



**Grobler v Cabinet Secretary for Interior and Co-ordination of National Government
(Civil Appeal E658 of 2021) [2022] KEHC 12562 (KLR) (Civ) (25 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12562 (KLR)

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

CIVIL

CIVIL APPEAL E658 OF 2021

JK SERGON, J

AUGUST 25, 2022

BETWEEN

MARETHA GROBLER APPELLANT

AND

**CABINET SECRETARY FOR INTERIOR AND CO-ORDINATION OF
NATIONAL GOVERNMENT RESPONDENT**

RULING

1. The subject matter of this ruling is the notice of preliminary objection taken out by the respondent putting forward the following grounds:
 - a. That the application and appeal offends the provisions of sections 7, 8 and 9 of the *Fair Administrative Action Act*, no 4 of 2015.
 - b. That subsequent thereto, this honourable court lacks jurisdiction to hear and determine this application and appeal.
 - c. That the application and appeal is bad in law and contravenes against among others, the provision of section 12 of the *Government Proceedings Act*, cap 40 of the Laws of Kenya.
 - d. That without prejudice to (3) above the application and appeal against the respondent is not maintainable in law for failure to enjoin the hon Attorney General
2. The appellant filed grounds of opposition in response to the notice of preliminary objection.
3. It is the submission of the honourable Attorney General that the appeal and the motion dated July 13, 2022 offends the provisions of sections 7, 8 and 9 of the *Fair Administrative Act* no 4 of 2015, therefore this court lacks jurisdiction to entertain this matter.



4. The respondent further argued that he appeal and the application are filed in contravention of section 12 of the Government Proceedings Act (cap 40 laws of Kenya). it is also stated that the appeal and the application are not maintainable in the absence of the Attorney General being a party to the action.
5. The appellant argued against the notice of preliminary objection stating that the same does not offend the provisions of Fair Administrative Action Act no 4 of 2015. The appellant further argued that under section 57(1) and (2) of the Kenya Citizenship and Immigration Act no 12 of 2011 he is entitled to apply to the High Court to review the decision of a Cabinet Secretary. The appellant further stated that the failure to enjoin the Attorney General is a mere technicality which is curable under article 159(2) (d) of the Constitution.
6. Having considered the rival submissions and averments, I am persuaded by the arguments put forward by the appellant. It is apparent from the provisions of section 57 (1) and (2) of the Kenya Citizenship and Immigration Act that any party aggrieved by the decision of a public officer or cabinet secretary under the Act may apply to the High Court for review of the decision or appeal against the decision to the High Court.
7. It is also clear from the above provision that there is no specific mode or procedure prescribed to approach the court. I find that this court has jurisdiction to entertain the appeal.
8. The other fundamental issue which was raised by the respondent is whether the appeal is rendered fatally defective and incompetent by the non-joinder of the hon Attorney General. I have taken into account the divergent views of the parties.
9. A careful perusal of article 156 (4) (b) of the Constitution of Kenya, 2010, will reveal that the Attorney General is constitutionally mandated to represent the National Government and he is automatically part of the proceedings. An action should not be defeated for misjoinder of non-joinder of parties. The court in broad interest of justice retains the inherent power to issue orders of substitution or joinder of parties and thereafter procedure to deal with the substantive issue in dispute.
10. In the end, I find no merit in the respondent's notice of preliminary objection. The same is ordered dismissed with each party bearing their own costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 25TH DAY OF AUGUST, 2022.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

