



REPUBLIC OF KENYA



KENYA LAW
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**Gwaro v State Law (Judicial Review E011 of 2024)
[2024] KEHC 8468 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 8468 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
JUDICIAL REVIEW E011 OF 2024**

**TA ODERA, J
JUNE 12, 2024**

BETWEEN

GILBERT KENYONI GWARO APPLICANT

AND

THE STATE LAW RESPONDENT

RULING

1. Gilbert Kenyoni Gwaro the ex-parte applicant herein filed the application dated 4. 4..24 seeking leave to Institute Judicial review proceeding on the nature of *mandamus* against the respondents for failure to satisfy the decree in the sum of Kshs. 447,243.06/= in Ogembo PMCC No. 152 of 2019. (Gilbert Kenyoni vs Hon. Attorney General). He told this court that despite demand the respondents have refused to satisfy the said decree and hence his intent to file *mandamus* proceedings to compel the respondents to satisfy the said decree. The threshold for leave to file judicial review proceedings was laid down in the case of *Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others*, Mombasa HCMCA No. 384 of 1996 where it was held as follows: “The purpose of 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. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived. Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court’s discretion but as always it has <http://>



2. I have carefully considered the application, the annexed decree and certificate of costs, notices and demand letter issued to the respondents and I am satisfied that the applicant has an arguable case against the respondents.
3. In the upshot I issue the following orders in respect to the application dated 4.4.24; -
4.
 - a. Leave is hereby granted to the ex-parte applicant to file and serve the substantive motion for *mandamus* against the respondents within 21 days from today. (In terms of prayer 1a of the application)
 - b. Costs be in the cause.
 - c. This file is closed.

T.A ODERA

JUDGE

12.6.24

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:

Ben Gichana for the Applicant

Court Assistant: Oigo

Parties absent

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