



Republic v National Transport and Safety Authority & 2 others; Kimathi (Exparte) (Judicial Review E149 of 2023) [2025] KEHC 6608 (KLR) (Judicial Review) (21 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6608 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E149 OF 2023
RE ABURILI, J
MAY 21, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

NATIONAL TRANSPORT AND SAFETY AUTHORITY 1ST RESPONDENT

**THE DIRECTOR GENERAL NATIONAL TRANSPORT AND SAFETY
AUTHORITY 2ND RESPONDENT**

COUNTY TRANSPORT AND SAFETY COMMITTEE 3RD RESPONDENT

AND

MARTIN KIMATHI EXPARTE

JUDGMENT

1. Pursuant to leave granted on 4th October 2023 the Ex parte Applicant filed the Notice of Motion application dated 12th October 2023 seeking the following orders;
 - a. An order of Certiorari to remove into this honourable court and quash the decision of the 1st, 2nd and 3rd Respondents to issue a Registration Certificate No. N5XXX610B purporting Glenn Digollo Otieno as the registered owner of motor vehicle KBH 6X1V vide Transfer No. 20230XXXXX40251 and Entry No. 2009NB1XXX930 with date of registration being 17.06.2009;
 - b. An order of MANDAMUS directed to the 1st, 2nd and 3rd Respondents to revoke the Registration Certificate No. N5XXX610B purporting Glenn Digollo Otieno as the registered



owner of motor vehicle KBH 6X1 vide Transfer No. 20230XXXXX40251 and Entry No. 2009NB1XXX930 with date of registration being 17.06.2009;

- c. An order of MANDAMUS directed to the 1st, 2nd and 3rd Respondents to restore Registration Certificate No. L 360998Q registered in the Applicant's name on the 17.06.2009 to the Applicant as the registered owner of motor vehicle KBH 6X1V;
 - d. The leave so granted do operate as a stay of the decisions of 1st, 2nd and 3rd Respondent to issue a Registration Certificate N5XXX610B purporting Glenn Digollo Otieno as the registered owner of motor vehicle KBH 6X1V vide Transfer No. 20230XXXXX40251 and Entry No. 2009NB1XXX930 with date of registration being 17.06.2009;
 - e. Costs of and incidental to the application be provided for.
 - f. Such further and other reliefs that the Honourable Court may deem just and expedient to grant.
2. The application is based upon the grounds said to be set out in the statutory statement of dated 2nd October 2023 and the Verifying Affidavit of Martin Kimathi sworn on even date.
 3. The main bone of contention between the parties before this court is the transfer of motor vehicle KBH 6X1V to Glenn Digollo Otieno as the registered owner vide Transfer No. 20230XXXXX40251 and Entry No. 2009NB1XXX930.
 4. On the one hand, the Ex parte Applicant asserts that the Registration Certificate No.5881610B purporting Glenn Digollo Otieno as the registered owner of motor vehicle KBH 6X1V was obtained through fraud, forgery and concealment of relevant facts.
 5. In response, the Respondents contend that it was indeed the Ex parte Applicant who initiated the transfer to Glenn Digollo Otieno. Further, that from the Audit trail on 8th February 2023 at 1342hrs, the Ex parte Applicant Martin Kimathi of ID process BP6001026 and ID 24140798 applied for the said transfer through NTSA's TIMS portal.
 6. That on the same day at 1644hrs, Glenn Digollo Otieno of ID number 34660938 through process ID BP6001028 accepted ownership that had been initiated by the Ex parte Applicant herein. It is their case that the 1st Respondent approved the application and the new logbook was printed in favour of Glenn Digollo Otieno after verification was done.
 7. It is also contended that the Applicant has failed to enjoin Glenn Digollo Otieno who is a relevant party in these proceedings.
 8. From the annexures to the Applicant's verifying affidavit, I note that indeed a transfer of ownership from the Ex parte Applicant to one Glenn Digollo Otieno and Bashy African Credit Limited was effected on 25th September 2023.

Analysis and Determination.

9. I have considered the application before this court, together with the verifying affidavit and annexures. I have also considered the written submissions by the parties. I note that although the Respondents allude to a Replying affidavit sworn by Collins Kieng on 27th August 2024, the same has not been uploaded on the Case Tracking System and as such, the court has not had an opportunity to consider the same.
10. The issues for determination therefore are:



- a. Whether judicial review is the proper forum to determine allegations of fraud and ownership disputes; and
 - b. Whether the failure to enjoin the third party (Mr. Glenn Digollo Otieno) is fatal to the application.
11. I will, in answering the above issues first examine the scope of judicial review remedy. The scope of judicial review was restated by the Court of Appeal in *Kapa Oil Refineries v Kenya Revenue Authority* [2019] eKLR where the court stated that:

“Judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. See the *Commissioner of Lands –versus Hotel Kunste* [1997] eKLR. The purpose of JR is to ensure that the individual is given fair treatment by the Authority to which he has been subjected. JR as a remedy is available, in appropriate cases, even where there are alternative legal or equitable remedies. See *David Mugo t/a Manyatta Auctioneers –versus Republic – Civil Appeal No. 265 of 1997 (UR)*. JR being a discretionary remedy, it demands that whoever seeks to avail itself/himself/herself of this remedy has to act with candour or virtue and temperance. See *Zakayo Michubu Kibwange –versus Lydia Kagina Japheth and 2 others* [2014] eKLR. JR as a remedy may also be invoked where the issues in controversy as between the parties are contested. See *Zakayo Michubu Kibwange case (Supra)*. The remedy of judicial review is only available where an issue of a public law nature is involved. Further, that a person seeking mandamus must show that he has a legal right to the performance of a legal duty by a party against whom the mandamus order is sought or alternatively, that he has a substantially personal interest and that the duty must not be permissive but imperative and must be of a public nature rather than of a private nature. See *Prabhulal Gulabuland Shah –versus Attorney General & Erastus Gathoni Mlano, Civil Appeal No. 24 of (1985) (UR)*. Following the promulgation of the Kenya Constitution, 2010, judicial review is available as a relief to a claim of violation of the rights and fundamental freedoms guaranteed in *the Constitution* of Kenya 2010. See *Child Welfare Society of Kenya –versus- Republic and 2 others, Exparte Child in Family Forces Kenya* [2017] eKLR.”

12. What Judicial Review Orders entails was elaborated in the case of *Kenya National Examination Council v Republic Exparte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No.266 of 1996*, where the Court held that:

“That now bring us to the question we started with, namely the efficacy and scope of mandamus, prohibition and certiorari. These remedies are only available against public bodies such as the council in this case. What does an Order of Prohibition do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules or natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings – See *Halsbury’s Law of England, 4th Edition vol.1 at Pg.37 paragraph 128.*”

13. It is trite that judicial review remedies are concerned with the decision-making process of administrative or public bodies rather than the merits of the decision itself. The scope of judicial review is thus limited



- to assessing whether an administrative or public body acted within its legal mandate, observed the rules of natural justice and adhered to statutory and constitutional procedures.
14. In the present case, the Applicant's main grievance is that the transfer of the subject motor vehicle to Glenn Digollo Otieno was procured through fraud, forgery and concealment of relevant facts.
 15. The Respondents on the other hand contend that the digital audit trail shows that the Applicant himself initiated the transfer through the NTSA's online portal, and that the transferee accepted the ownership in a process that appears procedurally regular on its face.
 16. The Applicant has not pointed to any unlawful conduct or administrative impropriety on the part of the 1st Respondent or any procedural irregularity in how the transfer was effected. Instead, his allegations relate to the authenticity of the process and the alleged fraudulent criminal conduct of a third party. These are factual and evidentiary matters which fall outside the purview of judicial review.
 17. It is well settled that where the facts are in serious dispute, and where the allegations of fraud or bad faith require testing through oral evidence and cross-examination, the appropriate forum is not judicial review but a civil or criminal trial. Judicial review proceedings are ill suited for such factual interrogations.
 18. It is trite that judicial review is primarily concerned with the legality, rationality, and procedural propriety of administrative or public body decisions. It is not a forum for the adjudication of private rights, ownership disputes, or contested matters requiring evidentiary scrutiny, such as fraud.
 19. The applicant herein alleges that the registration of the vehicle to Mr. Glenn Digollo Otieno was fraudulent. Determining whether fraud occurred requires examination of intent, conduct, authenticity of documents and potentially the oral evidence of witnesses, matters that are beyond the remit of judicial review. The appropriate forum for such disputes is a civil suit, where the court can fully ventilate the issues, hear testimony, and determine rights conclusively.
 20. On the Non-Joiner of the Registered Owner, the records indicate that Mr. Glenn Digollo Otieno is the current registered owner of the vehicle, yet he is not enjoined as a party to these proceedings. It is a cardinal principle of natural justice that no adverse order can be made against a person who is not a party to the proceedings. It cannot be gainsaid that a decision affecting the rights of an individual cannot be made without affording that person an opportunity to be heard.
 21. Given that the applicant seeks to quash a registration and restore ownership to himself, it is imperative that the current registered owner sGlenn Digollo Otieno would have been accorded the opportunity to respond to the alleged fraud. The failure to enjoin the registered owner renders the application fatally defective.
 22. A decision affecting the legal rights or interests of a person who has not been heard and not because he refused to participate in these proceedings, but that he was never enjoined or served with the allegations that he got himself fraudulently registered as the owner of the motor vehicle in issue, would amount to a denial of the right to fair hearing, access to justice and violate the rules of natural justice that prohibit condemnation of any person without a hearing.
 23. It would therefore be procedurally improper and legally unsustainable for this Court to issue orders nullifying the transfer of the motor vehicle in the absence of Mr. Glenn Digollo Otieno, who is a necessary and proper party to the dispute. The non-joinder is not a mere procedural technicality, it goes to the root of the matter, in terms of fair hearing and due process.



24. Consequently, even if there were grounds to question the legitimacy of the transfer process, which would better be canvassed in civil proceedings, as this Court is constrained by the limits of judicial review and the absence of a key party without whom the issues cannot be fairly determined, it cannot issue the orders sought.
25. In light of the foregoing, I find and hold that the issues raised by the Applicant are not amenable to judicial review but are better suited for determination in a civil or criminal forum where the factual background can be adequately interrogated.
26. Accordingly, the Notice of Motion dated October 12, 2023 is hereby dismissed. The applicant is at liberty to pursue appropriate remedies in a civil or criminal court with competent jurisdiction.
27. Each party shall bear their own costs of these proceedings.
28. This file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF MAY, 2025

R.E. ABURILI

JUDGE

