



**Goldfield Insurance Brokers Limited v Commissioner of Insurance & another; First Assurance Company Limited (Interested Party) (Judicial Review Miscellaneous Application 008 of 2022) [2022] KEHC 16802 (KLR) (Commercial and Tax) (22 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16802 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 008 OF 2022**

**DO CHEPKWONY, J**

**DECEMBER 22, 2022**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO INSTITUTE JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS**

**BETWEEN**

**GOLDFIELD INSURANCE BROKERS LIMITED ..... APPLICANT**

**AND**

**COMMISSIONER OF INSURANCE ..... 1<sup>ST</sup> RESPONDENT**

**INSURANCE REGULATORY AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**FIRST ASSURANCE COMPANY LIMITED ..... INTERESTED PARTY**

**RULING**

1. This ruling determines the *ex parte* Applicant's Chamber Summons application dated 7<sup>th</sup> June, 2022 and the Respondents' Notice of Motion application dated 25<sup>th</sup> July, 2022.
2. The *ex parte* Chamber Summons seeks Inter alia the following orders:--
  - a. Spent;
  - b. That leave be granted to the *ex parte* Applicant to institute Judicial Review proceedings seeking an Order of *certiorari* directed to the Respondents, their servants, employees and or agents or any other officer acting under their Authority to bring to court for the purpose of quashing the decision made by the Respondents on 31<sup>st</sup> March, 2022 unlawfully purporting to decline the



Applicant's request seeking enforcement of a contract to be paid commission; directing the Interested Party not to pay the Applicant's undisputed lawful commission earned.

- c. That leave be granted to the *ex parte* Applicant to institute Judicial Review proceedings seeking an Order of prohibition directed to the Respondents, their servants, employees and or agents or any other officer acting under their Authority prohibiting them from implementing their decision dated 31<sup>st</sup> March, 2022 unlawfully purporting to decline the Applicant's request seeking enforcement of a contract to be paid commission; directing the Interested Party not to pay the Applicant's undisputed lawful commission earned.
  - d. That leave be granted to the *ex parte* Applicant to institute Judicial Review proceedings seeking an Order of *mandamus* directed to the Respondents, their servants, employees and or agents or any other officer acting under their Authority compelling them to forthwith issue a no objection letter to the Interested Party to facilitate payment of Kshs 27,644,221/- to the Applicant by the Interested Party pursuant to the tender hereof.
  - e. That leave so granted to the Applicant do operate as stay on implementation of the Respondents' impugned decision dated 31<sup>st</sup> March, 2022 pending the hearing and determination of the main Judicial Review Motion.
  - f. That this Honorable Court be pleased to give directions hereof and further orders that it may deem fit to grant hereof.
  - g. That the costs of this application be in the cause.
3. The application is premised on the grounds on the face of the application, the annexed affidavit of Joseph Anampiu, the *ex parte* Applicant's Principal Officer and further, on the statement of facts dated 7<sup>th</sup> June, 2022. The *ex parte* Applicant's case is that the Respondents made an impugned decision on 31<sup>st</sup> March, 2022 which in the Applicant's view is unlawful, biased, oppressive, capricious, unconstitutional and offends rules of natural justice. According to the Applicant, Kenya Forest Service (KFS) advertised Tender No KFS/02/2021-2022 for provision of group medical insurance cover for which the Applicant and the Interested Party joined hands and successfully bid for the tender. The Applicant avers that it was actively involved in the deliberations by assigning its officers to ensure the tender documents were correctly done and conveyed the relevant correspondences and ultimately played the substantial part to having the tender awarded to the Interested Party.
4. Sometimes on or about 30<sup>th</sup> November, 2021, before the commencement of the cover, Kenya Forest Service paid the interested party the full premium amounting to Kshs 276,442,209/= but the Interested Party refused to pay the *ex parte* Applicant ten percent (10%) commission thereof which is equivalent to Kshs 27,644,221/=. Although the Interested Party indicated that it had no objection to paying the commissions, the Respondents prevented the Interested Party from making the payments on grounds of pending investigations with respect of the Kenya Forest Service tender. The Applicant then wrote to the 1<sup>st</sup> Respondent vide letter dated 5<sup>th</sup> January, 2022 and to the Association of Insurance Brokers vide a letter dated 19<sup>th</sup> January, 2022 seeking its intervention to have the commission paid by the Interested Party. The Respondents then responded through a letter dated 31<sup>st</sup> March, 2022 declined the Applicant's request seeking enforcement of a contract to be paid lawfully earned commission and instead (sic) tendered threats by reporting the matter to Ethics and Anti-corruption Commissions (EACC) and Communications Authority.



