



Ndirangu t/a Cash Auctioneers v Auctioneers Licensing Board & another (Miscellaneous Civil Application E157 of 2025) [2025] KEHC 8465 (KLR) (Judicial Review) (17 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8465 (KLR)

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

MISCELLANEOUS CIVIL APPLICATION E157 OF 2025

RE ABURILI, J

JUNE 17, 2025

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO COMMENCE
PROCEEDINGS IN THE NATURE OF JUDICIAL REVIEW**

AND

IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015

AND

IN THE MATTER OF SECTION 25 OF THE AUCTIONEERS ACT, NO. 5 OF 1996

BETWEEN

JAMES KIMANI NDIRANGU T/A CASH AUCTIONEERS APPLICANT

AND

THE AUCTIONEERS LICENSING BOARD 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The ex parte Applicant has moved this Court by way of chamber summons dated 5th June, 2025 seeking leave to apply for judicial review orders of certiorari and mandamus- to quash the decision of the Auctioneers Licensing Board made in Disciplinary Cause No. 80 of 2023 communicated vide letter



dated 28th October, 2024, suspending the applicant/auctioneer's license to practice as an auctioneer for three months, ordering for refund of Kshs 6,005,000 paid to him by the complainant and the auctioneer to pay a fine of Kshs 50,000 and costs of Kshs 20,000 to the complainant.

2. The applicant also seeks leave for mandamus to compel the 1st respondent to reinstate the Complaint Cause No. 80 of 2023 and hear the substantive complaint and determine it.
3. He also prays that the leave so granted do operate as stay of execution pending the hearing and determination of the substantive motion and costs be provided for.
4. The applicant's case is that him and his advocate were never served with a hearing notice and were only made aware of the same in the impugned decision; that the impugned decision will cause irreparable harm to the applicant's family; that the complainant had sued the auctioneer in *Nairobi COMMMCC E783 of 2023* for breach of contract and that therefore the Licensing Board has no jurisdiction to entertain claims of breach of contract; that the decision to refuse the applicant leave to file the response out of time was in bad faith ;and that although the ruling was to be delivered on notice, no such notice was given to the applicant and his advocate.
5. The Applicant contends that the impugned decision was made without jurisdiction, illegally, unprocedurally, impropriety in breach of natural justice.
6. The application was heard orally this morning with Mr. Muhatia Nathan appearing for the applicant, *exparte*.

Determination

7. Having considered the application, the pleadings, and applicable law, the main issue for determination by this Court is whether leave to apply for judicial review should be granted in the face of a clear and available statutory appeal mechanism under Section 25 of the *Auctioneers Act*, and the requirements under Section 9(2) and (4) of the *Fair Administrative Action Act* (FAAA), 2015.

Applicable Law

8. The principle of exhaustion of internal review or appeal mechanisms before resorting to judicial review is a foundational doctrine in administrative law. It requires that an aggrieved party first utilize all available administrative remedies, such as internal appeals or reviews, before seeking relief through the courts.
9. Additionally, where the statute provides for appeals against decisions of the quasi-judicial body, then the aggrieved party, whether against the judgment or ruling denying him review or setting aside the judgment, must resort to that appeal mechanism.
10. Section 25 of the *Auctioneers Act* provides that:
 25. Appeals
 1. A person aggrieved by a decision of the Board under this Act may, within thirty days after receipt by him of written notice of such decision, appeal against the decision to the High Court by giving notice of appeal to the Registrar thereof setting out the grounds of appeal within thirty days after the giving by him of the notice.
 2. The decision of the High Court on an appeal under this section shall be final.
11. This provision grants an explicit statutory right of appeal to any person affected by a decision of the Auctioneers Licensing Board. Further, Section 9(2) and (4) of the *Fair Administrative Action Act* states:



- (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
- (4) The High Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
12. In the present matter, it is not in dispute that the Applicant is aggrieved by the decision of the Licensing Board to suspend his license, to fine him and to order that he refunds the complainant the sums received on account of an eviction exercise that the auctioneer was to undertake. He then applied for setting aside of that decision and to be allowed to file his response out of time. that application was dismissed. The decision dismissing an application for review or setting aside is appealable under section Section 25 of the *Act*.
13. The Applicant has not pursued that avenue, even if leave to appeal was necessary. More importantly, he has not sought or demonstrated exceptional circumstances that would warrant the Court to exempt him from the requirement to exhaust the appellate mechanism provided under the Act.

