



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAJIADO**

**JUDICIAL REVIEW MISC. CIVIL APPLICATION NO. E006 OF 2021**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF MANDAMUS**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT CAP 26 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE COUNTY GOVERNMENT ACT**

**AND**

**IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT**

**BETWEEN**

**CHRISTOPHER CHEGE GICHURU.....APPLICANT**

**VERSUS**

**THE CLERK, OFFICE OF THE SPEAKER, KAJIADO COUNTY ASSEMBLY.....1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF ACCOUNTS, KAJIADO COUNTY ASSEMBLY.....2<sup>ND</sup> RESPONDENT**

**RULING**

The Ex-parte Applicant, Christopher Chege Gichuru, has brought this Chamber Summons under Sections 8 and 9 of the Law Reform Act and Order 53 Rules 1 and 3 of the Civil Procedure Rules seeking leave to institute Judicial Review Orders by way of Mandamus directed at the Respondents to settle the decretal sum being Kshs 2,626,198 awarded to him in Kajiado CMCC No. 2 of 2019- Christopher Chege Gichuru T/A Sypruse Engineering Company v. The County Government of Kajiado & 2 Others together with interest at the rate of 12% per annum from 17<sup>th</sup> February 2021 until payment in full and costs of this application.

The grounds in support of the application are found in the Statement of Facts and the Verifying Affidavit sworn by the Applicant. I have read both the Statement of Facts and the Verifying Affidavit. The Applicant states that he successfully applied for a tender vide Local Service Order No. 1348512 for the provision of overhaul, repair and maintenance services of the County Assembly toilets at the quoted price of Kshs 1, 786,922. He was not paid after completion of work. He filed a case against the Respondents at the Kajiado CMCC being CMCC No. 2 of 2019. He successfully prosecuted the case and was awarded judgment and subsequent decree in the sum of Kshs 2,626,198. However the Respondents have failed to settle the amount without justification.

The Applicant avers that he needs the money urgently to attend to his wife’s ailment. It is that failure to settle the amount owed to him that he has come to this court seeking leave to commence Judicial Review proceedings. The Applicant has attached documents in support of this application.

Counsel for the Applicant Mr.Mandela made brief submissions orally in court on 22<sup>nd</sup> November 2021.

I have considered this application. A party coming to court to seek leave to apply for Judicial Review Orders must comply with Order 53. Under Order 53 Rules 1 and it is provided as follows:

*(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.*

*(2) An application for such leave shall be made ex parte to a judge in chambers, and shall be accompanied by —*

*(a) a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought; and*

*(b) affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the respondent, over the same subject matter and that the cause of action relates to the applicants named in the application.*

The reasons for seeking leave to commence judicial review proceedings were explained in Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996 as follows:

*“The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The 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”.*

I am satisfied that the Applicant has complied with these provisions of the law and I therefore grant leave to the Applicant to institute Judicial Review proceedings against the Respondents. The Applicant shall file Judicial Review Proceedings within 21 days from today and serve the same to the Respondents. I also award costs to the Applicant. Orders shall issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 23<sup>RD</sup> NOVEMBER 2021.**

**S. N. MUTUKU**

**JUDGE**