



**Ochieng' & another v Managing Director, Kenya Railways Corporation  
& 2 others (Environment and Land Judicial Review Case E001 of 2023)  
[2023] KEELC 20451 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20451 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2023**

**E ASATI, J**

**SEPTEMBER 28, 2023**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO  
APPLY FOR THE JUDICIAL REVIEW ORDER OF MANDAMUS**

**AND**

**IN THE MATTER OF: THE ENFORCEMENT OF COURT  
ORDERS AND DECREES AGAINST KENYA RAILWAYS  
CORPORATION, THE COUNTY GOVERNMENT OF KISUMU  
AND THE GOVERNMENT OF THE REPUBLIC OF KENYA**

**AND**

**IN THE MATTER OF: SECTIONS 8 & 9 OF THE LAW REFORM  
ACT AND THE RULES CONTEMPLATED PURSUANT THERETO**

**AND**

**IN THE MATTER OF: THE GOVERNMENT PROCEEDINGS  
ACT, THE KENYA RAILWAYS CORPORATION ACT AND THE  
COUNTY GOVERNMENTS ACT**

**BETWEEN**

**AMINA ACHIENG' OCHIENG' ..... 1<sup>ST</sup> APPLICANT**

**TILAPIA BEACH RESORT LIMITED ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MANAGING DIRECTOR, KENYA RAILWAYS CORPORATION .... 1<sup>ST</sup>  
RESPONDENT**



**PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND COORDINATION  
NATIONAL GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF FINANCE OFFICER, COUNTY GOVERNMENT OF  
KISUMU ..... 3<sup>RD</sup> RESPONDENT**

## **RULING**

1. This ruling is in respect of the chamber summons application dated July 18, 2023 stated to be brought pursuant to the provisions of article 47 of the Constitution of Kenya 2010, sections 8 and 9 of the Law Reform Act, sections 7, 8, 9 and 11(1)(f) and (2) of the Fair Administrative Actions Act and order 53 Civil Procedure Rules. The application seeks for
  - a. Leave to apply for judicial review order of *mandamus* to compel:
    - i. The managing Director, Kenya Railways Corporation being the accounting officer of the said corporation,
    - ii. The Principal Secretary Ministry of Interior and Coordination of National Government, being the accounting officer in the said Ministry of Government of the Republic of Kenya
    - iii. The Chief Officer, Finance being the accounting officer in the structure of the county government of Kisumu to forthwith pay the applicants the sum of Kenya shillings 76,873,366.00 plus costs and interest at court rates from the date of judgement, making an aggregate total of Kenya shillings 117,233,983/- as at July 17, 2023 being the amount awarded in the judgement and decree of the Environment and Land Court delivered on February 24, 2022 and in terms stated in the certificate of order against the government issued on October 3, 2022 in Kisumu ELC No 40 of 2019 between Amina Achieng, and Tilapia Beach Resort Limited versus Kenya Ports Authority, Kenya Railways Corporation, County Government Of Kisumu and The Honourable the Attorney General of The Republic of Kenya.
  - b. Costs of the application be provided for.
2. The application was premised on the grounds in shown the chamber summons and particularly that the judgement and decree aforementioned remain unsettled, the respondents failed to comply with the terms of the stay order and that the orders sought are a necessary part of the execution process of the decree against the respondents. The application was supported by the contents of the verifying affidavit sworn on July 18, 2023 and annexures thereto.
3. When the application was placed before the court under certificate of urgency, the court pursuant to the provisions of the proviso to order 53 rule 1 and for the special circumstances that an order of stay of execution had earlier been granted in the matter, the court directed the applicant to serve the application upon the respondents for inter partes hearing.
4. The 1<sup>st</sup> respondent opposed the application vide the grounds contained in the replying affidavit sworn by Stanley Gitari on September 19, 2023. The 1<sup>st</sup> respondents contention is that being aggrieved by the judgement and decree, the respondents filed an appeal namely Kisumu Court of Appeal civil appeal No E011 of 2022 which is yet to be determined. That the 1<sup>st</sup> respondent has not declined or neglected to pay the sum of Kshs 76,873,366, costs and interest but that the 1<sup>st</sup> respondent being a state corporation



obtains funds from government upon budget. That the 1<sup>st</sup> respondent presented the amounts to the Cabinet Secretary Finance for inclusion in the budget of the financial year and is awaiting response. That the 1<sup>st</sup> respondent had opened an account at KCB Eldoret for the purpose and is awaiting funds.

5. The other respondents filed no response to the application.
6. The application was argued orally on September 20, 2023.
7. I have considered the application and the grounds of opposition thereto. The applicant is the holder of a decree which is yet to be settled. The order of stay of execution lapsed for non-compliance by the respondents with the conditions thereof. The grounds raised in the replying affidavit of the 1<sup>st</sup> respondent, in my view, are grounds that will be applicable in the substantive application. The application satisfies the provisions of order 53 for grant of leave to bring judicial review proceedings. I find that the application has merit and allow it as follows:
  - a. Leave is hereby granted to the applicants to apply for judicial review order of *mandamus* to compel:
    - i. The managing director, Kenya Railways Corporation being the accounting officer of the said corporation,
    - ii. The principal secretary Ministry of Interior and Coordination of National Government being the accounting officer in the said Ministry of government of the Republic of Kenya.
    - iii. The Chief Officer, Finance being the accounting officer in the structure of the county government of Kisumu, to forthwith pay the applicants the sum of Kenya shillings 76,873,366.00 plus costs and interest at court rates from the date of judgement making an aggregate total of Kenya shillings 117,233,983/- as at July 17, 2023 being the amount awarded in the judgement and decree of the Environment and Land Court delivered on February 24, 2022 and in terms stated in the certificate of order against the government issued on October 3, 2022 in Kisumu ELC No 40 of 2019 between Amina Achieng, and Tilapia Beach Resort Limited V Kenya Ports Authority, Kenya Railways Corporation, County Government of Kisumu and the honourable the Attorney General of the Republic of Kenya.
  - c. The substantive application be filed and served within 21 days hereof.
  - d. Costs of the application to abide the substantive judicial review proceedings.

Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI**

**JUDGE.**

In the presence of:

Maureen: Court Assistant

No appearance for the Applicants.

Moraa for the 1<sup>st</sup> Respondent.



No appearance for the 2<sup>nd</sup> Respondent.

No appearance for the 3<sup>rd</sup> Respondent.

