



**Republic v Insurance Regulatory Authority (IRA); Xplico Insurance Company Limited (Interested Party); Kimani & 2 others (Exparte Applicants) (Judicial Review Application E154 of 2022) [2023] KEHC 3704 (KLR) (Judicial Review) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3704 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW**

**JUDICIAL REVIEW APPLICATION E154 OF 2022**

**JM CHIGITI, J**

**APRIL 27, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**INSURANCE REGULATORY AUTHORITY (IRA) ..... RESPONDENT**

**AND**

**XPLICICO INSURANCE COMPANY LIMITED ..... INTERESTED PARTY**

**AND**

**SAMUEL WAWERU KIMANI ..... EXPARTE APPLICANT**

**ROSE KILOKO MUSAU ..... EXPARTE APPLICANT**

**ROBERT NGUGI MAINA ..... EXPARTE APPLICANT**

**RULING**

1. The application before this Court is the Ex parte Applicants' Chamber Summons application dated 14<sup>th</sup> October, 2022. The application is brought under Order 53 Rule 1 of the [Civil Procedure Rules](#). It seeks the following orders:
  - i. That leave do issue for the Applicants to apply for an order of mandamus against the Respondent and the said Respondent may be compelled to:-
    - a. Investigate the actions against the interested party in failing, refusing and/or neglecting to settle the decretal sum in Thika





requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived... Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court's discretion but as always it has to be exercised judicially”.

9. The Court in the case of *Republic v Registrar of Companies & another Ex parte Prakla East Africa Limited; Prakla Bobrtecknic GMBH (Interested Party)* [2021] eKLR held as follows;

“ 11. While in most cases it is self-evident that the matter should proceed to judicial review, there are a number of preliminary factors that a Court considers and addresses at the leave stage. These factors have been enumerated in *Judicial Review: Principles and Procedure* by Jonathan Auburn et al at paragraph 26.05 as follows:

1. whether the enactment, action, decision, or failure to act that is being challenged is amenable to judicial review;
2. whether the claimant has capacity to bring a claim for judicial review;
3. whether the claimant has a sufficient interest to bring a claim for judicial review;
4. whether the particular challenge brought by the claimant is one that may be brought by the judicial review procedure, and whether it is appropriate to bring it by that procedure;
5. whether the claim is otherwise an abuse of process;
6. whether all or some of the grounds of challenge relied upon by the claimant are sufficiently meritorious to justify the grant of permission;
7. whether the claim has been brought promptly;
8. whether there are any discretionary grounds that justify the refusal of permission in the exercise of the court's discretion.

12. It therefore follows that the case must in the first place be one that is amenable to or appropriate for judicial review, and one that does not weigh against the exercise of the Court's discretion. This is for the reason that in judicial review, the Court is being asked to review the lawfulness of an enactment, decision, action or failure to act in the exercise of a public function. Therefore, judicial review concerns the exercise of public duties and not private duties. Some of the grounds that may influence the exercise of the Court's discretion in this regard with respect to the exercise of public duties are the availability of an adequate alternative remedy, prematurity of a claim, delay, and where the claim



would cause great prejudice and hardship to third parties or the public interest. Lastly, the extent and limits of this Court's judicial review jurisdiction as set out in Article 165(6) of the Constitution must also be borne in mind.

13. Once a case is found to be amenable to and appropriate for the exercise of the Court's discretion to grant leave, it is trite that the Court then ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before it and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave. It was explained by Lord Bingham in *Sharma vs Brown Antoine* (2007) 1 WLR 780, that a ground of challenge is arguable if its capable of being the subject of sensible argument in court, in the sense of having a realistic prospect of success."
10. It is evident that there exists a subsisting order of the Court yet to be satisfied and further that efforts for settlement of amounts owing have been made by the Ex parte Applicants to the Interested Party herein which efforts have borne no fruit leading the Ex parte Applicants to draw in the Respondent herein as it is a statutory government agency established under the *Insurance Act* (Amendment) 2006, CAP 487 of the Laws of Kenya to regulate, supervise and develop the insurance industry.
11. The Ex parte Applicants seek to have this Court intervene and direct the Respondent to undertake its duty in regard to non-payment by the Interested Party herein. This claim is therefore within the jurisdiction of this Court. To this extent, this Court finds that the Applicants have established an arguable case.

### **Disposition**

12. In light of the foregoing observations and findings, the Applicants' Chamber Summons dated 14<sup>th</sup> October 2022 is found to be merited to the extent of the following orders:
  - i. The Applicant is granted leave to apply for an order of mandamus against the Respondent and the said Respondent may be compelled to:-
    - a. Investigate the actions against the interested party in failing, refusing and/or neglecting to settle the decretal sum in *Thika CMCC 627 OF 2019; Samuel Waweru Kimani Vs Xplico Insurance Company Ltd, Murang'a CMCC 17 of 2019 Robert Ngugi Maina Vs Xplico Insurance and Nairobi CMCC No.4957 Of 2019 ROSE Kiloko Musau Vs Xplico Insurance Company LTD.*
    - b. Take appropriate disciplinary action against the interested party including but not limited to withdrawal, cancellation and/or revocation of the interested party's license issued pursuant to section 3A and 196 of the *Insurance Act*.
  - ii. The costs of the Applicants' Chamber Summons application dated 14<sup>th</sup> October 2022 shall be in the cause.
  - iii. The Applicant shall file and serve the Respondent and Interested Party with the substantive Notice of Motion within twenty-one (21) days from the date of this ruling.
  - iv. The Respondent and Interested Party shall file their responses within fourteen (14) days of service.
  - v. Parties to appear before the Court on 19<sup>th</sup> June, 2023 to confirm compliance.
13. Orders accordingly.



DATED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF APRIL, 2023.

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JOHN CHIGITI (SC)

JUDGE

