



**Republic v Kenya Revenue Authority; Mazeras Kenya (EPZ) Limited (Exparte Applicant)
(Judicial Review E033 of 2023) [2024] KEHC 4515 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 4515 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
JUDICIAL REVIEW E033 OF 2023**

OA SEWE, J

FEBRUARY 8, 2024

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY
FOR JUDICIAL REVIEW ORDERS OF CERTIORARI**

AND

**IN THE MATTER OF CONSTITUTIONAL RIGHTS PURSUANT
TO ARTICLES 21, 22,23(1) &(3)(F), 25(C), 27,47(1) & (2),
48,50(1) & 210(1) & (2) OF THE CONSTITUTION OF KENYA,**

2010

AND

**IN THE MATTER OF SECTIONS 3, 4(1) & (3), 7(1), 10(1),
11(1)(D) &(G) OF THE FAUR ADMINISTRATIVE ACTION ACT,**

NO. 4 OG 2015

AND

**IN THE MATTER OF SECTION 29(2) (E) OF THE EXPORT
PROCESSING ZONES ACT CAP 517**

AND

**IN THE MATTER OF SECTION 17(1) OF THE STAMP DUTY
ACT CAP 480**

BETWEEN

BETWEEN

REPUBLIC APPLICANT

AND



THE KENYA REVENUE AUTHORITY RESPONDENT

AND

MAZERAS KENYA (EPZ) LIMITED EXPARTE APPLICANT

RULING

1. The Chamber Summons dated 16th October 2023 was filed by Mazeras Kenya (EPZ) Limited (the applicant) against Kenya Revenue Authority (the respondent) under Section 3A of the *Civil Procedure Act*, Chapter 21 of the Laws of Kenya and some unspecified provisions of *Fair Administrative Action Act*, *Tax Procedures Act*, *Stamp Duty Act* and all other enabling provisions of the law for the following orders:
 - (a) Spent
 - (b) That the ex parte applicant be granted leave to apply for the Judicial Review Order of Certiorari to remove into this Court and to quash the decisions of the respondent made on 11th January 2022 and 22nd June 2022 to assess, demand and recover from the applicant stamp duty together with penalties and interest thereon in respect of the transfer of Land Reference No. 1043/III/54, Mazeras by Kenya Suitcase Manufacturers Ltd to the applicant.
 - (c) That the ex parte applicant be granted leave to apply for the Judicial Review Order of Prohibition to prohibit the respondent from assessing, demanding, recovering or collecting from the applicant any or any additional stamp duty or any penalties or interest thereon in respect of the transfer of Land Reference No. 1043/III/54, Mazeras by Kenya Suitcase Manufacturers Ltd to the applicant.
 - (d) That such leave do operate as a stay of all proceedings, actions and/or measures to enforce and implement the decisions of the respondent made on 11th January and 22nd January 2022 in respect of the transfer of Land Reference No. 1043/III/54, Mazeras by Kenya Suitcase Manufacturers Ltd to the applicant.
 - (e) that the costs of the application be costs in the cause.
2. The application was premised on the grounds that the decisions of the respondent made on 11th January 2022, namely, the Demand Notice; and the decision made on 22nd June 2022, namely the Objection Decision to assess, demand and recover from the applicant stamp duty together with penalties and interest thereon in respect of the transfer of Land Reference No. 1043/III/54, Mazeras by Kenya Suitcase Manufacturers Limited to the applicant, were ultra vires. The applicant further contended that the respondent had no powers, whether under the *Stamp Duty Act*, Cap. 480), the *Tax Procedures Act*, No. 29 of 2015, or any other law whatsoever, to reassess stamp duty payable on a Transfer after the respondents, as the Collector of Stamp Duty has adjudicated or assessed the stamp duty payable on the Transfer under Section 17(1) of the *Stamp Duty Act* and the Transfer has been duly stamped or exempt, as the case may be.
3. Hence, the assertion of the applicant is that the respondent, being a Collector of Stamp Duty as defined under the *Stamp Duty Act*, became functus officio once the transfer in question had been assessed under Section 17(1) as being exempt from stamp duty and stamped with a stamp denoting such exemption. Accordingly, the applicant posited that the process and procedure for challenging an assessment of stamp duty under Section 17(1) of the *Stamp Duty Act* is by way of an appeal to the High



Court under Section 18(1) of the *Stamp Duty Act*, to be lodged within 30 days of the assessment, which period had long lapsed when the respondent issued the Demand Notice.

