrator of the estate of Nancy Sarah Kharwali. The plaintiff sued the Hon. Attorney General on behalf of the National Police Service, seeking damages for a fatal shooting. The facts of the case were that on 22nd April, 2012, the deceased was in Dandora Area, when a police officer shot her without justified cause or provocation. The plaintiff alleged carelessness, negligence and use of excessive force by the National Police Service.
 - (ii). The Office of the Attorney General sought instructions from the National Police Service in order to defend the matter as appropriate. The matter subsequently proceeded by way of viva voce evidence, where the evidence of the plaintiff was subjected to cross-examination.
 - (iii). Judgement was delivered on 16th May 2019, with the court finding that the police officers were negligent by shooting at the plaintiff who was at the balcony of her house without paying attention and due regard to the occupants of the said houses and as a consequence, a stray bullet hit the deceased and killed her. The court held the Defendant 100% liable for the negligence of the police officers.
 - (iv). In terms of compensation, the court found that the deceased was aged 34 years and was working with the Kenya Bus Service as a conductor, earning Ksh.15,000/= per month. In assessing the quantum payable, the court applied a multiplier of 26 years and dependency ratio of 2/3 since the deceased had a family. The Plaintiff was thus awarded Ksh.180, 000/= for damages under the Law Reform Act, Ksh.3, 120,000/= for loss of dependency and Ksh.25, 200/= for special damages. This was in addition to costs of the suit and interest on the damages from the date of Judgement until payment in full.

- (v). The Plaintiff obtained a Certificate of Stated Costs dated 17th July, 2019 for the sum of Kshs.216, 805/=, being costs of the suit. The Plaintiff also obtained a Certificate of Order against the Government dated 17th July, 2019 in the sum of Kshs.3,402,045.20/=.
- (vi). Following the Judgement, the Attorney General filed an application for stay of execution and for leave to appeal out of time on 5th August, 2019. The application was dismissed on 29th October 2019.
- (vii). That in the circumstances, and in order to bring the matter to a close, the Solicitor General has written to the Principal Secretary, State Department for Interior and Citizen Services to settle the decretal amount in the sum of Kshs.4,458,120.30/=.

CHAPTER THREE

3.0 COMMITTEE'S OBSERVATIONS

9. The Committee observed the following in the consideration of the Petition, that-

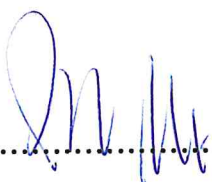

- (i). Ms.Nancy Sarah Kharwali was shot and killed by police officers on 22nd April, 2012 while washing clothes on the balcony of her residence on the 5th floor of Elin House in Dandora Phase 4,Nairobi, during an attempt by the police to control a riotous mob nearby.
- (ii). THAT, following the incident, the petitioner, Mr. John Musotsi Wangusi, who is an uncle to Ms. Kharwali and also serves as the administrator *ad litem* of her estate, filed Civil Case No.2025 of 2013 seeking compensation for the wrongful killing.
- (iii). THAT, on 16th May, 2019,the Milimani Commercial Court ruled that the police officers were culpable of gross negligence and awarded the family of the late Ms. Nancy Kharwali compensation totaling Ksh.3,325,200 and later issued a decree on 17th July, 2019 with added interest that increased the total award to Ksh.3,618,857.20.
- (iv). THAT, to date, the Attorney General has failed to honour and effect the payment despite numerous reminders by the deceased's family.
- (v). That the Solicitor General has written a letter to the Principal Secretary, State Department for Interior and Citizen Services to settle the decretal amount in the sum of Kshs.4,458,120.30/=.

CHAPTER FOUR

4.0 COMMITTEE RECOMMENDATION

In response to the prayers by the petitioner, the Committee recommends that;

- (a) The Principal Secretary, State Department for Interior and Citizen Services settles the decretal amount in the sum of **Kshs.4,458,120.30/=** as decreed by the Court in Civil Case No.2025 of 2013 *John Musotsi Wangusi versus Attorney General*, within sixty (60) days from the date of Tabling this Report in the National Assembly;
- (b) If the Principal Secretary, State Department for Interior and Citizen Services fails to pay the decretal sum as recommended by the Committee under paragraph (a) of these recommendations, the issue should be brought to the attention of the Committee on Implementation for necessary action.

