



**Republic v County Government of Nandi; Eastern Produce Kenya Limited (Exparte)
(Judicial Review E003 of 2024) [2025] KEHC 4543 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4543 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
JUDICIAL REVIEW E003 OF 2024**

JR KARANJA, J

APRIL 9, 2025

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF NANDI RESPONDENT

AND

EASTERN PRODUCE KENYA LIMITED EXPARTE

RULING

1. Pursuant to Section 8 of the [Law Reform Act](#) and Order 53 Rule 1 of the Civil Procedure Rules the Exparte applicant, Eastern Produce [Kenya] Limited vide the chamber summons dated 4th July 2024 applied for leave to institute judicial review proceedings for an order of certiorari to bring into this court and quash the demand by the Respondent, Nandi County Government, arising from several invoices for business permits for the Applicant's administrative units.
2. The major ground for the application is that the Respondent enacted the Nandi County Finance Act 2023 prescribing fees for the issuance of single business permits to persons conducting business within the County. The scale of fees to be levied was prescribed in the schedules to the Act which were amended and gazetted in December 2023 for purposes of the 2024 financial year. The Applicant paid the single business permit for the year 2024 on the 5th April 2024, but the Respondent contrary to the provisions of the aforementioned Act purported to issue a series of invoices for single permits with respect to the Applicant's administrative units, yet the Act does not provide for raising invoices for administrative units in addition to the single business permit issued and paid by the Applicant whose administrative units do not constitute a separate legal entity under the Act. That, whereas the applicable schedule for single business permit in respect of the Applicant's business is items 401 and 805 under the Act, the invoices were issued under schedule 13.



3. On the 4th December 2024 this court granted the necessary leave and directed that the substantive application be filed within twenty one [21] days and that the prayer four [4] of the application be heard inter-parties on 13th February 2025, on which date the hearing was rescheduled to 12th March 2023 to allow the parties file their respective submissions.

To date, the substantive application is yet to be filed as per the court record.

Prayer four [4] of the application seeks an order that the leave granted to operate as a stay of the impugned decision/ demand pending the hearing and determination of the substantive application.

4. The ultimate relief being sought by the Applicant as per the statutory statement dated 4th July 2024 is that the demand by the Respondent on the basis of the specified invoices be quashed and that a declaratory order be issued against the Respondent to the effect that its decision to issue several invoices for business permit for the Applicant's administrative units is "ultra-vires" the Act aforesaid i.e. The Nandi County Finance Act 2023.

5. At this juncture, the issue for determination is whether the leave granted should operate as a stay of the Respondent's action or intended action of raising invoices for single business permits respecting the Applicant's administrative units pending hearing and determination of the substantive application.

Both parties filed their respective submissions which have been given due consideration by this court. the first thing that came to the mind of this court was whether at this juncture the application is proper and competent before the court given that the substantive application is yet to be filed. There being no substantive application on record it would follow that there is nothing to stay and/or that the application has already been overtaken by events.

6. Be that as it may, a stay order would amount to a temporary injunction against the Respondent restraining it from demanding fees for single business permits as provided for by the Nandi County Finance Act 2023.

The Applicant argues that the Respondent's demand is "ultra-vires" the Act in so far as it is based on Schedule 13 rather than schedule 11 of the Act. This allegation amounts to a challenge on the legality of the Respondent's action in demanding from the Applicant extra or unnecessary payments for a single business permit, hence the legality of the Respondent's impugned finance Act 2023, hitherto by way of these judicial review proceedings.

7. An order of certiorari would issue if the impugned decision is made without jurisdiction or in excess of jurisdiction.

The remedy of judicial review is aimed at reviewing not the merits of the decision for which the application is made but the decision making process itself [See, Republic Vs. Kenya Revenue Authority Exparte Yaya Towers [2008] ekLR]

In the case of Pastoli Vs. Kabale District Local Government Council and Others [2008] 2EA 300, it was held that: -

"in order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety."



8. It was further held in the same case that: -

“Illegality is when the decision making authority commits error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra-vires or contrary to the provisions of a law or its principles are instances of illegality.”

In this matter, the Applicant implies or alleges that the Respondent’s impugned decision and/or demand is tainted with illegality. In the circumstances, the Applicant was entitled to seek the remedy of judicial review for which it sought and was granted leave by this court. However, the grant of leave was not an indication or proof that the Applicant has a good valid case against the Respondent. Its entitlement to the orders sought at this juncture would largely be dependent on the success or otherwise of the intended substantial application.

9. It is without doubt that prayer four [4] of the present application shows that the emerging dispute with, the Respondent is grounded on public law issues and in particular the action undertaken by the Respondent as a public organ exercising a statutory ordained public function against the Applicant. It was therefore incumbent upon the Applicant to establish by facts and cogent evidence that it has a strong arguable case against the Respondent with probability of success and if the leave granted herein does not operate as stay of the challenged decision, then the intended substantive application will be rendered nugatory or that the Applicant will suffer irreparable damage.