4. The applicant contended therefore that the Demand Notice and the Objection Decision violate the principles of legitimate expectation and were made in violation of the provisions of Section 4(3)(g) of the *Fair Administrative Action Act* by failing to provide the applicant with substantive reasons and/or legal basis for altering its decision on the payment of stamp duty despite the Transfer having originally been adjudicated and assessed as being exempt from stamp duty by the respondent. Moreover, the Demand Notice and Objection decision are said to have been issued in violation of the applicant's fundamental rights protected under Articles 40 and 47 of *the Constitution*; as well as Article 210(1) and Section 29(2)(e) of the *Export Processing Zones Act*, (Cap. 517) of the Laws of Kenya.
5. The foregoing grounds were amplified in the Statutory Statement dated 16th October 2023 as well as the Verifying Affidavit filed therewith, sworn by a director of the applicant, Mr. Sailesh Dayalal Shah on the same date of 16th October 2023. The applicant annexed several documents to the said affidavit to augment its application. They include copies of the Transfer dated 23rd October 2017, the Demand Notice dated 11th January 2022 and the Objection Decision dated 22nd June 2022.
6. The application was opposed by the respondent vide the Grounds of Opposition dated 8th November 2023. The contention of the respondent is essentially that:
 - (a) The application is incompetent, bad in law, fatally defective and is an abuse of the process of the Court;
 - (b) The respondent is established under the *Kenya Revenue Authority Act*, Cap 469, Laws of Kenya; and under Section 5(1) thereof, the applicant has the mandate to assess and collect revenue, in addition to the administration and enforcement of the laws relating to revenue;
 - (c) Section 18 of the *Stamp Duty Act* already prescribes a dispute resolution mechanism for disputes on assessment of stamp duty;
 - (d) The application does not muster the mandatory parameter of the doctrine of exhaustion as enunciated in Catherine Mwhaki Ngami v International Leadership University [2022] eKLR;
 - (e) The *Stamp Duty Act*, being the applicable statute in relation to the administration of stamp duty, does not prescribe statutory limitations of collection of stamp duty in arrears/shortfall taxes under the Act;
 - (f) Prima facie, the dispute herein is a civil dispute on whether or not a debt is owing and what is the quantum of the debt; and that the nature of judicial review proceedings is, therefore inappropriate in ascertaining the merits of the claim of a debt owing and the proper quantum;
 - (g) The application does not muster the exercise of the Court's judicial review jurisdiction, having failed to demonstrate illegality, irrationality and/or procedural impropriety on the respondent's part;
 - (h) The application is an afterthought and a tactic by the applicant meant to delay the conclusion of this matter, which holds substantial government revenue.
 - (i) The applicant has not demonstrated it deserves favourable discretion of the Court and therefore the application should be dismissed with costs to the respondent.