Signed..........Date..........

Hon. Clement Muturi Kigano, M.P.

Chairperson, Departmental Committee on Justice and Legal Affairs





Annex 1

Minutes

1. 2000

2. 2000

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS HELD ON THURSDAY 30TH SEPTEMBER 2021 AT 12:30 PM.
IN COMMITTEE ROOM 9, PARLIAMENT BUILDINGS**

PRESENT-

1. Hon. Tom Kajwang, M.P -Vice-Chairperson
2. Hon. John Olago Aluoch, M.P -Virtual
3. Hon. Mwamkale Kamoti, M.P
4. Hon. Zuleikha Hassan, M.P.
5. Hon. Jennifer Shamalla, M.P.
6. Hon. Adan Haji Yussuf, M.P
7. Hon. George Gitonga Murugara, M.P
8. Hon. Peter Opondo Kaluma, M.P -Virtual
9. Hon. Anthony Oluoch, M.P - Virtual
10. Hon. Anthony Githiaka Kiai, M.P
11. Hon. John Munene Wambugu, M.P.-Virtual

ABSENT WITH APOLOGIES-

1. Hon.Muturi Kigano, M.P - Chairperson
2. Hon.Emmanuel Wangwe, M.P
3. Hon. Junet Sheikh Nuh Mohammed, M.P.
4. Hon. Josephine Naisula Lesuuda,M.P
5. Hon. Japheth Mutai, M.P
6. Hon. Roselinda Soipan Tuya, M.P
7. Hon. John Kiarie Waweru, M.P.
8. Hon.Robert Gichimu Githinji, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|-----------------------|---|---------------------------------|
| 1. Mr. Abenayo Wasike | - | Principal Clerk Assistant |
| 2. Mr.Dennis Abisai | - | Deputy Director, Legal Services |
| 3. Dr. Donald Manyala | - | Principal Research Assistant |
| 4. Ms. Emma Essendi | - | Legal Counsel |
| 5. Ms. Halima Hussein | - | Second Clerk Assistant |
| 6. Ms. Roselyn Njuki | - | Sergeant at Arms |
| 7. Mr.Nickson Mutai | - | Audio Officer |

MIN NO./01/2021: -

PRELIMINARIES

The meeting commenced at 1:00 p.m with a word of prayer from the Vice-Chairperson and thereafter Members considered reports on Petitions as per the agenda.

MIN NO./02/2021: - ADOPTION OF REPORTS ON BILLS

1. Report on the Petition Regarding Settlement of an Award to the Family of the late Nancy Kharwali

The Committee adoption of the report was proposed by Hon.George Murugara and seconded by Hon.Anthony Kiai.The Committee recommended that;

(a) The Principal Secretary, State Department for Interior and Citizen Services settles the decretal amount in the sum of **Kshs.4,458,120.30/=** as decreed by the Court in Civil Case No.2025 of 2013 John Musotsi Wangusi versus Attorney General, within sixty (60) days from the date of Tabling this Report in the National Assembly;

(b) If the Principal Secretary, State Department for Interior and Citizen Services fails to pay the decretal sum as recommended by the Committee under paragraph (a) of these recommendations, the issue should be brought to the attention of the Committee on Implementation for necessary action.

(c)

2. Report on the Petition by Mr. Ephantus Nyaga & Others Regarding Amendment to Sections of the Civil Procedure Act, Chapter 21, and the Law of Succession act, Chapter 160

The Committee adoption of the report was proposed by Hon.Kamoti Mwamkale and seconded by Hon.Adan Haji. The Committee recommended that;

The petitioners invoke the provisions of Paragraph 14 of the Fifth Schedule to the Law of Succession Act (Cap. 160) or section 7 of the Public Trustee Act (Cap. 168) to apply for other persons to be nominated to represent the deceased in the court cases relating to the petition.