10. Indeed in Republic Vs. National Transport & Safety Authority and other [2014] eKLR, it was stated 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 for issuance of stay orders. In order to obtain leave to commence judicial review proceedings, an Applicant only needs to show that he has an arguable case. The standard for the grant of order of stay is however a high one. In a situation where an Applicant seeks to stop the implementation of the law he must demonstrate that the implementation of the law will cause irreparable harm. Otherwise the court will be reluctant to suspend the operation of the law.”

11. The aforementioned finding of the court was informed by the decision in the English Case of Republic Vs. Secretary of State for transport Exp Factorame [No. 2] [1991] A.C6034L where it was stated that: -

“The court should not restrain a public authority by interim injunction from enforcing an apparently authentic law unless, it is satisfied, having regard to all the circumstances, that the challenge to the validity of the law is, prima facie, so firmly based to justify an exceptional cause being taken.”

12. However, a stay order may be issued where it is efficacious so as to ensure that the substantive application is not rendered nugatory. It would be the circumstances of each particular case to determine whether or not the grant of leave should operate as stay.

In Taib A. Taib Vs. Minister for Local Government & Others [2006] eKLR it was stated that: -

“The court should always ensure that the Ex-parte Applicant’s application is not rendered nugatory by the acts of the Respondent during the pendency of the application.



Therefore where the order of stay is efficacious the court should not hesitate to grant it. Even with that in mind, however, it should never be forgotten that stay orders are discretionary and their scope and purpose is limited.”

13. In the Nigerian case of *United Cement Company of Nigeria Vs. Dangote Industries Limited and Minister of Solid Mineral Development* [CA/A/165/2025], it was stated that: -

“appropriate orders are made to prevent acts which will destroy the subject matter of the proceedings or foist upon the court a situation of complete helplessness or render nugatory any judgment or order.”

It is apparent in the present case that the Respondent’s action of demanding additional payment from the Applicant on account of a single business permit respecting each of the Applicant’s alleged administrative units instead of a single permit for the Applicant company and all its units is the central point of contention at the heart of the disagreement between the Applicant and the Respondent. The Applicant’s legitimate expectation vis-à-vis the Respondent appeared to have been dashed when several additional invoices were raised in disregard of the relevant schedules of the Nandi County Finance Act 2023.

14. The Applicant’s legitimate exceptions was clearly that the Respondent would comply with the provisions of the said Act and issue appropriate business permit or permits to the Applicant as a single entity as opposed to several independent entities which has always been the case previously.

The Supreme Court of Kenya in the case of *Communication Commission of Kenya and 5 Others Vs. Royal Media Services and 5 Others* SC Petition Nos. 14, 14A 14B and 14C of 2014, stated that: -

“Legitimate expectation would arise when a body, by representation or by past practice has aroused an expectation that it is within its powers to fulfill. Therefore, for an expectation to be legitimate, it must be founded upon a promise or practice by public authority that is expected to fulfill the expectation.”

15. It is decipherable from the Applicant’s submissions that it is not challenging the validity or legality of the impugned Nandi County Finance Act and/or the implementation thereof which it considers to be improper, illegal, abrupt, arbitrarily and made in bad faith.

The Court of Appeal in the case of *Bitange Ndemo Vs. Director of Public Prosecution & Others* [2016] eKLR and *Republic Vs. Commissioner of Co-operatives Ex-parte Kirinyaga Tea Outgrowers Co-operative Savings & Credit Society* [199] EALR 245 LR 245, held that: -

“Statutory powers can only be exercised validly if they are exercised reasonably and that no statute ever allowed anyone to whom it confers powers to exercise such power arbitrarily, capriciously or in bad faith.”

16. Whereas the Applicant contends that the Respondent’s challenged action is without legal foundation and beyond legal power, the Respondent contends otherwise. The actual legal position will only be made certain during or after the hearing of the intended substantive application.

The legality or otherwise of the Respondent’s disputed action can only be established during the hearing of the substantive application.



Therefore, it is clear that the circumstances obtaining in this matter are such that they are skewed in favour of a stay order for purposes of preventing acts which may destroy the subject matter of the proceedings and render nugatory the substantive application and orders emanating therefrom.

17. It would thus be prudent that the “status quo” existing between the parties prior to the issuance of the disputed invoices be maintained until after the hearing and determination of the substantive application.

In sum, the present application is hereby allowed to the extent that the leave granted by this court do operate as a stay of the disputed action, demand or decision of the Respondent pending the hearing and determination of the intended substantial application.

However, the stay is granted on condition that the substantive application, if not already filed, be filed within the next fourteen [14] days from this date hereof and in default the stay order lapses forthwith. It is noteworthy that the delay in filing the substantive application will lead to a reversal of the stay order.

DELIVERED AND DATED THIS 9TH DAY OF APRIL 2025

**HON. J. R. KARANJAH,
JUDGE**