7. The application was canvassed by way of written submissions, pursuant to the Court's directions dated 24th October 2023. In its written submissions dated 23rd November 2023, the applicant raised the following issues for determination:
 - (a) Whether the applicant has an arguable case warranting issuance of leave to file judicial review proceedings;
 - (b) Whether the application and any substantive application for judicial review deals with the merits of the decision as opposed to the process and if so, whether judicial review proceedings are not appropriate to deal with those issues;
 - (c) Whether the doctrine of exhaustion is applicable in this instance and if so, whether the application should be dismissed on the ground that the applicant has not exhausted the alternative remedies available to it; and
 - (d) Whether any leave, if issued ought to operate as stay of the respondent's decision pending hearing and determination of the substantive judicial review proceedings.
8. The applicant submitted that judicial review proceedings intended to be commenced by the applicant herein are brought under the Fair Administrative Actions Act; and as such are exempt from the need to obtain leave before commencing such proceedings. Reliance was placed, in this regard, on *James Gacheru & 2 Others v Kiambu County Assembly & 3 Others* [2017] eKLR. Nevertheless, the applicant proceeded to further submit, on a without prejudice basis, that it is trite that before the Court grants leave to commence judicial review proceedings in instances where such proceedings are to be commenced under the *Law Reform Act*, it has to be satisfied that the proceedings intended to be filed are not frivolous or an abuse of the court process. It explained that the purpose of seeking the Court's leave at this juncture is to ensure that the proceedings are prima facie arguable and are not statute barred.
9. In response to the respondent's argument that judicial review proceedings are limited to the process as opposed to the merits of a matter, the applicant submitted that the issue is whether the respondent has the right, power and jurisdiction to unilaterally reverse its decision on exemption of stamp duty made under Section 17 of the *Stamp Duty Act* after expiry of four years and purportedly based on the *Tax Procedures Act*. On the authority of *Wanjigi v Chebukati & 2 Others* [2022] KECA 724 (KLR), the applicant urged the Court to find that it has the jurisdiction to review the merits of the respondents' impugned decisions.
10. As for the doctrine of exhaustion, the applicant submitted that Section 18 of the *Stamp Duty Act* does not provide any remedy to the applicant because it was not dissatisfied with the respondent's decision under Section 17 to exempt it from paying stamp duty; and therefore had no basis for appealing that decision or assessment to the High Court. The applicant further asserted that there is no alternative remedy available under the *Stamp Duty Act* or any other law; and therefore judicial review is the only option available. The applicant made reference to *Kenya Revenue Authority v Universal Corporation Ltd* [2020] eKLR; *Judicial Review No. 3 of 2013: West Kenya Sugar Co. Limited v Kenya Sugar Board and John Kipkoech Rotich & 29 Others v Drinks Regulation Committee, Ex Parte John Kipkoech Rotich t/a Silent Pub & 29 others* [2019] eKLR, to buttress its argument.
11. The applicant also urged that stay be granted in the circumstances, considering the threats by the respondent of imminent enforcement of the impugned decisions. It added that an order for leave to operate as stay, pending the determination of the intended judicial review proceedings, will ensure that the said proceedings are not rendered nugatory. In this connection, the applicant relied on *Taib A. Taib v Minister for Local Government & 3 Other** [2006] eKLR.



12. The respondent, on its part, raised two issues for determination in its written submissions dated 11th December 2023, namely:
 - (a) Whether the applicant merits exemption from the doctrine of exhaustion;
 - (b) Whether the applicant has met the threshold for grant of leave to institute judicial review proceedings.
13. The respondent reiterated its stance that there is in place a robust and exhaustive dispute resolution mechanism for adjudication of disputes and recovery of stamp duty under the [Stamp Duty Act](#) at Sections 18 and 29 of the [Stamp Duty Act](#), as well as Sections 7 and 9(2) of the [Fair Administrative Action Act](#). Moreover, the respondent reiterated that, by dint of Sections 5 and 49 of the [Stamp Duty Act](#), contracts for the transfer of property are subject to stamp duty; and therefore that it was within its mandate to demand for stamp duty from the applicant in respect of the purchase of the suit property.
14. It was further the submission of the respondent that recovery of underpaid duty being a civil debt, is recoverable as such under the Civil Procedure Rules; and therefore does not fall under the [Tax Procedures Act](#). The respondent also urged the Court to find that the [Stamp Duty Act](#) also provides dissatisfied persons with an avenue for relief by way of appeal to the High Court. The respondent relied on *Mutanga Tea & Coffee Company Limited v Shikara Limited & Another* [2015] eKLR; *Speaker of National Assembly v Karume* [1992] KLR 21; *William Odhiambo Ramogi & 3 Others v Attorney General & 4 Others*; *Muslims for Human Rights & 2 Others (Interested Parties)* [2020] eKLR and *Mustafa Tobiko Ole Tampul v Hassan Ole Naado & 17 Others* [2021] eKLR to back up its submission that the present application has not met the threshold for treatment as an exception to the exhaustion doctrine.
15. Lastly, it was the submission of the respondent that the applicant is not deserving of the Court's discretion and posited that its sole intention is forum shopping. The respondent cited *Mbogo v Shah* [1968] eKLR to buttress its argument that the Court's discretion must be exercised judiciously; and therefore that, in the absence of sufficient cause, the instant application is an abuse of the process of the Court. Thus, the respondent prayed for the dismissal of the application with costs.
16. A preliminary objection was taken by the respondent on the ground that the applicant is yet to exhaust all the alternative mechanisms and remedies available to it as required under Section 9(2) and (3) of the [Fair Administrative Action Act](#). Those provisions state:
 - (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.
 - (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under subsection (1).
17. Hence, in the submission of the respondent, there is an alternative remedy under Section 18 (1) of the [Stamp Duty Act](#), which the applicant was obliged to pursue before filing the instant matter. In my consideration however, Section 18(1) of the [Stamp Duty Act](#) does not qualify as an alternative dispute resolution mechanism for purposes of Article 159(2)(c) of the Constitution; for it is explicit that:
 - (1) Any person who is dissatisfied with the assessment of the collector may, within thirty days after the date of the assessment, and on payment of duty in conformity therewith, or on securing the duty to the satisfaction of the collector, appeal against the assessment to the High Court,