5. Further, the Applicant avers that the Respondents' decision in the letter dated 31<sup>st</sup> March, 2022 offends the Rules of Natural Justice because it was not given a reasonable opportunity to prepare or give a defence. That the decision was made ultra vires and the Respondents had no authority to object the payment of the commission. It was the Applicant's case that the 1<sup>st</sup> Respondent purported to solicit and demand Kshs 5,000,000/= from its agents as a condition to write the letter of no objection to facilitate the payment of the commission. As such, the 1<sup>st</sup> Respondent breached Article 73 of the Constitution which provides for leadership responsibilities including public trust and dignity of office, Article 75 of Constitution which enjoins a public officer to behave in a manner that does not conflict public interests with private interests and breaches the core values of Chapter 6 of the Constitution.
6. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents opposed the application through the affidavit of Godfrey Kiptum wherein he avers that the Respondents received a complaint letter and supporting documents from Renshield Insurance Agency Ltd seeking its intervention to compel the interested party to pay Insurance Agency commissions after its participation in bid for Kenya Forest Service Tender no. KFS/02/2021-2022. A preliminary meeting was then held between the 2<sup>nd</sup> Respondent, the Interested Party and Renshield and upon further deliberations, the 2<sup>nd</sup> Respondent directed the Interested Party to pay the commission as sought pending further investigations. However, vide a forensic investigation report Ref: Kenya Investigation AASKE-2110-00058 the Interested Party was absolved of the fraud and unethical conduct leveled against it by Renshield's complaint. The Interested Party then notified the Respondent that it had appointed the Applicant herein as its agent with respect to Kenya Forest Service's tender and indeed Kenya Forest Service confirmed in their letter dated 5<sup>th</sup> January, 2022 that the Interested Party had submitted its tender documents through the Applicant.
7. Vide a letter dated 5<sup>th</sup> January, 2022, the Applicant herein sought the Respondents' intervention and approval for payment of commissions by the Interested Party. Thus given the two competing claims by Renshield and the Applicant herein, both claiming commissions on the same particular tender and both claiming to have acted as the Interested Party's agents, the Respondents wrote to Kenya Forest Service seeking to be supplied with opening and closing Tender Registers to aid in making an informed conclusion. The Respondents also identified seven legal issues for determination with respect to the two competing claims which are as follows: - Whether the work done by Renshield amounted to Insurance Agency, Whether the work done by the Applicant herein amounted to brokerage services, what is the distinction between an agency license and brokerage license under the Insurance Act, Whether Mr. Joseph Anampiu, not being a licensed insurance agent, could hold himself out as such or carry on the business of an insurance agent; whether the Public Procurement and Assets Disposal Act provides opportunity for insurance intermediation in public procurement proceedings where insurers are bidding directly; the circumstances under which Insurance Agency Commission or brokerage commission could be lawfully payable to an intermediary; and, whether any enforcement action arise against the insurer and/or intermediaries in the circumstances of the case.
8. The 2<sup>nd</sup> Respondent then came to a conclusion that with respect to Renshield's claim, the same was not justified since it intended to commercially exploit private and confidential information in exchange of commissions, and a notice to show cause was taken against its Principal Officer to show the requisite consents in disclosing the private information. With respect to the Applicant's claim, the Respondents concluded that the subject tender was an "underwriter's only" tender and the work undertaken by the Applicant was not insurance brokerage services within Section 2 of the Insurance Act for which it is licensed to offer. By offering the services as it did, the Applicant breached Section 191(2) of the Insurance Act which prohibits brokers from engaging in any work other than it is licensed to. The conclusion was the Applicant should not be paid the commissions for work outside its ambit.



