



Mycredit Limited v Micro and Small Enterprises Tribunal; African Herbal Ingredient Wholesalers Limited (Interested Party) (Judicial Review Miscellaneous Application E064 of 2025) [2025] KEHC 8357 (KLR) (Judicial Review) (16 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8357 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E064 OF 2025
RE ABURILI, J
JUNE 16, 2025
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY
FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND
PROHIBITION
AND
IN THE MATTER OF ARTICLES 50 (1) AND 159 OF THE
CONSTITUTION
AND
IN THE MATTER OF SECTION 55 OF THE MICRO AND SMALL
ENTERPRISES TRIBUNAL CLAIM NO. E001 OF 2025 AFRICAN
HERBAL INGREDIENT WHOLESALERS LIMITED VERSUS
MYCREDIT LIMITED
AND
IN THE MATTER OF ORDER 53 RULES 1 AND 2 OF THE CIVIL
PROCEDURE RULES, 2010 AND ALL OTHER ENABLING
PROVISIONS OF THE LAW

BETWEEN

MYCREDIT LIMITED APPLICANT

AND

THE MICRO AND SMALL ENTERPRISES TRIBUNAL RESPONDENT



AND

AFRICAN HERBAL INGREDIENT WHOLESALERS LIMITED ... INTERESTED PARTY

RULING

1. The Chamber Summons dated 9th June 2025 seeks leave of this Court to apply for judicial review orders of certiorari and prohibition against the decision and proceedings of the Micro and Small Enterprises Tribunal (hereinafter "the Tribunal" to assume jurisdiction to hear a dispute filed by the interested party against the applicant herein. The Applicant further seeks an order that the grant of leave do operate as a stay of the proceedings before the Tribunal, which are scheduled for hearing on 24th June 2025 at 9.00 o'clock as per the directions given on 9/6/2025.
2. The Applicant contends that the Tribunal has assumed jurisdiction in a matter filed against it by the Interested Party, yet the Applicant is not a person falling within the purview of the *Micro and Small Enterprises Act*, No. 55 of 2012 ("the Act"). It is averred that the Applicant is neither registered nor registrable under the said Act as it is not a micro or small enterprise as defined under the *Act* as it has a turnover of over one million Kenya Shillings and that it boasts of having hundreds of employees all over the country and that therefore cannot lawfully be subjected to proceedings before the Tribunal established under Section 54 of the *Act*. The jurisdiction of the Tribunal is provided for in section 55 of the *Act*.
3. The Applicant further argues that it is prejudiced by being compelled to respond to proceedings before a Tribunal.
4. The Applicant therefore seeks to challenge the Tribunal's decision to entertain the claim by way of judicial review.

Determination

5. Order 53 Rule 1(1) of the *Civil Procedure Rules* requires that leave be obtained before an application for judicial review can be brought. The grant of leave is discretionary and is designed to filter out frivolous or hopeless cases at an early stage. The applicable threshold is that the applicant must demonstrate an arguable case, as established in *Republic v County Council of Kwale & Another Ex parte Kondo & 57 Others* [1998] eKLR, and reaffirmed in *Republic v Kenya Revenue Authority ex parte Yaya Towers Ltd* [2008] eKLR.
6. In addition, the court has jurisdiction to order that leave granted shall operate as a stay of the impugned decision or proceedings. This is a protective measure intended to preserve the subject matter and prevent prejudice to the applicant before the full hearing of the matter.

Analysis

7. Upon perusal of the statutory framework, Section 54(1) of the *Micro and Small Enterprises Act* provides for the establishment of the Tribunal to adjudicate disputes involving micro, small and medium enterprises registered under the *Act*. Section 55 provides for jurisdiction of the Tribunal while section 11(1) of the same *Act* provides a right of appeal only to a person registered under the *Act*.
8. In the present case, the Applicant claims that it is not registered under the *Act*, nor is it under any obligation to register, not being a micro or small enterprise as defined under the *Act*. On the face of it,



the Tribunal appears to have assumed jurisdiction to entertain a dispute against a party over whom it lacks jurisdiction, which is a foundational legal issue.

9. Under section 55(2) of the Act:

(2) A dispute for the purpose of this Act shall include—

- (a) commercial disputes involving micro and small enterprises;
- (b) failure to comply with the terms and condition of allocation of worksites;
- (c) election and management of associations;
- (d) failure to comply with the Constitution or rules of a micro and small enterprise association or umbrella organisation;
- (e) unprocedural and illegal allocation, subdivision, subletting of a micro and small enterprise worksite;
- (f) mismanagement and misappropriation of funds;
- (g) any other dispute acceptable by the Tribunal.

10. Jurisdiction is not conferred by convenience or implied consent. It must be expressly conferred by statute, the Constitution or both. The jurisprudence on jurisdiction is well settled. In Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, Nyarangi J famously held that:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings.”

11. The Applicant having claimed that it is not registered or registrable under the Act, as stipulated in section 5, in my view, it has demonstrated that it has no alternative remedy, as it is not a person entitled to invoke the appellate process under Section 11 of the Act. Judicial review thus becomes the only available remedy.

12. Further, the proceedings scheduled for 24th June 2025 present imminent prejudice, as the Applicant will be compelled to participate in a process before a forum that may be acting ultra vires its statutory mandate. This constitutes a sufficient basis for the grant of a stay of proceedings, to avoid rendering the intended application nugatory.

13. For the above reasons, this court having considered the pleadings and applicable principles, I am satisfied that the Applicant has established an arguable prima facie case warranting the grant of leave to challenge the jurisdictional basis of the Tribunal's proceedings.

14. Accordingly, I make the following orders:

- a. Leave is hereby granted to the Applicant to apply for judicial review orders of:
 - i. Certiorari to quash the decision of the Micro and Small Enterprises Tribunal to entertain and proceed with the application filed against the Applicant by the interested party in *Tribunal Case No. E001 of 2025*; and
 - ii. Prohibition to restrain the Tribunal from further hearing or determining the said application in *Tribunal Case No. E001 of 2025*.



- b. The leave granted shall operate as a stay of the proceedings before the Micro and Small Enterprises Tribunal in the matter scheduled for 24th June 2025, in *Tribunal Case No. E001 of 2025* pending the hearing and determination of the substantive judicial review application.
15. The Applicant shall file and serve the substantive Notice of Motion within twenty-one (21) days from the date hereof and in a fresh judicial review file upon which this skeletal Miscellaneous file shall be availed in the main motion file.
16. I make no orders as to costs.
17. This file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF JUNE, 2025

R.E. ABURILI

JUDGE

