



Waqooy Merchants Limited v Nairobi City County & another (Environment & Land Case E201 of 2023) [2023] KEELC 19214 (KLR) (20 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19214 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E201 OF 2023**

J OMANGE, J

JULY 20, 2023

BETWEEN

WAQOOY MERCHANTS LIMITED PLAINTIFF

AND

**THE DIRECTOR, LANDS, HOUSING & URBAN PLANNING &
DEVELOPMENT NAIROBI CITY COUNTY 1ST DEFENDANT**

NAIROBI CITY COUNTY 2ND DEFENDANT

RULING

1. The plaintiff applicants application dated June 6, 2022 prays for the following reliefs;
 1. Spent.
 2. That this honourable court be pleased to compel the defendants/respondents to issue the plaintiff/applicant with the stamped and approved architectural and structural plans pending the hearing and determination of this application.
 3. That this honorable court be pleased to grant an order compelling the defendants/respondents forthwith to release to the plaintiff/applicant the following documents in the defendant's/respondents' possession.
 4. That upon hearing *inter partes* this honourable court be pleaded to grant the orders in prayer (c) above pending the hearing and determination of this suit.
 5. That this application be heard *inter partes* on the.....day of.....2023.
 6. That the costs of this application be borne by the defendants/respondents.



2. The application is supported by the affidavit of Issa Kuno in which he deponed that on October 12, 2020 he did write to the Nairobi Metropolitan requesting to be allowed to develop and operate a shopping center within the bus terminus.
3. That pursuant to this request he was issued with a letter of offer for lease of business space within the green terminus. A lease agreement was subsequently executed.
4. In preparation for construction he paid for architectural and structural plans. He states that he has never received the plans in spite of severally requesting for them.
5. The application came up for directions on June 27, 2023 during which counsel for the Defendant/ Respondent submitted that the orders sought are Judicial Review in nature. Hence leave of court should be sought.
6. Ms Lamwenya for the plaintiff/ Applicant submitted that the orders sought are not Judicial Review. The issue for determination is whether leave ought to have been sought in this case.
7. The courts have had occasion to differentiate between instances where leave is required and where leave is not required. In the case of *National Social Security Limited v Sokomanja Limited* [2021 eKLR] the Court observed as follows:

“Judicial review as a relief is provided for in among others; Article 23 (3) of the *Constitution* of Kenya 2010, section 8 of the *Law Reform Act* Chapter 26 Laws of Kenya, section 13(7) of the *Environment and Land Court Act* 2011, section 7 of the *Fair Administrative Action Act* 2015 and the Common law. In my view, no leave is required to seek judicial review as a relief under Article 23(3) of the *Constitution* where proceedings are instituted to enforce the Bill of Rights under Article 22 of the *Constitution* or where proceedings have been brought under section 7 of the *Fair Administrative Action Act*, 2015 for the review of an administrative action. Such leave is also not required under the *Environment and Land Court Act* 2011 before such relief is sought.

Leave is however still required in my view where an applicant for judicial review moves the court under the *Law Reform Act* Chapter 26 Laws of Kenya and Order 53 of the Civil Procedure Rules. Following the promulgation of the *Constitution* of Kenya, 2010 and *Fair Administrative Action Act*, 2015, applicants for judicial review orders have a choice. They can anchor their judicial review applications under the *Constitution* of Kenya 2010 and/or the *Fair Administrative Action Act*, 2015 in which case they will not need leave of the court or go for the same relief under the *Law Reform Act* Chapter 26 Laws of Kenya and Order 53 of the *Civil Procedure Rules* like in the present case and be bound to seek leave of the court.”

8. While the Plaintiff contends that the application is not a Judicial Review it clear that the applicant seeks to compel through the application government officials to perform certain duties. This is an order for Mandamus for which leave should have been sought unless framed as a constitutional petition.
9. I therefore find that the preliminary objection has merit. The application is struck out with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 20TH DAY OF JULY 2023.

JUDY OMANGE

JUDGE