9. That decision was communicated to the Applicant vide a letter dated 31<sup>st</sup> March, 2022 and dissatisfied with the same, the Applicant sought to challenge the decision before the Insurance Appeals Tribunal vide Appeal No 6 of 2022. The said appeal is still pending and has been stood over generally pending the Constitution of a new Insurance Appeals Tribunal given that the previous one's term had expired. Nonetheless, the Applicant has in addition to the Appeal, sought to challenge the decision through the present Judicial Review proceedings.
10. In the opening paragraphs, I indicated that there are two applications pending determination in this matter. The second application is a Notice of Motion application dated 25<sup>th</sup> July, 2022 filed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent. It is brought under Sections 3A and 6 both of the Civil Procedure Act, Order 2 Rules 15 (1)(b)(c) and (d), Order 13 Rule 2, and Order 53 Rule 2 all of the Civil Procedure Rules. It seeks the following orders: -
- a. Spent;
  - b. That Judgment be and is hereby entered against the ex-parte Applicant to the effect that it has admitted that it engaged in the provision of services which are not within the limited scope of services that a registered insurance broker is permitted to provide under Section 2 of the Insurance Act and the *ex parte* Applicant is consequently estopped from denying that it breached Section 191(2) of the Insurance Act.
  - c. That in consequence of the foregoing estoppel and Judgment on admission, the *ex parte* Chamber Summons dated 7<sup>th</sup> June, 2022 be and is hereby dismissed on grounds that the Exparte Applicant has failed to establish reasonable grounds for grant of leave to institute Judicial Review Proceedings against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in respect of the decision communicated in the letter dated 31<sup>st</sup> March, 2022.
  - d. That the Certificate of Urgency, ex-parte Chamber Summons, Statutory Statement, and Verifying Affidavit, all dated 7<sup>th</sup> June, 2022, be struck out and the *ex parte* Chamber Summons dated 7<sup>th</sup> June, 2022 be and is hereby dismissed.
  - e. That in the alternative, the hearing of the Ex-Parte Chamber Summons application dated 7<sup>th</sup> June, 2022 be stayed pending hearing and determination of Insurance Appeals Tribunal Appeal No 6 of 2022 where parties litigating over the same issues that are directly and substantially arising herein in other courts of competent jurisdiction.
  - f. That costs of this application be borne by the ex-parte Applicant.
11. The grounds adduced in support of the application are that the ex-parte Applicant is guilty for failing to disclose to this court that it has sought to challenge a decision in the letter of 31<sup>st</sup> March, 2022 vide Insurance Appeals Tribunal Appeal No 6 of 2022 which is pending on the same subject and being litigated by similar parties under the same title. That Order 53 Rule 2 of the Civil Procedure Rules provides that an application for leave to institute Judicial Review ought to be adjourned pending determination of an appeal before the tribunals. That in any event the prayer for leave to operate as stay would overturn the decision dated 31<sup>st</sup> March, 2022 and would indeed allow the Applicant to be paid unlawful commissions of Kshs 27,644,221/= which are suspected to have been procured through fraud, corruption and collusion. Therefore, if the Judicial Review proceedings are allowed to continue,



the court is likely to arrive at a decision conflicting with that of the Insurance Appeals Tribunal in the Appeal pending before it.

12. It is further averred that from the given narration, the Applicant has not denied that its actions are tantamount to violation of Section 191(2) of the Insurance Act and is punishable under Section 191(4) thereof.
13. The two applications were canvassed by way of written submission and as the record reflects with the Applicant's set of submissions are dated 7<sup>th</sup> November, 2022 whereas the Respondents' submissions are dated 9<sup>th</sup> November, 2022. Having read through the submissions, they reiterate the summary of each party's perspective decision as summarized above and I do not wish to repeat the same here.

### **Analysis and Determination**

14. I have considered the two applications, the affidavits sworn in support and rebuttal thereof, the submissions made, and the authorities relied on by the parties. In my humble opinion, the following issues crystalize for determination.
  - a. Whether in the circumstances of this case, Judgment on admission can be entered.
  - b. Whether the Applicant has made a case for leave to commence Judicial Review proceedings

#### **a) Whether Judgment can be entered on admission of facts in this case**

15. The relevant provision on the above subject is Order 13 Rule 2 of the Civil Procedure Rules which reads as follow: -

“Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just.”

16. In explaining further on the same subject, the court in the case of Guardian Bank Limited v Jambo Biscuits Kenya Limited [2014]eKLR stated as follows:-

“The principle applicable in judgment on admission is that the admission must be very clear and unequivocal on a plain perusal of the admission. The admission in the sense of Order 13 Rule 2 of the Civil Procedure Rules is not one which requires copious interpretations or material to discern. It must be plainly and readily discernible. In such clear admission, like J.B. Havelock J stated in the case of 747 Freighter Conversion LLC v One Jet One Airways Kenya Ltd & 3 others HCCC No 445 of 2012, there is no point in letting a matter go for a trial for there is nothing to be gained in a trial.”

