



Republic v General & another; Mwangi & 2 others (Interested Parties); Mwangi (Exparte Applicant) (Application E188 of 2024) [2025] KEHC 8344 (KLR) (Judicial Review) (12 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8344 (KLR)

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

APPLICATION E188 OF 2024

JM CHIGITI, J

JUNE 12, 2025

BETWEEN

REPUBLIC APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

SMALL CLAIMS COURT - NAIROBI 2ND RESPONDENT

AND

MERCY WANJIRU MWANGI INTERESTED PARTY

AHMED MOHAMED JILLO INTERESTED PARTY

NATIONAL TRANSPORT & SAFETY AUTHORITY INTERESTED PARTY

AND

HARRISON WANGORO MWANGI EXPARTE APPLICANT

JUDGMENT

1. The application before this Court is the Notice of Motion dated 12th September 2024 brought under Order 53 Rule I of the civil procedure Rules. It seeks the following orders:
 1. An order of certiorari co bring into this court the warrants of attachment issued by this court on 15th August 2024 for purposes of being quashed.
 2. A declaration that the decree passed on 21st June 2023 should be paid by the 2nd Interested Party.



3. Costs of this application be provided for.
2. The application is supported by a statutory statement dated 26th August, 2024 and Verifying Affidavit by Harrison Wangoro Mwangi sworn on even date.
3. It the Applicants' case that he was sued by the 1st interested party herein before the 2nd Respondent.
4. The suit was for a claim for compensation for damages caused in a traffic accident involving his motor vehicle registration number KCH 545 B.
5. It is contended that at the time of the accident he had sold the motor vehicle to the 2nd Interested party.
6. The applicant deposes that he was not served with the claim and as such judgment was entered against him which prompted him to file applications:
 - i. One to set aside the judgment
 - ii. One to enjoin the 2nd interested party
7. It is posited that the 2nd Respondent in its decision dated 8th July, 2024 held that it did not have jurisdiction to hear and determine suits pertaining to personal injury and proceeded to dismiss his two applications.
8. The Applicant argues that despite its decision dated 8th July, 2024, the 2nd Respondent issued warrants of attachment to his goods thus acting ultra vires and he is seeking from this honourable court the setting aside of the warrants ex-debito justitae.
9. The Applicant canvassed his application by way of written submissions dated 6th February, 2025.
10. It is his submission that in Lilian S Case, Jurisdiction is everything and without it the Court should immediately down its tools and make no further step in the matter. According to him the 2nd Respondent acted in excess of its jurisdiction.
11. It is also his submission that the 2nd interested party admitted in his replying affidavit he had bought the subject Motor- vehicle before the accident.
12. A notice of withdrawal of against the 3rd Interested party the National Transport & Safety Authority was filed on 28th April, 2025.

The 1st and 2nd Respondent's case;

13. The 1st Respondent in response to the Applicants' Notice of Motion 12th September, 2024 filed grounds of opposition dated 18th October, 2024. They oppose the application on the following grounds:
 1. The Application is premature, incompetent, misplaced and an abuse of the Court process.
 2. Judicial Review proceedings are special proceedings and as such this court does not have the jurisdiction to make a determination in this matter. The Ex parte applicants ought to have filed an Appeal in a Court of higher jurisdiction or filed an application for Review of the impugned orders before the 2nd Respondent's Court.
 3. The Application is fatally defective as it offends the mandatory provisions of Section 9(2) and (4) of the Fair Administrative Actions *Act No. 4 of 2015*.
 4. The 2nd Respondent acted within the principles of the law.



5. The application is a fallacy and ought to be dismissed with costs to the 3rd Respondents.
14. It is their submission that first exhaust the dispute resolution mechanism available to them in the Respondent Court before moving this Court, with judicial review as a remedy being of last resort.
15. They contend that this Court cannot usurp and curtail the jurisdiction of the 2nd Respondent to hear and determine the Applicants' pending application before it.
16. Reliance is placed in the case of Republic versus Kenya Revenue Authority Ex parte Style Industries Limited [2019] ECLR where the court clearly explained the provisions of Section 9 (2) and (3) of the FAAA and stated as follows;
- “A proper construction of Section 9(2) and (3) of the FAA Act leads to the conclusion that they are couched in mandatory terms. The only way out is the exception provided by Section 9(4) which provides that; -
- “notwithstanding sub section (3), the High Court or a subordinate 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. Two requirements flow from the above subsection. First, the applicant must demonstrate “exceptional circumstances”.
17. It is further their submission that the application lacks merits since the applicant has not proved his case and seeks to dwell on the merits of the case yet the same are issues that would be adequately addressed in the lower court if they moved court appropriately by way of review.
18. In of Republic vs. Kenya Revenue Authority Ex-parte Yaya Towers Ltd (2008) eCLR the court held;
- “The remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision-making process itself as Judicial Review is intended to ensure that an individual is accorded fair treatment by the authority to which he has been subjected. In this case, once again, I reiterate that the ex parte applicant has not stated that he was subjected to an unfair process by the respondents before the decision to charge him was made. In my view, the applicant indirectly seeks orders of this court to substitute the decision of the respondents to charge him in court with a decision not to charge him and this will amount to usurpation of the respondents' powers conferred by the *Constitution*.”