3. Report on the Petition Regarding Amendment of the Advocates Act, Chapter 16, to allow Admission of Law Practitioners from the Republics of Rwanda and Burundi to the Roll of Advocates in Kenya

The Committee adoption of the report was proposed by Hon. George Murugara and seconded by Hon. Anthony Kiai. The Committee recommended that;

The petition is merited and that Parliament amends the Advocates Act, Chapter 16, Laws of Kenya, as follows-

- (a) Section 12 of the Advocates Act is amended in paragraph (a) by inserting the words "Rwanda, Burundi" immediately after the word "Kenya";
- (b) Section 13(1) of the Advocates Act is amended in paragraph (d) by inserting the words "the High Court of Rwanda, the High Court of Burundi" immediately after the word "Uganda".

MIN NO./03/2021:-

PENDING

The Secretariat tabled a report on pending business and members adopted a plan presented by the Secretariat. Members resolved to prioritise the Mediation Bill, 2020 for further engagement with Stakeholders. It was also resolved that the Committee will conduct public hearings across the Country on a Petition regarding amendments to the Elections Act on academic qualifications.

MIN NO./04/2021:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at 2:30 pm.

Signed.....


Hon. Clement Muturi Kigano
Chairperson

Date.....

6/10/21



Annex 2

Adoption List

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KENYA NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

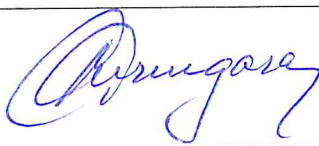
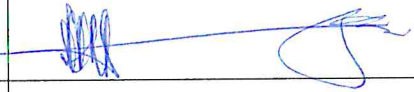

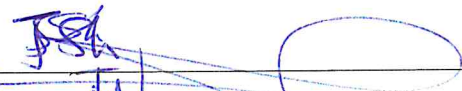
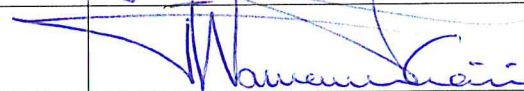

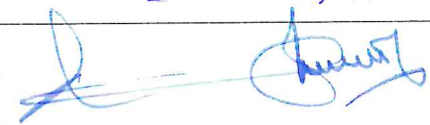
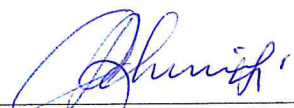
ATTENDANCE REGISTER FOR MEMBERS

DATE 30/9/2021

VENUE COMMITTEE ROOM A

AGENDA ADOPTION OF REPORT ON PETITION REGARDING SETTLEMENT OF AN AWARD TO THE FAMILY OF THE LATE NANCY ICHARWALI

NO.	NAME	SIGNATURE
.	Hon. Clement Muturi Kigano, M.P. - Chairperson	
.	Hon. T.J Kajwang - Vice Chairperson	
.	Hon. Emmanuel Wangwe	
.	Hon. Junet Sheikh Nuh Mohamed, M.P	
.	Hon. John Olago Aluoch, MP.	
.	Hon. Roselinda Soipan Tuyu, MP.	
.	Hon. Peter Opondo Kaluma, MP.	
.	Hon. Mwamkale Kamoti, MP.	
.	Hon. Zuleikha Hassan, MP.	

10.	Hon. Josephine Naisula Lesuuda, M.P.	
11.	Hon. George Gitonga Murugara, MP.	
12.	Hon. Adan Haji Yussuf, MP.	
13.	Hon. Japheth Kiplangat Mutai, MP.	
14.	Hon. Anthony Githiaka Kiai, MP.	
15.	Hon. Jennifer Shamalla, MP.	
16.	Hon. John Kiarie Waweru, MP.	
17.	Hon. John Munene Wambugu, MP.	
18.	Hon. Anthony Oluoch, M.P.	
19.	Hon. Robert Gichimu Githinji, M.P	

COMMITTEE CLERK


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DIRECTOR DEPARTMENTAL COMMITTEES