and may for that purpose require the Collector to state and sign a case, setting out the question upon which his opinion was required, and the assessment made by him.

18. It is plain that this is an appellate provision such as is contemplated by Article 165(3)(e) of the Constitution. Indeed, the Black's Law Dictionary, 11th Edition defines alternative dispute resolution as: A procedure for settling a dispute by means other than litigation, such as arbitration or mediation.”
19. It appears from the respondent's arguments that it may have misapprehended the true import of Sections 18 and 29 of the *Stamp Duty Act*; as one is in reference to unpaid stamp duty being recovered as a civil debt while the other provides a right of appeal to the High Court for persons who are dissatisfied with the decision of the Collector of Stamp Duty. In this instance, the applicant explained that it was not dissatisfied with the decision of the Collector; and therefore had no reason to appeal to the High Court as provided for under Section 18(1) of the *Stamp Duty Act*. Needless to say that the applicant is not a collector and therefore had no reason to approach the Court under Section 29 of the *Stamp Duty Act*. Thus, on both scores the respondent's preliminary objection fails and is hereby dismissed accordingly.
20. That said, the only merit issue for consideration is whether the applicant has made out a case to warrant the grant of leave to institute Judicial Review proceedings. I note that the application is expressed to have been filed under the *Fair Administrative Action Act*, in respect of which leave is not a prerequisite. Nevertheless, on his own volition, the applicant opted to move the Court for leave under Order 53 Rules 1 and 2 of the Civil Procedure Rules. It was therefore anomalous for the applicant to argue, in the same breath, that leave is not a requirement. Where such a conscious step has been taken, as has been done herein, the Court has no option but to consider the application from the prism of Sections 8 and 9 of the *Law Reform Act*, Chapter 26 of the Laws of Kenya and Order 53, and satisfy itself as to the strictures thereof. Hence, in *Matagei v Attorney General; Law Society of Kenya (Amicus Curiae)* (Petition 337 of 2018) [2021] KEHC 460 (KLR) Hon. Korir, J. (as he then was) acknowledged that:

...the tension between the common law judicial review and the judicial review founded on the Constitution is apparent. The application of the rules of order 53 of the CPR to judicial review applications brought under sections 8 and 9 of the LR Act and the non-application of the rules to judicial review applications premised on the Constitution has resulted in what appears to be a two-track judicial review process; one under common law and another under the Constitution”
76. A perusal of the FAA Act clearly shows that Parliament intended to substitute the judicial review under the common law with statutory judicial review and this explains why Part III (sections 7 to 11) of the Act is clearly titled “Judicial Review”. One cannot therefore understand why Parliament did not go to the whole hog by repealing sections 8 and 9 of the LR Act. The failure to repeal the impugned provisions of the LR Act has led to the continuing confusion as regards the procedure for institution of judicial review proceedings. It is noted that rules have not been made as provided by section 10(2) and regulations have also not been enacted under section 13 of the FAA Act even though the law is already operational. Lack of procedural rules force applicants to resort either to order 53 of the CPR or constitutional petitions when seeking orders of judicial review...”
21. I therefore take the view that it is optional for a party to seek leave or not before approaching the Court with a substantive application. I am fortified in this stance by the decision of a 5-judge bench of



the Court of Appeal in Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 others [2017] eKLR in which it was held:

"In our considered view presently, judicial review in Kenya has Constitutional underpinning in articles 22 and 23 as read with article 47 of the Constitution and as operationalized through the provisions of the Fair Administrative Action Act. The common law judicial review is now embodied and ensconced into constitutional and statutory judicial review. Order 53 of the Civil Procedure Act and rules is a procedure for applying for remedies under the common law and the Law Reform Act. These common law remedies are now part of the constitutional remedies that the High Court can grant under article 23(3)(c) and (f) of the Constitution. The fusion of common law judicial review remedies into the constitutional and statutory review remedies imply that Kenya has one and not two mutually exclusive systems for judicial review. A party is at liberty to choose the common law order 53 or constitutional and statutory review procedure. It is not fatal to adopt either or both...We hold that Kenya has one and not two mutually exclusive systems for judicial review. The common law and statutory judicial review are complementary and mutually non-exclusive judicial review approaches."

22. The rationale for leave was explicated by Hon. Waki, J. (as he then was) in the case of Republic v County Council of Kwale & another ex parte Kondo & 57 others [1998] 1 KLR (E&L), he stated: -

...The purpose of the application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further consideration..."

23. For a party to be granted leave they must show that they have an arguable case. The Court of Appeal in the case of Aga Khan Education Service Kenya v Republic Exparte Ali Seif & 3 others [2004] eKLR, held:

"We think both Mr Inamdar and Mr Kigano are generally agreed on the principles of law applicable in these matters. They are agreed that in order to enable a judge to grant leave under Order 53, there must be prima facie evidence of an arguable case and for that proposition both counsel rely on this Court's decision in: In The Matter of An Application By Samuel Muchiri Wanjuguna & 6 Others And In The Matter of The Minister For Agriculture and The TEA ACT, Civil Appeal No 144 of 2000 in which the Court approved and applied the principles to be found in the English case of R V Secretray Of State, ex p. Harbage [1978] 1 ALL ER 324 where it was stated thus:

It cannot be denied that leave should be granted, if on the material available, the court considers without going into the matter in depth, that there is an arguable case for granting leave. The appropriate procedure for challenging such leave subsequently is by an application by the Respondent under the inherent jurisdiction of the court, to the judge who granted leave to set aside such leave – see Halsbury's Laws of England, 4th Edition Vol 1 (1) paragraph 167 at page 1276."

So once there is an arguable case, leave is to be granted and the court, at that stage, is not called upon to go into the matter in depth.



24. Leave is, therefore, not granted as a matter of course. An applicant needs to convince the court that there are sufficient grounds for leave to be granted for the proposed judicial review orders sought. One of the applicant's prayers is for leave to apply for an order of Certiorari to quash the decisions made by the respondent on the 11th January 2022 and 22nd June 2022 to assess, demand, and recover stamp duty together with penalties and interest with respect of the transfer of Land Reference Number 1043/III/54. These are decisions that were made over one (1) year before the application for leave was filed. Section 9(3) of the [Law Reform Act](#), as read with Order 53 Rule 2 of the Civil Procedure Rules, 2010 requires that an application such as the one before the court be filed within six (6) months. In particular, Section 9(3) of the [Law Reform Act](#), is peremptory in terms. It states:

“In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

25. Thus, without prejudice to the rights of the applicant under the Constitution and the [Fair Administrative Action Act](#), there is no gainsaying that, under the provisions of Section 9 (3) of the [Law Reform Act](#) as well as Order 53 Rule 2 of the Civil Procedure Rules, the application for leave to apply for an order of Certiorari is not permissible. The Court of Appeal in the case of *Ako v Special District Commissioner Kisumu & another* [1989] eKLR, held:

“It is plain that under sub-section (3) of section 9 of the [Law Reform Act](#) Cap 26 leave shall not be granted unless application for leave is made inside six months after the date of the judgment. The prohibition is statutory and is not therefore challengeable under procedural provisions of the Civil Procedure Rules, more specifically order 49 rule 5 which permits for enlargement of time. That is the basis of the contention that the prohibitive nature of sub-section (3) of section 9 of the Act is capable of bearing such a liberal interpretation as would make it permissible for the court to enlarge time beyond the period of six months. We have no doubt that the prohibition is absolute and any other interpretation or view of the particular provision would be doing violence to the very clear provision of subsection (3) of section 9 of the [Law Reform Act](#).”