The 2nd Interested Party's case;

19. The 2nd Interested Party (hereinafter referred to as IP) in response to the Applicants' Notice of Motion dated 12th September, 2024 filed a Replying Affidavit by one Ahmed Mohammed Jillo sworn on 31st January, 2025 and written submissions dated 23rd February, 2025.
20. According to the 2nd IP the application before this honourable court is frivolous, vexatious, bad in law, meritless, and an abuse of the court process as it is meant only to frustrate us and delay us from enjoying a validly and lawfully obtained judgment.
21. It is deposed that he is not the owner of the motor vehicle registration number KCH545B as he had sold it to one Allan Manyoni Mulimah whom he surrendered possession of the said vehicle upon signing of the sale agreement.



22. The 2nd IP denies knowledge of the of the accident or facts of the suit of the damages claim in the small claims court as he was not party to the said suit.
23. It is his case that the motor vehicle KCH 545 B had been sold to him however the seller did not effect transfer of the motor vehicle to him.
24. He further argues that the orders sought in the instant suit can only be determined substantively If this court were to examine the issues of ownership of the motor vehicle in question which can only be done by re-examining the evidence and providing evidence by all parties not involved in the trial court which is not the purview of this court.
25. It is posited that the application before his honourable court is misguided as the Applicant ought to have lodged an appeal against the decision of the trial court as opposed to filing the instant suit clearly showing that the applicant is forum-shopping.
26. It is submitted that this court should be guided by the doctrine of avoidance.
27. In the Supreme Court case of Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR. The Court held as follows: -

“The appellants in this case are seeking to invoke the ‘principle of avoidance’, also known as ‘constitutional avoidance’. The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis.”
28. Reliance is also placed in the South African case S. V. Mhlungu, 1995 (3) SA 867 (CC) and Uhuru Muigai Kenyatta v Nairobi Star Publications Limited [2013] eKLR.
29. It is also submitted that the application offends Section 9 and Section 4(3)(b) of the Fair Administrative Actions Act.
30. The 2nd IP urges this court to be guided by the principle of Natural Justice which states that no party ought to be condemned unheard.
31. Reliance is placed in the in the Supreme court of India Sangrem Sing v Election Tribunal, Kotech AIR 1955 SC664; 1955 AIR 425, 1955 SCR (2) where the court held:

“There must be ever present in the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.”
32. On the issue of costs, the 2nd IP submits that the applicant has failed to prove his case has merit thus the costs should be awarded to the Respondents an in particular to himself.

Analysis and determination:

33. Article 165(6) of the *Constitution* stipulates that the High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court. (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.



34. The Small claims court is a subordinate court and this court has the supervisory power over it.
35. The *Small Claims Court Act* (2016) section 12 provides for its powers as follows;
- (1) Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to—
 - (a) a contract for sale and supply of goods or services;
 - (b) a contract relating to money held and received;
 - (c) liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;
 - (d) compensation for personal injuries; and
 - (e) set-off and counterclaim under any contract.
 - (2) Without prejudice to the generality of subsection (1), the Court may exercise any other civil jurisdiction as may be conferred under any other written law.
 - (3) The pecuniary jurisdiction of the Court shall be limited to one million shillings.
 - (4) Without prejudice to subsection (3), the Chief Justice may determine by notice in the Gazette such other pecuniary jurisdiction of the Court as the Chief Justice thinks fit.
36. The court had the following to say in the case of *Andala v FI (Suing through the next friend and mother RN) & another* (Civil Appeal E092 of 2024) [2024] KEHC 10042 (KLR) concerning the issue of the jurisdiction of the Small claims court.

“Having said that, the decision by Kizito J in *Jerusha Auma Ogwari v Ibrahim Aisha Hersi Alias Aisha Hersi Ibrahim* (Civil Appeal 223 of 2022) (2023) KEHC 20111 (KLR) has left many, particularly the litigants at crossroads as to whether to apply the said decision on matters jurisdiction or the *Small Claims court Act* under Section 12 which speaks in the following terms: -“(1)Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to—(a)a contract for sale and supply of goods or services;(b)a contract relating to money held and received;(c)liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;(d)compensation for personal injuries; and(e)set-off and counterclaim under any contract.”