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Annex 3
Comments
by the
Attorney
General

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REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL

&

DEPARTMENT OF JUSTICE

OUR REF: AG/GC/CP/194/13
YOUR REF: NA/DCS/JLAC/2021/14

13th August 2021

Mr. Michael Sialai, EBS
Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
P. O. Box 41842-00100
NAIROBI

RE: PUBLIC PETITION REGARDING SETTLEMENT OF AWARD TO THE FAMILY OF THE
LATE NANCY KHARWALI – PETITION NO. 001 OF 2021

Introduction

1. Reference is made to the above-captioned subject matter and to the letter by the Departmental Committee on Justice and Legal Affairs dated 30th July 2021, inviting the Solicitor General for a meeting to be held on Tuesday, 17th August 2021 at the Mini Chamber, County Hall, Parliament Buildings at 10 am, on the petition under reference.
2. We note that the petition relates to the compensation for the family of the late Nancy Kharwali following the court award in Nairobi CMCC No. 2025 of 2013 filed by John Musotsi L. Wangusi, as the legal representative and administrator of the estate of Nancy Sarah Kharwali, against the Hon. Attorney General.
3. At the outset, the undersigned would like to convey his humble apologies for his inability to attend before the Committee in person, given that he will be engaged in other official duties that require his personal and urgent attention. For purposes of facilitating the consideration of the petition and for apprising the Committee on the status thereof, the undersigned requests your kind indulgence to admit the written submissions hereunder and to allow his representation by Mr. Charles Mutinda, Chief State Counsel and acting Head of the Civil Litigation Division; and Mr. Andrew Emacar, Senior Litigation Counsel, at the meeting.

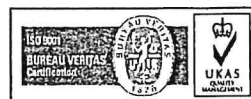
Brief Facts and Current Status

4. The Plaintiff filed this suit against the Attorney General as the legal representative and administrator of the estate of Nancy Sarah Kharwali. The Plaintiff sued the Hon. Attorney

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.state.law.office@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified



General on behalf the National Police Service, seeking damages for a fatal shooting. The facts of the case were that on 22nd April 2012, the deceased was in Dandora Area, when a police officer shot her without justified cause of provocation. The Plaintiff alleged carelessness, negligence and use of excessive force by the National Police Service.

5. This Office sought instructions from the National Police Service vide our letters dated 23rd November 2012, 11th September 2013 and 15th August 2017 in order to defend the matter as appropriate. The matter subsequently proceeded by way of viva voce evidence, where the evidence of the Plaintiff was subjected to cross-examination.
6. Judgement was delivered on 16th May 2019, with the court finding that the police officers were negligent by shooting at the Plaintiff who was at the balcony of her house without paying attention and due regard to the occupants of the said houses and as a consequence, a stray bullet hit the deceased and killed her. The court held the Defendant 100% liable for the negligence of the police officers.
7. In terms of the compensation, the court found that the deceased was aged 34 years and was working with the Kenya Bus Service as a conductor, earning Kshs. 15,000/= per month. In assessing the quantum payable, the court applied a multiplier of 26 years and dependency ratio of 2/3 since the deceased had a family. The Plaintiff was thus awarded Kshs. 180,000/= for damages under the Law Reform Act, Kshs. 3,120,000/= for loss of dependency and Kshs. 25,200/= for special damages. This was in addition to costs of the suit and interest on the damages from the date of judgement until payment in full.
8. The Plaintiff obtained a Certificate of Stated Costs dated 17th July 2019 for the sum of Kshs. 216,805/=, being costs of the Suit. The Plaintiff also obtained a Certificate of Order against the Government dated 17th July 2019 in the sum of Kshs. 3,402,045.20/=.
9. Following the judgment, we filed an application for stay of execution and for leave to appeal out of time on 5th August 2019. The application was dismissed on 29th October 2019.
10. In the circumstances, and in order to bring this matter to a close, we have written to the Principal Secretary, State Department for Interior and Citizen Services to settle the decretal amount in the sum of Kshs. 4,458,120.30/=. A copy of the said letter is enclosed herewith. We shall expeditiously process the payment once the decretal sum is received from the State Department.