Judicial Precedents

14. The position that where a statute provides a clear procedure or remedy, that procedure must be followed is well entrenched in Kenyan laws and the *Constitution* at Article 159(2) (c) which mandates the Courts and Tribunals to promote alternative dispute resolution mechanisms.
15. In the oft-cited case of *Speaker of the National Assembly v Karume* [1992] KLR 21, the Court of Appeal held that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.
16. This principle was reaffirmed in *Republic v National Environment Management Authority Ex Parte Sound Equipment Ltd* [2011] eKLR, where the Court declined to entertain judicial review where the applicant had not exhausted the alternative remedies provided under the *Environmental Management and Coordination Act*.
17. Although the High Court in the above case agreed that the existence of an alternative remedy cannot by itself prevent a court from issuing a judicial review order, the Court was concerned, and sought to know from the appellant, why he had preferred to challenge NEMA's decision directly in the High Court rather than by first lodging an appeal with the Tribunal. Ultimately, the Court was not satisfied about the appellant's preference for judicial review. As a matter of fact, it held that the failure to disclose the existence of an alternative remedy and the failure to demonstrate at an early stage in the proceedings why judicial review was the preferred procedure disentitled the appellant to the orders sought in the application.
18. Concurring with the High Court's decision, the Court of Appeal held that where there was an alternative remedy and especially where an appeal procedure has been provided in an Act of Parliament, it is only in exceptional circumstances that an order for judicial review would be granted.
19. In determining whether an exception should be made and judicial review orders granted, the Court observed that it was necessary for a court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it.



20. In *Geoffrey Mutbinja & Another v Samuel Muguna Henry & 1756 Others* [2015] eKLR, the Court of Appeal held that where a statute provides a dispute resolution mechanism, it must be followed before seeking court intervention.
21. Thus, Section 9 (2) of the *FAAA* is a codification of the doctrine of exhaustion of administrative remedies. In applying the said doctrine, the Court of Appeal in the above cited case of *Geoffrey Mutbinja & another v Samuel Muguna Henry & 1756 others* [2015] eKLR, stated that the requirement is in conformity with Article 159 (2) (c) of the *Constitution* as it encourages the use of alternative dispute resolution mechanisms. Of note was the Court's holding that:

“It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews... as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of Courts.”
22. Thus, Judicial review is not a substitute for internal mechanisms such as review or appeal.
23. In *Ndiara Enterprises Limited v Nairobi City County & 2 Others* [2018] eKLR, the Court of Appeal upheld the High Court's decision and restated that a litigant should not rush to court where there are dispute resolution mechanisms established under statute. To do so renders those mechanisms otiose.
24. In the instant case, the applicant auctioneer had the opportunity to appeal the decision declining to set aside the judgment to allow him file his response out of time to the High Court as stipulated in section 25 of the *Auctioneers Act*, or any other written law and if he was late in filing the appeal, he could still invoke section 79G of the *Civil Procedure Act*.
25. The High Court on appeal has powers under section 78 of the *Civil Procedure Act* to delve into the issues that he has raised in this Judicial review matter including setting aside the ruling of the Auctioneers Licensing Board and ordering for a fresh hearing where the applicant establishes that the matter proceeded exparte and that he was denied the opportunity to file his response out of time.
26. As stated above, even where the applicant is late in filing of the appeal, he has the opportunity under section 79G of the *Civil Procedure Act* to seek leave to file the appeal out of time and seek for stay of execution of the ruling under Order 42 of the *Civil Procedure Rules*.

Disposition

27. The Applicant has not persuaded this Court that the appeal mechanism under Section 25 of the *Auctioneers Act* is inadequate, ineffective or unavailable. He has also not applied for nor demonstrated exceptional circumstances that would entitle him to exemption under Section 9(4) of the *Fair Administrative Action Act*.
28. Judicial review is a remedy of last resort, not an alternative to an available appeal. To entertain this application would be to sanction the bypassing of a clear statutory procedure, contrary to the law and public policy.
29. For the foregoing reasons, I find that this application is premature, incompetent and an abuse of the court process.
30. Accordingly, I make the following orders:



- a. The chamber summons application dated 5th June, 2025 is hereby dismissed.
- b. The Applicant is at liberty to pursue his right of appeal under Section 25 of the [Auctioneers Act](#).
- c. There shall be no order as to costs.
- d. This file is closed.

31. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF JUNE, 2025

R.E. ABURILI

JUDGE