12. In the instant case, one cannot say that the preferred appeal is not arguable. We have had a plethora of decisions where it has been constantly held that an arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous. I am of the considered view that the issues raised in the appeal are those this court will need to consider and determine at the hearing of the appeal by considering the trial court’s reasoning as against the Applicant’s arguments and arrive at its own decision. On the arguability test therefore, the appeal passes.
13. Taking it a notch higher, as I have said, the decision by Kizito J has left litigants at crossroads. This in my view a substantial question of law under clause (3) (b) or (d) of Article 165 of the *Constitution* of Kenya 2010, which should be



heard by an uneven number of Judges not being less than three, assigned by the Chief Justice.

14. The court in *Kenya Medical Research Institute v Attorney General & 3 others* [2014] eKLR had this to say on the Article 165(4):“Article 165(4) of the Constitution stipulates circumstances under which the Chief Justice can exercise his powers under that Article. It is a requirement that the substantial question of law which justifies the invocation of the said provision must either be where the Court is required to make a determination of the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened or a determination in respect of a question respecting the interpretation of the Constitution. It is therefore clear that Article 165(4) can only be invoked in specific and limited circumstances. This is therefore, in our view, not an ordinary jurisdiction. A Bench empanelled under the said provision cannot therefore be termed as an Industrial Court so as to be constituted solely of Industrial Court Judges. In any case, it is not contended that this Court as constituted is not properly seized of the jurisdiction to determine the twin issues contemplated under Article 165(4) of the Constitution.”
15. Given that background, I am then persuaded that this is one of the cases where there is need to stay the proceedings in order to have the appeal determined to finality. This matter in the manner it is being explored and litigated raises arguable points of law of general public importance that triggers the jurisdiction of the Small Claims Court. In reference to the certain dicta in *Jerusha Auma Ogwari v Ibrahim Aisha Hersi Alias Aisha Hersi Ibrahim* (Civil Appeal 223 of 2022) (2023) KEHC 20111 (KLR). Thus, permitting the matter to be adjudicated by an empanelled bench of an even number by the Chief Justice to revisit the inherent issue in the matter. There is need for a final decision to be made whether matters arising out of these appeals are within the jurisdiction of the Small Claims Court.”
37. The court in *Jane v Runga* (Civil Appeal E034 of 2024) [2024] KEHC 11036 (KLR) determined the following on the jurisdiction of the small claims court;
 - “ 8. In holding as above, I am aware of the holding in the case of *Owners of Motor Vessel “Lillian S” V Caltex Oil (Kenya) Ltd* (1989) Eklr that jurisdiction is everything, and without it a court of law has to down its tools. In the case of the Small Claims Court however, jurisdiction is broad as defined under Section 12(1) of the Small Claims Court Act No. 2 of 2016, and includes compensation for personal injuries as follows:-“
 - 12(1) Subject to this Act, the rules and any other law the court has jurisdiction to determine any civil claim relating to –a) A contract for sale and supply of goods or services. b) A contract relating to money held and received. c) Liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property. d) Compensation for personal injuries, and e) Set off and counter claim under any contract.”



9. From the above provisions of the law it is clear that the jurisdiction of the Small Claims Court actually covers some personal injury claims. I must mention here also, that in determining the issue of its jurisdiction, every Small Claims Court, must bear in mind and be conscious of the short time lines statutorily given for determination of matters in that court, and that all cases that are likely to take a longer period than the statutory time allowed, should be heard and determined in the ordinary courts.”

38. In *Gichovi v Kilem* (Civil Appeal E020 of 2024) [2024] KEHC 10859 (KLR), the court determined the following:

“The respondent raised a preliminary objection challenging the jurisdiction of the Small Claims Court to determine a claim for personal injury. The court found in favour of the respondent and allowed the preliminary objection on the basis of the case of *Ogwari v. Hersi* (Civil Appeal 223 of 2022) [2023] KEHC 20111 (KLR) where the court limited jurisdiction of the court to determine personal injuries arising from assault. The trial court ordered that the suit be struck out and it be re-filed before the appropriate court All in all, it is my considered view that the trial court indeed bore the jurisdiction to determine the case as bestowed upon it by section 12(1)(d) of the *Small Claims Court Act*.”

