



REPUBLIC OF KENYA



KENYA LAW
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**In re John Lemaiyan Towett (Miscellaneous Civil Application
10 of 2024) [2024] KEHC 8443 (KLR) (1 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8443 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS CIVIL APPLICATION 10 OF 2024**

TA ODERA, J

JULY 1, 2024

**IN THE MATTER OF AN APPLICATION BY JOHN LEMAIYAN TOWETT FOR LEAVE
TO APPLY FOR JUDICIAL REVIEW ORDERS IN THE NATURE OF MANDAMUS**

AND

**IN THE MATTER OF THE OGEMBO PRINCIPAL
MAGISTRATE'S COURT CASE NO.302 OF 2016**

RULING

1. John Lemaiyan Towett the ex parte applicant herein filed the application dated 16.1.24 seeking leave to Institute Judicial review proceeding on the nature of mandamus against the respondents for failure to satisfy the decree dated 4.12.24 against them in the sum of Kshs. 626,706.30= in Ogembo PMCC No. 302 of 2016. He told this court that despite demand the respondent has neglected / refused to satisfy the said decree and hence his intent to file mandamus proceedings to compel the respondent to satisfy the said decree.
2. 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 to be exercised Judicially as was held in the case of Republic v Law Society of Kenya & another Ex Parte Neddie Eve Akello; Marianne Jebet Kitany (Interested Party) [2020] eKLR ”.

3. I have carefully considered the application, the annexed decree and certificate of costs, certificate of satisfaction order, certificate of order against Government Order for costs and I am satisfied that the applicant has an arguable case against the respondent.
4. In the upshot I proceed to issue the following orders in respect to the application dated 16.1.24; -
 - a. Leave is hereby granted to the ex-parte applicant to file and serve the substantive motion for mandamus against the respondent within 21 days from today.
 - b. Costs be in the cause.
 - c. This file is closed.

T.A ODERA

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

Delivered Virtually Via Teams Platform in the Presence of

Court Assistant: Oigo

Parties Absent