17. Similarly, the court in the case of Express Automobile Kenya Limited v Kenya Farmers Association Limited & another [2020] eKLR observed that an admission should reflect a conscious and deliberate act of the person making it, showing an intention to be bound by it. As for the court, the power to enter Judgement on admission is not mandatory or peremptory; it is discretionary. The court is therefore enjoined to examine the facts and prevailing circumstances while keeping in mind that a Judgement



on admission is a Judgment without trial which permanently denies a remedy to the sued party by way of an appeal on merits.

18. In the present case, it is averred that the Applicant admitted having engaged in among other transactions, preparation and submission of tender document, collection of letters and relay of correspondence between the Interested Party and Kenya Forest Service and finally conducting the market intelligence exercise which are all services outside the scope of its brokerage license. The argument is tied to Section 191 (2) of the [Insurance Act](#) which precludes Insurance Brokers from engaging in activities for which it is not licensed to, while Section 191 (4) thereof which creates an offense for contravening Section 191(2). According to the Respondents, the Applicant is estopped from denying its representation and seeks the court to enter Judgment to the extent that it has engaged in services to which it is not licensed.
19. In response, the Applicant does not deny having engage in conducting the market intelligence, assisting in preparation of the tender documents but avers that the services were within the scope of the mandates covered in its license. It is therefore clear that the Applicant never admitted that the actions complained of are outside the scope of its license and the issue cannot be ascertained and or determined with conclusion without further evidence being adduced. The Respondents bear that burden of proof, and in the premises, I am not persuaded that there is in this case a clear and unequivocal admission of facts so as to render it unnecessary for the Respondents to adduce evidence to show that the activities in which the Applicant was engaged on are outside the scope of its license as is required under the [Insurance Act](#). This case does not meet the threshold in Order 13 Rule 2 of the [Civil Procedure Rules](#) above and the prayer to enter judgment on admission is therefore declined.

#### **b) Whether the Applicant has made a case for leave to commence Judicial Review proceedings**

20. The gist of the Applicant's application is to commence Judicial Review proceedings. Under Order 53 Rule 1 of the [Civil Procedure Rules 2010](#), it is mandatory that an Applicant in such an application must seek leave of court before he/she can file the substantive application. As it is trite in law, Judicial Review is more concerned with the manner in which a decision is made than the merits of the decision. The court is concerned with the lawfulness of the process by which the decision is made. The court in the case of [Republic v National Land Commission & another, ex parte Farmers Choice Limited](#) (2020) eKLR explained thus, some of the grounds upon which an order of Judicial Review can issue include where the decision complained of is tainted with illegality, irrationality and procedural impropriety (where there is failure to act fairly on the part of the decision-making authority in the process of taking a decision) or where the rules of Natural Justice are not complied with. It may also be issued where the decision is made without or in excess of jurisdiction.
21. Normally, the court will not allow an application for leave to commence Judicial Review if it holds the view that the application is vexatious, frivolous or otherwise hopeless. Leave should therefore be granted only if, based on material placed before the court, prima facie the court is persuaded that there is an arguable case for granting the reliefs sought in the substantive application. Just like the court held in the case of [Republic v County Government of Embu Ex parte Peterson Kamau Muto T/A Embu Medical And Dental Clinic & 6 others](#) [2022] eKLR, thus in an application for leave to commence Judicial Review: -

“It is therefore clear from the above that in an application for leave such as the present one, this court ought not to delve deeply into the arguments of the parties but should make cursory perusal of the evidence before court and make the decision as to whether an Applicant's case is sufficiently meritorious to justify leave.”



