



Sbi International Holdings (Kenya) v Director General Kenya National Highway Authority (Judicial Review Application E034 of 2022) [2025] KEHC 4514 (KLR) (Judicial Review) (8 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4514 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW**

JUDICIAL REVIEW APPLICATION E034 OF 2022

RE ABURILI, J

APRIL 8, 2025

BETWEEN

SBI INTERNATIONAL HOLDINGS (KENYA) APPLICANT

AND

THE DIRECTOR GENERAL KENYA NATIONAL HIGHWAY AUTHORITY RESPONDENT

RULING

1. This will be one of the shortest Ruling I have ever written on very long pleadings, affidavits and submissions both written and oral. The ruling determines the application dated 9/10/2023, supported by the affidavit of Gilad Mishni sworn on 9/10/2023, the supporting affidavit of Gilad Mishni sworn in support of the application dated 5/12/2024 and the further affidavit. The application is also supported by oral submissions.
2. The applicant seeks to prosecute the application for contempt of court orders for mandamus issued against the respondents on account that the consent entered into on 19th December, 2023 that halted the hearing of the contempt application was violated. That the respondent had defaulted in settling the balance of the monthly instalments as ordered by the court in the consent.
3. The respondents oppose the application vide their replying affidavit dated 18th December, 2023 deposing in contention that the application in the series matters was compromised by the consent of 19th December, 2023 which was filed immediately after the filing of the contempt application and the balance was to be settled in six monthly instalments.
4. It was contended that s at that time, two billion was subject of the Kenya Revenue Agency Notice and a conservatory order in HC *Misc Application No. E457 of 2022* between Kenya Revenue Authority and



the Applicant herein. That therefore the 2 billion demanded by the applicant to be settled immediately was not part of the consent as it was not available at that time for disbursement.

5. It was deposed that the six-monthly instalment was paid as per the consent hence there is no contempt and further, that there is no brazen disobedience of the consent order even on the 2 billion as the respondents had asked for additional funding of the said money from the exchequer through the State Department of Roads.
6. In a rejoinder, the applicant's counsel submitted that the respondents can still pay from the road levies or dispose of some of its property to settle the decree. That there was no commitment to settle the decree which denies the applicant justice.

Determination

7. I have considered the application and the opposition thereto as submitted orally. The issue is whether there is brazen violation of the order of mandamus and the consent dated 19th December, 2023.
8. From my reading of the consent, which I did not have the privilege to record or adopt, as at the time of the consent of 19th December, 2023, part of the claim was subject of an agency notice by Kenya Revenue Authority who had filed proceedings in court to attach the said money being 2 billion as outstanding tax payable by the applicant. That money was not available but was nonetheless was subject of litigation. The consent does not disclose how much was the balance and or how much had been settled as at that time of recording the consent.
9. It follows that although the decretal sum was known, with the agency notice by KRA still in force, the respondent could not have released to the applicant the amount which were not available and which were subject of the agency Notice. Even if the respondent was selling its assets, sale of assets takes time. additionally, there is no contrary evidence that the respondent was depending on the exchequer release. The burden of proof lies on he who alleges. There is no evidence that the respondents had sufficient funds in the Roads levy fund but had refused to utilize those funds to settle the decree.
10. I therefore find that there was no violation of the terms of the consent which, in any event, did not state what the balance of the amount due was at that time, in view of the Agency notice by Kenya Revenue Authority.
11. Accordingly, the resuscitation of the application for contempt against the respondent was premature.
12. The prosecution of the application for contempt of court dated 9th October, 2023 is found to be premature and is hereby dismissed.
13. Each party to bear their own costs of the application as the respondents have not settled the decree which they are legally bound to settle the remainder of the decretal sum which is colossal and which as at the time of the consent, was held in an agency notice and proceedings initiated by Kenya Revenue Authority *vide HC Misc Application No. E457 of 2022*.
14. This ruling to apply to *JR E035, E036, E037 and E038 of 2022* as agreed by the parties.
15. Mention on 10th June, 2025 to confirm payment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF APRIL, 2025

R.E. ABURILI

JUDGE

