



Munika & Company Advocates v Nairobi City County Government (Judicial Review Application E151 of 2025) [2025] KEHC 8227 (KLR) (Judicial Review) (12 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8227 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E151 OF 2025
RE ABURILI, J
JUNE 12, 2025**

BETWEEN

MUNIKAH & COMPANY ADVOCATES APPLICANT

AND

NAIROBI CITY COUNTY GOVERNMENT RESPONDENT

RULING

1. The application dated 30th May 2025 and filed on 11/6/2025 seeks leave of the court to apply for judicial review orders of mandamus to compel the Respondent's officers namely, County Secretary and Head of Public Service, County Executive Committee Member and Economic Affairs as well as the Chief Finance Officer each one of them, jointly and severally to pay to the exparte applicants advocate a sum of Kshs.2,671,240.73 legally due and payable to the exparte applicant by the Respondent County Government of Nairobi as per the amended certificate of order against the Government dated and signed on 31/1/2025 by the Deputy Registrar of the this court.
2. The applicant also prays for costs of these proceedings. The application is exparte. However, leave to apply is not automatically granted by the court even where the matter is being handled exparte. The applicant must demonstrate a prima facie arguable case and the application must meet the threshold for leave to be granted.
3. Having perused the application, the grounds, statutory statement and verifying affidavit, I am inclined to refuse to grant leave to apply for mandamus, and the reasons are as follows:
 - a. That although the annexures to the verifying affidavit show that the costs subject of the decree and certificate of order against the Government were assessed in Civil Miscellaneous Application No. 11 of 2013, in the Civil Division of the High Court, throughout the pleadings, statutory statement and the verifying affidavit, there is no single mention of the case



number from which the judicial review proceedings are derived. A reading of the application and the accompanying statutory statement and verifying affidavit gives no background information on why the applicant is before this court; and how the costs were arrived at.

- b. Failure to disclose those facts in the pleadings and affidavit disentitles the applicant of judicial review orders of mandamus. In other words, the application and statutory statement do not disclose the cause of action, noting that annexures are not pleadings and neither are pleadings evidence.
 - c. The applicant seeks to have the following persons to be compelled to settle the assessed costs taxed in undisclosed proceedings as per the pleadings namely:
 - i. The Chief Finance Officer
 - ii. County Secretary and Head of Public Service
 - iii. The Member of the Executive Committee and Economic Affairs.
 - d. There is absolutely no basis upon which a Chief Finance Officer, being a junior officer of a County Government or Public entity would be compelled to settle decree, jointly and severally with the County Secretary and the office holder named as Member of the Executive Committee and Economic Affairs, which title is vague and does not disclose any existing position in the Counties. I say vague because the law is settled as to who can be compelled to settle decree of a government or public entity. The applicant should read Section 103 of the *Public Finance Management Act* together with Section 21 of the *Government Proceedings Act* and equally familiarise himself with the titles of officials at the County Governments before picking on titles that do not exist or that at the end of the day, this Court, even if it were to grant the orders sought, those orders would be incapable of being implemented.
4. For avoidance of doubt, this court cannot compel a “Chief Finance Officer” as described and neither can it compel ‘Member of the Executive Committee and Economic Affairs’ as described. Those titles do not belong to any accounting officers of the County Governments and neither can the Court drag the County Secretary and Head of Public of Service of the County Government to this Court with mandamus orders, in the absence of any legal basis and evidence that the office holder is the accounting officer of the County Government.
 5. This court will not issue orders in vain. I find the application dated 30/5/2025 fatally defective for the reasons given above and that those defects cannot be hired in the substantive proceedings.
 6. It is at this stage that the court must halt the proceedings to allow the applicant an opportunity to do his homework well and approach the court appropriately.
 7. Accordingly, the application dated 30/5/2025 is hereby struck out with no orders as to costs. The applicant’s counsel to be notified forthwith.
 8. This file is closed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JUNE, 2025.

R.E. ABURILI.

JUDGE.

