



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njoroge v County Government of Machakos & another (Application E094 of 2023)  
[2025] KEHC 1841 (KLR) (Judicial Review) (24 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1841 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
APPLICATION E094 OF 2023  
JM CHIGITI, J  
FEBRUARY 24, 2025**

**BETWEEN**

**ANDERSON KIMANI NJOROGE ..... APPLICANT**

**AND**

**THE COUNTY GOVERNMENT OF MACHAKOS ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD OF MACHAKOS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this court is a Chamber Summons Application dated 18<sup>th</sup> July, 2023. The Application is brought under Order 53 Rule 1(1), (2) and (4) of the Civil Procedure Rules, Sections 103 of the *Public Finance Management Act* and Section 21(I) *Government Proceedings Act*.
2. The applicant seeks for orders:
  1. That the Applicant, Anderson Njoroge Kimani, be granted leave to apply for an order of Mandamus issued to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, The County Government of Machakos and The County Public Service Board of Machakos, to pay to the Applicant the sum of Kshs 1,016,710 being the Decretal amount in Milimani Chief Magistrate Court at Nairobi Employment Case No. 1133 of 2019 together with Kshs 90,030/= being the certified costs thereon together with interest thereon at 12% per annum from 9<sup>th</sup> December 2020 until payment in full.
  2. That the costs of this application be costs in the cause.
3. The Application is supported by the grounds on the face of it, and on the grounds in the accompanying Statutory Statement, and in verifying affidavit deponed by Anderson Kimani Njoroge, an Advocate of the High Court of Kenya – both similarly dated as the Application.



4. It is the Applicant's case that Milimani Chief Magistrate Court gave and issued a Decree in Employment Case No. 1133 of 2019 directing the Respondent to pay to the Exparte Applicant a sum of Kshs 1,016,710/= with interest thereon, at 12% per annum from 9<sup>th</sup> December, 2020 plus costs OF Kshs. 90,030/= at the court's interest rate until payment in full.
5. It is maintained that despite demand and notice of intention to institute these recovery proceedings having been served upon the respondent through the office of the County Executive Member of Finance on the 15<sup>th</sup> of March, 2023, the respondent has failed, and or refused, and or neglected to pay the outstanding decretal sum to the Exparte applicant.
6. Resultantly, that it appears the Respondent has no intention to pay the said sum, and may continue in such failure and or refusal and or neglect to pay unless compelled by an order of Mandamus, given by this honourable court, so to pay. Therefore, it is thus just and proper that leave to apply for a judicial review order of Mandamus be granted.
7. I have considered the materials on record: Application, annexures, and the written submissions. The issue for determination is:

#### **Whether the Application for leave to institute Judicial proceedings is merited**

8. It is a requirement of the law under Order 53 Rule 1 of the Civil Procedure Rules 2010, that an Applicant must seek leave to institute judicial review proceedings.
9. Leave is meant to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless; 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; 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. This reason for leave was discussed in the case of Republic v County Council of Kwale & another Exparte Kondo & 57 others, Mombasa HCMCA No. 384 of 1996.
10. The Learned Judge, in Republic v County Council of Kwale & another Exparte Kondo & 57 others (supra), further held that leave may only be granted 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 parties hearing of the substantive application for judicial review. Granting of leave to file for judicial review is an exercise of the court's discretion, but as always it has to be exercised judiciously.
11. From the foregoing, in an Application for leave, such as the instant one, this court ought not to delve deeply into the arguments of the parties; but should make cursory perusal of the evidence before it [court] and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave.
12. In Republic v National Transport & Safety Authority & 10 others [2014] eKLR, the court held that in judicial review, the threshold for obtaining leave to commence is low and obtaining leave is not in itself evidence of a strong case. In order to obtain leave to commence judicial review proceedings, an applicant only needs to show that he has an arguable case.



13. In the instant matter, the gist of the Application before this court is that the applicant is seeking for leave to commence judicial review proceedings for orders of Mandamus. It is not contested that the applicant was awarded cost in CMCC Employment Case No. 1133 of 2019.
14. Having invoked the judicial review jurisdiction of this court, it was upon the applicant to demonstrate an arguable case that requires ventilation at a substantive hearing. I have carefully perused through the record and submissions. A prima facie case is established to warrant the grant of the leave sought.
15. In the end, I find that the Application dated 18<sup>th</sup> July, 2023 for leave has merit.

Order;

1. Leave to file judicial review proceedings is granted.
2. The applicant shall file and serve the substantive motion within 14 days of today's date.
3. The respondent shall file and serve its responses to the application within 14 days of service.
4. The applicant shall thereafter file and serve its submissions within 10 days.
5. The respondents shall file and serve their submissions within 10 days of service.
6. The matter will be mentioned on 13<sup>th</sup> May 2025 to report compliance.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF FEBRUARY 2025**

**J.M. CHIGITI (SC)**

**JUDGE**