22. In the Present case, the *ex parte* Applicant avers that the Respondents in their impugned decision dated 31<sup>st</sup> March, 2022 unlawfully and unreasonably declined the request to enforce a contract for payment of commissions earned from an exercise the Applicant assisted the Interested Party to successfully bid for in a tender advertised by Kenya Forest Services. The Applicant adds that the decision was made *ultra-vires* as the Respondents had jurisdiction to reject the payment of the commissions, but they chose to frustrate the Applicant after it declined to be solicited from. The Applicant thus seeks leave for Orders of *certiorari*, prohibition and *mandamus* to remove into this court and quash the decision by the Respondent declining the approval for payment of the commissions and compel them to issue the letter of no objection.
23. In respect thereof, and having perused the evidence by the *ex parte* Applicant without delving into the merit of its arguments which are contrasted by the Respondents, I am of the respectful opinion that the case cannot be said to be vexatious or hopeless. It has merited grounds to justify leave to commence Judicial Review Proceedings.
24. However, the Respondents have argued that if at all the court finds justifiable grounds in the application, the said leave should not be granted bearing in mind that the Applicant is pursuing similar relief before the Insurance Appeals Tribunal vide Appeal No 6 of 2022 which is still pending and there is eminent risk of granting conflicting orders if the matters run in parallel with each other. In the Respondents' view, the present application should thus be struck out and parties be directed to pursue the appeal or alternatively, the same be stayed pending the determination of the Insurance Tribunal's Appeal No 6 of 2022. In the Respondent's view, these proceedings are sub-judice the proceeding before the Insurance Tribunal and are in contravention of Sections (5) and (6) of the [Civil Procedure Act](#). On the other hand, while conceding to having filed the Appeal, the Applicant submits that the two suits are not related in mandate although they are between the same parties.
25. I wish to first re-affirm the emphasis for facilitating alternative dispute resolutions mechanisms as the court is enjoined to by Article 159 of the [Constitution](#). Where there is an alternative procedure for redress, of a particular grievance prescribed by the [Constitution](#) or an Act of Parliament, that procedure should strictly be followed since there are good reasons for that procedure. Ideally, in weighing both sides, the court has to consider if the other available remedies and alternative means of legal redress are adequate enough and whether they provide an efficacious and satisfactory answer to the litigant's grievances. It guides the court's discretion in considering whether to exercise restraint or first give an opportunity to the relevant bodies or state organs duly empowered by the [Constitution](#) and Legislation to deal with the dispute as provided in the relevant statutes or even in considering the dispute as an exceptional one. The same is the import in the case of *Republic v The Commissioner of Lands, Ex parte Lake Flowers Limited* Nairobi HC Misc. Application No 1235 of 1998, where the court stated thus:-
- “Availability of other remedies is no bar to the granting of the Judicial Review relief but can however be an important factor in exercising the discretion whether or not to grant the relief...”
26. It was also held by this court in the case of [Republic v Ministry of Interior and Coordination of National Government and another ex parte ZTE](#), Judicial Review Case No 441 of 2013 that:
- “...one must not lose sight of the fact that the decision whether or not to grant Judicial Review orders is an exercise of judicial discretion and as was held by Ochieng, J in *John Fitzgerald Kennedy Omanga v The Postmaster General Postal Corporation of Kenya & 2 others* Nairobi HCMA No 997 of 2003, for the Court to require the alternative procedure to be exhausted prior to resorting to Judicial Review is in accord with Judicial Review being very properly



regarded as a remedy of last resort though the Applicant will not be required to resort to some other procedure if that other procedure is less convenient or otherwise less appropriate. Therefore, unless due to the inherent nature of the remedy provided under the statute to resort thereto would be less convenient or otherwise less appropriate, parties ought to follow the procedure provided for under the statute.

27. Likewise, I associate myself with the decision in the case of *International Centre for Policy and Conflict & 5 others v The Hon. Attorney-General & 4 others* [2013] eKLR, where the Court recognized the need to let relevant statutory bodies deal with a matter within their mandate fully before interfering in the manner sought in these proceedings by holding that a Court of law:

“...must first give an opportunity to the relevant constitutional bodies or State organs to deal with the dispute under the relevant provision of the parent statute. If the court were to act in haste, it would be presuming bad faith or inability by that body to act...Where there exist sufficient and adequate mechanisms to deal with a specific issue or dispute by other designated constitutional organs, the jurisdiction of the court should not be invoked until such mechanisms have been exhausted...”

28. Lastly, in the case of *Thuku Kirori & 4 others v County Government of Murang'a* [2014] eKLR, the Court similarly held that: -

“Moreover, where a statute or constitution, for that matter, has expressly delegated specific functions, duties or responsibilities to a particular organ, state or otherwise, this court will be hesitant to intervene and curtail these organs’ efforts to execute their statutory or constitutional mandates”

29. I need not to reiterate the dictum in the above cases, which I fully agree and associate with, save to add that Judicial Review is a remedy of last resort and where an alternative remedy exists, before exercising the discretion to allow an application for leave to commence Judicial Review proceedings, the Applicant must show to the satisfaction of the court, that Judicial Review is the more convenient, efficacious and satisfactory remedy available.

