



Ndemo & 10 others v Principal Secretary, Ministry of Interior & Co-ordination of National Government & another (Application E065 of 2023) [2023] KEHC 22836 (KLR) (Judicial Review) (29 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22836 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION E065 OF 2023
J NGAAH, J
SEPTEMBER 29, 2023**

BETWEEN

DR SALIM NDEMO & 10 OTHERS APPLICANT

AND

PRINCIPAL SECRETARY, MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL GOVERNMENT 1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The applicant's application is a motion dated May 24, 2023 brought under section 3A of the [Civil Procedure Act](#) and Order 53 Rule 3 of the [Civil Procedure Rules](#). The prayers in the motion are framed as follows:
 1. That the applicants herein Dr Salim Ndemo, Dr Francis K. Sang, Ibrahim Duale, Major (rtd) Rama Ndegwa Mwang'ombe, Nuria Musyimi, Nancy Wambui Gachoka, Immanuel Ichor Imana, Purity Sein Karariet and Caren Wakoli be granted leave (judicial review) orders of mandamus directed to the respondents the principal secretary, Ministry of Interior and Coordination of National Government (PS. Interior) and the Honourable Attorney General to comply and satisfy the court decree and/or judgment in Petition number E0 84 of 2020 in the sum of Kshs 117, 050,000/= comprising principal sum which was reviewed and varied to Kshs 139,744,000/= exclusive of gratuity assessed at that 31%, costs and accrued interest from the 29th of October, 2023 to the date of payment of the sums due in full.
 2. That the Honourable Court be pleased to issue the applicants with an order of mandamus (judicial review) directed to the respondents the Principal Secretary Ministry of Interior and



Coordination of National Government and the Honourable Attorney General to comply with and satisfy the court decree and/or judgment in cause no E024 of 2020 in the sum of Kshs 139,744,000/= comprising the principal sum, gratuity at the rate of 31% with the costs and interest thereon from 29th of October, 2023 to the date when the full payment will be effected.”

2. The applicants also sought for an order on costs.
3. The application is based on a statement of facts dated May 24, 2023 and an affidavit verifying the facts relied upon sworn by Dr Salim Ndemo on June 8, 2023.
4. The applicants’ case is fairly simple. They obtained a judgment in the Employment and Labour Relations Court in Petition no E084 of 2020. The judgment is against the Attorney General who was sued on behalf of the Government of Kenya for damages for unlawful and unfair dismissal. The judgment is for the amount of “Kshs, 139,744,000/= together with gratuity and costs.”
5. A certificate of order against government was issued on June 8, 2023 but as at the time of filing the instant application, the respondents had either failed or refused to satisfy the decree. Thus, it became necessary that the instant application be filed.
6. The respondents filed grounds of opposition to oppose the applicant’s application. In these grounds, it has been contented that the application is incompetent, bad in law and an abuse of the process of court.
7. According to the respondents, this Honourable Court lacks the requisite jurisdiction to hear and determine the application or issue the order sought because the dispute is an employment matter which has been heard and determined by the Employment and Labour Relations Court. In particular, according to rule 7 of the *employment and Labour Relations Court (Procedure) Rules*, 2016, the Employment and Labour Relations Court has exclusive jurisdiction to hear judicial review matters that would ordinarily be filed in that court.
8. The application, according to the respondents, is in any event, defective because it is contrary to section 21 of the *Government Proceedings Act*, cap 40 in the sense that the applicants have not served the respondents with a certificate of taxation or a certificate of order against government or a certificate of costs.
9. The respondents have also averred that the application is premature since the applicants have neither commenced nor concluded the taxation process to ascertain the exact costs the respondents are bound to pay.
10. Again, the application offends order 53 of the *Civil Procedure Rules* because the applicants have sought for prayers for leave to file a motion for judicial review order of mandamus and the substantive prayer for this particular order in the same application.
11. The application is also alleged to be incompetent because one of the petitioners in the suit in the Employment and Labour Relations Court from where a judgment sought to enforced was obtained is not party to the proceedings in this application.
12. In considering this application, I am persuaded by the respondent’s contention that since the substantive suit out of which the applicants obtained the judgment sought to be enforced was determined by the Employment and Labour Relations Court, there would be nothing wrong if this application was placed before the same court for determination. I say so because according to Rule 6 of the *Employment and Labour Relations Court (Procedure Rules)*, 2016, the Court has jurisdiction to entertain judicial review applications. As a matter of fact, the court has a judicial review division.



13. Rule 6 to which reference has been made reads as follows:

Institution of petition and judicial review proceedings

- (1) A party who wishes to institute a petition shall do so in accordance with the Constitution of Kenya (Protection of Rights and Fundamental Freedoms and Enforcement of the Constitution) Practice and Procedure Rules, 2012.
- (2) A person who wishes to institute judicial review proceedings shall do so in accordance with section 8 and 9 of the [Law Reform Act](#) and Order 53 of the [Civil Procedure Rules](#).
- (3) Notwithstanding anything contained in this Rule, a party is at liberty to seek the enforcement of any constitutional rights and freedoms or any constitutional provision in a statement of claim or other suit filed before the Court. (Emphasis added).

14. In view of this provision, the Employment and Labour Relations Court would be ideally placed to dispose of this application but not necessarily because this Honourable Court is deficient of jurisdiction.

15. I, therefore, direct that the application be transferred to the Employment and Labour Relations Court forthwith. The deputy registrar of that court may fix a date when the matter will be mentioned before the presiding judge of the Court for directions on the disposal of the application or for such other orders that the judge may deem fit to grant. It is so ordered.

SIGNED, DATED AND DELIVERED ON 29 SEPTEMBER 2023.

NGAAH JAIRUS

JUDGE