26. Thus, the law as it stands at present, is that an application for leave to apply for an order of Certiorari must be made within six months from the date of the decision being challenged. In so far as the impugned decisions were made over one year prior to the filing of the instant application, the applicant's prayer for leave to apply for an order of Certiorari to quash decisions made on 11th January, 2022 and 22nd June 2022 respectively is untenable.

27. The applicant also prayed for leave to apply for an order of Prohibition, to prohibit the respondent from assessing, levying, demanding, recovering or collecting from it any or any additional stamp duty and any penalties or interest thereof in respect of the subject Transfer. In Kenya National Examination



Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR, the exact nature of such an order was explicated thus:

“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 of 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...”

28. An order of Prohibition, therefore, looks into the future. It aims to stop a wrong from being committed or the continuation of such a wrong. In this case, the Ex parte proposes to have the respondent prohibited from recovering any or additional stamp duty and penalties/interest in respect of the land Reference No. 1034/III/54. The applicant’s posturing is that it is exempted from paying stamp duty by dint of Section 29 (2)(e) of the *Export Processing Zones Act*. Hence, upon a cursory perusal of the evidence before the court and without delving into the arguments by the parties, it is my view that the applicant has an arguable case and therefore justifies the grant of leave.

29. On whether the said leave should operate as a stay Order 53 Rule 1(4) of the Civil Procedure Rules provides:

The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise:

Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.”

30. A stay order, therefore, discontinues or suspends proceedings that are being challenged by a claim for judicial review, and the purpose of a stay order is to preserve the status quo pending the final determination of the claim for judicial review. Accordingly, in *Taib A. Taib v Minister for Local Government & 3 Others* (supra) it was held:

“The purpose of a stay order in judicial review proceedings is to prevent the decision maker from continuing with the decision making process if the decision has not been made or to suspend the validity and implementation of the decision that has been made. It is not limited to judicial or quasi-judicial proceedings as some think. It also encompasses the administrative decision making process (if it has not yet been completed) being undertaken by a public body such as a local authority or minister and the implementation of the decision of such body if it has been taken. A stay is only appropriate to restrain a public body from acting. It is, however, not appropriate to compel a public body to act.”

31. Moreover, in *Republic v County Government of Embu Ex parte Peterson Kamau Muto t/a Embu Medical and Dental Clinic & 6 others* [2022] eKLR, it was held:

15. It is therefore clear that where the action or decision is yet to be implemented, a stay order can normally be granted in such circumstances. Where the action or



decision is implemented, then the Court needs to consider the completeness or continuing nature of such implementation. If it is a continuing nature, then it is still possible to suspend the implementation...”

32. It is manifest, from the evidence placed before the Court that the impugned decisions are yet to be implemented and seem to be of a continuing nature. In the circumstances, it is in the interest of justice to grant stay so as to preserve the subject matter pending hearing and determination of the substantive motion.
33. In the premises, the Chamber Summons application dated 16th October 2023 succeeds in part, in that prayers No. 3 and 4 are hereby allowed and orders granted accordingly, namely:
- (a) That leave be and is hereby granted to the ex parte applicant, Mazeras Kenya (EPZ) Ltd, to apply for the Judicial Review Order of Prohibition to prohibit Kenya Revenue Authority, the respondent, from assessing, demanding, recovering or collecting from the applicant any or any additional stamp duty or any penalties or interest thereon in respect of the Transfer of Land Reference No. 1043/III/54, Mazeras by Kenya Suitcase Manufacturers Ltd to the applicant.
 - (b) That leave so granted to operate as a stay of all proceedings, actions and/or measures to enforce and implement the decisions of the respondent made on 11th January and 22nd January 2022 in respect of the Transfer of Land Reference No. 1043/III/54, Mazeras by Kenya Suitcase Manufacturers Ltd to the applicant.
 - (c) That the substantive application be filed and served within 14 days from the date hereof.
 - (d) that the costs of the application be costs in the substantive application.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 8TH DAY OF FEBRUARY 2024.

OLGA SEWE

JUDGE