We remain grateful for your continued support.



KENNEDY OGETO CBS
SOLICITOR GENERAL

Encls.

Copy to: Hon. P. Kihara Kariuki, EGH
ATTORNEY GENERAL



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

AG/GC/CP/194/13

13th August 2021

Dr. Eng. Karanja Kibicho CBS
Principal Secretary
State Department of Interior and Citizen Services
Ministry of Interior and Coordination of National Government
Harambee, Harambee Avenue
NAIROBI

RE: NAIROBI CMCC NO. 2025 OF 2013
JOHN MUSOTSI L. WANGUSI (Suing as the Administrator Ad Litem of the estate of the Late Nancy Sarah Kharwali) VS. THE HON. ATTORNEY GENERAL

The Plaintiff, by way of a Plaint dated 17th April 2013 and filed on the same day, sued the Attorney General seeking damages for fatal shooting. The Plaintiff instituted the suit as the legal representative and administrator of the estate of Nancy Sarah Kharwali, while the Attorney General was sued in his representative capacity for and on behalf of the National Police Service in accordance with the provisions of the Government Proceedings Act.

The facts of the case were that on 22nd April 2012, the deceased was in Dandora Area when a police officer allegedly shot her without justified cause of provocation. The Plaintiff prayed for damages with interest and for costs of the suit.

The Attorney General entered appearance and filed a statement of defence in the matter. The Ministry was notified of the claim vide the letters dated 23rd November 2012, 11th September 2013 and 15th August 2017.

Judgement was delivered on 16th May 2019, with the court finding that the police officers were negligent by shooting at the Plaintiff who was at the balcony of her house without paying attention and due regard to the occupants of the said houses and as a consequence, a stray bullet hit the deceased and killed her. The court held the Defendant 100% liable for the negligence of the police officers.

In terms of the compensation, the court found that the deceased was aged 34 years and was working with the Kenya Bus Service as a conductor, earning Kshs. 15,000/= per month. In assessing the quantum payable, the court applied a multiplier of 26 years and dependency ratio of 2/3 since the deceased had a family. The Plaintiff was thus awarded Kshs. 180,000/=

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLAIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

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for damages under the Law Reform Act, Kshs. 3,120,000/= for loss of dependency and Kshs. 25,200/= for special damages. This was in addition to costs of the suit and interest on the damages from the date of judgement until payment in full.

The Plaintiff obtained a Certificate of Stated Costs dated 17th July 2019 for the sum of Kshs. 216,805/=, being costs of the Suit. The Plaintiff also obtained a Certificate of Order against the Government dated 17th July 2019 in the sum of Kshs. 3,402,045.20/=.

Following the judgment, we filed an application for stay of execution and for leave to appeal out of time on 5th August 2019. The application was dismissed on 29th October 2019.

As such, the amount due and payable to the Plaintiff herein is as follows:

Principal Amount	Kshs. 3,325,200.00
Interest @12% WEF 16/05/2019 to 31/08/2021	
Kshs. 3,325,200 * 12/100 * 838/365	Kshs. 916,115.30
Costs	Kshs. 216,805.00
Total Decretal Amount	Kshs. 4,458,120.30

We attach hereto copies of the following documents for your perusal, verification and record:

- i. Pleadings
- ii. Judgment and Decree
- iii. Certificate of costs
- iv. Certificate of order against the Government.

Please transfer the sum of Kshs. 4,458,120.30 through Electronic Funds Transfer (EFT) to the credit of the State Law Office for onward transmission to the Plaintiff's Advocates.

Please ensure an expeditious settlement of the claim to forestall the continued accrual of interest.

KENNEDY OGETO CBS
SOLICITOR GENERAL

Encls.

Copy to: Hon. P. Kihara Kariuki, EGH
ATTORNEY GENERAL

Dr. Fred Okengo Matiang'i EGH
Cabinet Secretary
Ministry of Interior and Coordination of National Government
Harambee House
NAIROBI

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