



REPUBLIC OF KENYA



**Republic v County Government of Marsabit; Dream EP Global (K) Energy (Exparte Applicant)
(Judicial Review E001 of 2021) [2025] KEHC 2541 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2541 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
JUDICIAL REVIEW E001 OF 2021
FR OLEL, J
MARCH 13, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF MARSABIT RESPONDENT

AND

DREAM EP GLOBAL (K) ENERGY EXPARTE APPLICANT

RULING

A. Introduction.

1. Before the court for determination is the Notice of preliminary objection filed by the respondent in response to the Ex parte Applicant's notice of motion Application dated 3rd February 2023, where they seek for orders of Mandamus to compel the respondents accounting officer to pay them a sum of Kshs 4,911,430.84/= together with interest thereon at the rate of 12% from 8th September 2020, until payment in full being the decretal sum issued in Marsabit High court civil case No 1 of 2020.
2. The undated preliminary objection raised the following grounds;
 - a. The Amended Application is incurably incompetent and fatally defective in substance and form as it goes against all known procedure in law and offends the provisions of Order 8 Rule1 and Order 5 rule 4 of the Civil procedure Rules. A notice of motion application is not a pleading under the civil procedure rules and cannot therefore be amended.
 - b. The Amended supporting Affidavit dated 3rd February, 2023 offends the provisions of Order 19 as read with Order 53 rule 4 of the Civil procedure Rules as known legal precedents. A sworn Affidavit cannot be amended.



- c. Other grounds and reasons as maybe adduced at the hearing thereof.
3. The Applicant therefore prayed that the preliminary objection be upheld and the Amended Application dated 3rd February, 2023 be struck out with costs.

B. Determination.

4. In *Oraro vrs Mbaja (2005)1 klr 141 Ojwang J.B. J (as he then was)* held that
- “A preliminary objection correctly understood is a point of law which must not be blurred with factual details to be contested and in any event, to be proved through the process of evidence..... Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed.....” (Emphasis mine)
5. The crux of the Applicant’s contention is that a notice of motion is not a pleading under the civil procedure Rules and therefore cannot be amended. By parity of reasoning, its supporting Affidavit too cannot be amended.
6. On my part, I find this aspect of the objection simplistic misconceived, and somewhat lacking in depth. Pleadings refer to formal, written documents filed in court by any party to a lawsuit, outlining their claim or defense as the case maybe. Pleadings, detail facts and legal arguments which the parties intend to rely on during the proceedings, and are not restricted to plaint and defense as alluded to by the Applicant.
7. For clarity, the applicant should also note that not all suits are commenced by way of plaint. Order 2 and 53 of the Civil Procedure Rules, allows for the filing of interlocutory applications, third-party proceedings, judicial review application amongst other pleadings , which are commenced by way of an application.
8. Finally Section 100 of the *Civil Procedure Act* as read with Order 8, rule 5 of the Civil Procedure Rules also grants the court general power to allow parties to amend their pleadings to bring out the real issues in controversy and also to allow the court determine the true, substantive merits of the case.

C. Disposition

9. In the circumstances I do find that the preliminary objection raised by the Applicant lacks merit and the same is dismissed with costs to the Exparte Applicant.
10. It is so ordered.

READ, SIGNED, AND DELIVERED VIRTUALLY AT MARSABIT ON THIS 13TH DAY OF MARCH, 2025.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Teams this 13th day of MARCH 2024.

In the presence of;

Mr. Kisiu for Petitioner

Ms Wairimu for Respondent



Mr. Jarso Court Assistant