39. In *Ruto v Cheron* (Civil Appeal E200 of 2023) [2024] KEHC 10947 (KLR), the court expressed the following on the jurisdiction of the small claims court;

“ 54. The jurisdiction of the Small Claims Court is set out in Section 12 of the *Small Claims Court Act*. The same provides as follows: “Nature of claims and pecuniary jurisdiction subject to this Act, the rules and any other law, the court has jurisdiction to determine any civil claim relating to—(a) A contract for sale and supply of goods or services; (b) A contract relating to money held and received; (c) Liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property; (d) Compensation for personal injuries; and (e) Set-off and counterclaim under any contract. (2) Without prejudice to the generality of subsection (1), the court may exercise any other civil jurisdiction as may be conferred under any other written law. (3) The pecuniary jurisdiction of the court shall be limited to one million shillings. (4) Without prejudice to subsection (3), the Chief Justice may determine by notice in the Gazette such other pecuniary jurisdiction of the court as the Chief Justice thinks fit.”

55. A reading of the highlighted provisions creates no doubt in my mind that the present contract squarely falls within the purview of the Small Claims Court. The issue in question as discerned does not relate to the piece of land that was being sold. It rather relates to the agency relationship between the parties; the contract made on 5th August, 2021 as to the payments due to the Respondent. I therefore find no compelling argument to set aside the judgment delivered by the Small Claims Court.”



40. Lastly in *Ochieng v Mshila* (Civil Appeal E099 of 2024) [2025] KEHC 2660 (KLR), the court determined the following;

“From the above provisions of the law, it follows that the Small Claims Court has jurisdiction of to determine matter relating to contracts for sale and supply of goods, relating to money held and received, liability in fort in respect to loss or damage caused to any property or for delivery of movable property, compensation for personal injuries and set off and counter claim under any contract. The pecuniary jurisdiction is fixed at one million shillings.

19. Section 13 of the Small Claims Act provides for the matters which the Small Claims Court has no jurisdiction to entertain. These matters are particularly listed under Section 13 (5) of the Act. It provides as follows: “A claim shall not be brought before the court if the cause of action is founded upon defamation, libel, slander, malicious prosecution or is upon a dispute over a title to or possession of land, or employment and labour relations.” [emphasis added].

41. In the instant suit, the 2nd Respondent in its decision dated 8th July, 2024 rightly held that it did not have jurisdiction to hear and determine suits pertaining to personal injury and proceeded to dismiss his two applications. However, on the same day the 8th July, 2024, the 2nd Respondent issued warrants of attachment to the applicants goods.

42. In the case of *Pastoli vs. Kabale District Local Government Council and Others* [2008] 2 EA 300 it was held follows:

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission...Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

43. The 2nd Respondent committed an error of law in issuing the impugned warrants of attachment. It acted without jurisdiction contrary to the provisions of a law leading into an illegality and I so hold.

The second issue is whether a declaration can issue that that the decree passed on 21st June 2023 should be paid by the 2nd Interested Party.



44. In the case of Republic v Director of Immigration Services & 2 others Exparte Olamilekan Gbenga Fasuyi & 2 others [2018] eKLR where Judge Mativo held that:

It is common ground that the prayers sought are Judicial Review remedies and the rules governing grant of Judicial Review orders do apply. Judicial Review is about the decision making process, not the decision itself. The role of the court in judicial review is supervisory. It is not an appeal and the Court should not attempt to adopt the 'forbidden appellate approach'. Judicial Review is the review by a judge of the High Court of a decision; proposed decision; or refusal to exercise a power of decision to determine whether that decision or action is unauthorized or invalid. It is referred to as supervisory jurisdiction - reflecting the role of the courts to supervise the exercise of power by those who hold it to ensure that it has been lawfully exercised.

Judicial Review is a means to hold those who exercise public power accountable for the manner of its exercise. The primary role of the Courts is to uphold the fundamental and enduring values that constitute the Rule of Law. As with any other form of governmental authority, discretionary exercise of public power is subject to the Courts supervision in order to ensure the paramountcy of the law.

Judicial Review is more concerned with the manner in which a decision is made than the merits or otherwise of the ultimate decision. As long as the processes followed by the decision-maker are proper, and the decision is within the confines of the law, a Court will not interfere. Broadly, in order to succeed, the applicant will need to show either: -

- a. the person or body is under a legal duty to act or make a decision in certain way and is unlawfully refusing or failing to do so; or
- b. a decision or action that has been taken is 'beyond the powers' (in latin, 'ultra vires') of the person or body responsible for it.

45. It is my finding and I so hold that this prayer revolves around a question that can only be heard and determined in an appeal and it does not fall within the remit of this court.

Disposition;

46. The applicant is partly successful.

Order;

1. An order of certiorari is hereby issued bringing into this court quashing the warrants of attachment issued by the court on 15th August 2024.
2. The prayer that a declaration that the decree passed on 21st June 2023 should be paid by the 2nd Interested Party is declined.
3. No order as to Costs.

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

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J.M. CHIGITI (SC)

JUDGE

