



**Republic v Kenya National Highways Authority; Amir Investment Limited (Exparte)  
(Judicial Review Cause E004 of 2024) [2025] KEHC 6630 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6630 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
JUDICIAL REVIEW CAUSE E004 OF 2024  
WM MUSYOKA, J  
MAY 23, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**KENYA NATIONAL HIGHWAYS AUTHORITY ..... INTERESTED PARTY**

**AND**

**AMIR INVESTMENT LIMITED ..... EXPARTE**

**RULING**

1. What has been placed before me for determination is an ex parte chamber summons for leave to apply for a mandamus order. The ex parte application for leave is meant, by Order 53 Rule 1(1)(2) of the [Civil Procedure Rules](#), to “be made ex parte to a judge in chambers.”
2. The provision is in mandatory terms. There are two things there. One, the application is ex parte. Which means that it should not be served in the first instance. Two, it should be placed before the Judge in chambers, it is not for hearing in open court. Leave is sought and granted ex parte, and the proceedings ought to be in chambers.
3. I do not quite understand why the ex parte application herein was not handled in the manner contemplated by Order 53 Rule 1(1)(2) of the [Civil Procedure Rules](#). After it was filed, it should have been placed before the Judge straightaway, for consideration by the judge, in terms of Order 53 rule 1(3). Instead of that happening, it was placed before the Deputy Registrar, who allocated a date for it to be listed for mention in open court.
4. Secondly, by the time it was to be mentioned before me, the ex parte applicant had served it on the interested party, so that when it came up on 11<sup>th</sup> February 2025 the two parties appeared before me, instead of only one, the ex parte applicant. The interested party had filed a reply and written



submissions. The application was supposed to be ex parte! There was no need for service, and no need for replies from any other party, for the only party to be heard at that stage is the ex parte applicant! Indeed, the only party in these proceedings, at this stage, is the ex parte applicant! There was no need, at this stage, for filing of written submissions, for the application for leave is, by design, not meant to be contentious, and the Judge is not expected to write a detailed reasoned ruling on it, but to make orders on it, either granting or declining to grant the leave sought.

5. The other issue is that this is the first time that I see Judicial Review proceedings where there is no respondent. In applications, under the *Civil Procedure Rules*, whether originating or interlocutory, the principal parties are the applicant and the respondent. The respondent is the party against whom the orders are sought, and who should respond to the claim by the applicant. An interested party is not a principal in an application. Interested parties are usually not even named in most applications under the *Civil Procedure Rules*. They apply to be joined. Their interest is peripheral, for no orders are sought against them, and they join only where the orders to be made may indirectly affect them.
6. I see that mandamus is proposed to be sought to enforce a decree that had been obtained against the party named as interested party, in a court matter whose particulars are not pleaded, in either the statutory statement or the chamber application. The duty to settle the decree emanates from the court order, and the court case, where that decree or order was passed, ought to be expressly pleaded in the statement and the applications. It is not enough to refer to it in an affidavit and attach a copy of it to that affidavit. The pleadings, in Judicial Review proceedings, is the statutory statement. The affidavit merely expounds or verifies the pleadings, and the critical information, such as the suit where the decree was obtained, must be in the pleadings.
7. The party named herein as interested party should have been named as the respondent, since the orders are sought against it, and it is the proper party to respond to the application. An interested party, being a secondary or lesser party, usually files no responses, for the application would seek no orders against it, and it would be more of an observer in the proceedings.
8. I think I have said enough to demonstrate that there is something deficient about these proceedings. I cannot grant leave based on them. Let the ex parte applicant make relevant amendments or adjustments, as may be necessary. If such amendments or adjustments are not feasible, the ex parte applicant may consider withdrawing the application altogether, so that it may initiate the proceedings afresh.
9. The matter shall be mentioned on 1<sup>st</sup> July 2025, for further directions.

**DELIVERED, VIA EMAIL, DATED AND SIGNED, IN CHAMBERS, AT BUSIA THIS 23<sup>RD</sup> DAY OF MAY 2025.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Ashioya, instructed by Ashioya & Company, Advocates for the ex parte applicant. Ms. Bodo, instructed by Lawrence Maruti, Advocate for the Interested Party.