30. Weighing the above principles to facts of the present case, Section 173 of the *Insurance Act* provides alternative remedy to parties aggrieved by the decision of the Commissioner of Insurance. It provides as follows: -

[173]. Appeals from Commissioner’s decisions;

1. A person aggrieved by a decision of the Commissioner under this Act may, within one month from the date on which the decision is intimated to him, appeal to the Tribunal which may, subject to such terms and conditions as it may consider necessary, uphold, reverse, revoke or vary that decision.
2. Except as provided in this section the decision of the Tribunal on an appeal made to it under subsection (1) shall be final and conclusive.
3. A person aggrieved by a decision of the Tribunal made under subsection (1) may, if it involves a question of law, within one month from the date on which the decision is intimated to him, appeal therefrom to the court.
4. A reference in this section to a question of law does not include a reference to a question whether there is sufficient evidence to justify a finding.



5. The Chief Justice may make rules for regulating the practice and procedure in connection with an appeal under subsection (3) and for the better carrying into effect the provisions of that subsection.
31. Plain reading of Section 173 (1) above shows any decision of the Commissioner including the one made in the present case can be appealed against before the Insurance Appeals Tribunal. Indeed, the Applicant did exercise the option available to it under Section 173 above by filing the Insurance Appeals Tribunal Appeal No 6 of 2022 which is yet to be determined.
32. For caution, I have perused the Memorandum of Appeal filed by the Applicant and it is clear that the Applicant has taken up all the grounds adduced in the present application for leave in its Memorandum of Appeal dated 8<sup>th</sup> April, 2022. The Applicant has not bothered to explain or show if at all the appeal pending before the Insurance Appeals Tribunal is inadequate to address all its grievances. In that regard, I stand guided by the provisions of Section 9(2) of the *Fair Administrative Action Act* which bars the Court from reviewing an administrative action or decision until the mechanisms including internal mechanisms for appeal or review and all other remedies available under any other written law are first exhausted.
33. In the premises, I am persuaded that the remedies/redress the Applicant seeks to achieve by the intended Judicial Review proceedings is substantially the same as what is sought in the appeal before the Insurance Appeals Tribunal. In expounding on the same line of argument, the G V Odunga (J) in the case of *Republic v Commissioner of Domestic Taxes Ex-Parte I & M Bank Limited* [2017] eKLR expressed thus: -
- “a party ought not to be allowed to have a double-pronged attack on the same decision with a view to availing to itself an opportunity of challenging the same decision twice over. In my view even without the provisions barring such a course, to proceed in that manner would amount to playing lottery with the Court and render legal proceedings a circus. That clearly is an abuse of the Court process. Whereas this Court may in exceptional cases excuse the failure to invoke the alternative dispute resolution mechanisms provided under the law, where such mechanisms have in fact been invoked, to abandon the same midstream without terminating the same and proceed to commence Judicial Review proceedings or vice versa amounts to abuse of the process of the Court.”
34. Therefore, it would be an abuse of the court process for a party to invoke two jurisdictions at the same time which are geared towards achieving the same result as the Applicant herein attempts to do. In conclusion, having found that the issues raised herein can properly be addressed in the appeal before the Insurance Appeals Tribunal, although the grounds adduced by the Applicant are meritorious for this court to grant leave to commence Judicial Review Proceedings as sought, it would be tantamount to abuse of the court process for the Applicant to invoke two jurisdictions at the same time.
35. In the circumstances, the challenge taken by the Respondent on this court’s jurisdiction in respect of the application dated 25<sup>th</sup> July, 2022 is merited and agree that the issues raised herein by the Applicant are better dealt with by the Insurance Appeals Tribunal.
36. In the resultant, and for the above reasons, the Applicant’s Notice of Motion application herein dated 7<sup>th</sup> June, 2022 be and is hereby struck as while the Respondents’ Notice of Motion application dated 25<sup>th</sup> July, 2022, partially succeeds. Each party shall bear its own costs.
37. It is so ordered.



**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 22<sup>ND</sup> DAY OF DECEMBER 2022.**

**D.O CHEPKWONY**

**JUDGE**

In the presence of:

Mr. Kurauka counsel for Applicant

Court Assistant - Sakina

