



**Republic v Committee on Trade Industry, Msems Innovation & Cooperatives & 4 others; Mwinzi & another (Interested Parties); Kimanzi (Exparte Applicant) (Judicial Review E002 of 2024) [2024] KEHC 8800 (KLR) (23 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8800 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITUI  
JUDICIAL REVIEW E002 OF 2024**

**RK LIMO, J**

**JULY 23, 2024**

**IN THE MATTER OF AN APPLICATION BY HON. DANIEL NGOIMA KIMANZI TO APPLY FOR JUDICIAL REVIEW ORDERS CERTIORARI, MANDAMUS AND PROHIBITION**

**AND**

**IN THE MATTER OF ARTICLES 3,10,20,21,23,27,38,47,159 AND 258 OF THE CONSTITUTION OF KENYA, 2010 AS READ WITH THE CIVIL PROCEDURES ACT; AND THE FAIR ADMINISTRATIVE ACTIONS ACT**

**AND**

**IN THE MATTER OF COUNTRY GOVERNMENT’S ACT 2012 AND IN THE MATTER OF THE KITUI COUNTY ASSEMBLY STANDING ORDERS 2015 AND ALL OTHER ENABLING PROVISIONS OF THE LAW**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COMMITTEE ON TRADE INDUSTRY, MSEMS INNOVATION & COOPERATIVES ..... 1<sup>ST</sup> RESPONDENT**

**THE CLERK OF THE COUNTY ASSEMBLY OF KITUI ..... 2<sup>ND</sup> RESPONDENT**

**HARRISON MALUKI MAWIA ..... 3<sup>RD</sup> RESPONDENT**

**THE COUNTY ASSEMBLY OF KITUI THROUGH THE SPEAKER ..... 4<sup>TH</sup> RESPONDENT**

**THE LIAISON COMMITTEE KITUI COUNTY ASSEMBLY . 5<sup>TH</sup> RESPONDENT**

**AND**

**HON. MUNYWOKI MWINZI ..... INTERESTED PARTY**



**BONIFACE MUKWATE KATULA ..... INTERESTED PARTY**

**AND**

**DANIEL NGOIMA KIMANZI ..... EXPARTE APPLICANT**

**RULING**

1. The Ex-parte Applicant herein, Daniel Ngoima Kimanzi has filed this Judicial Review proceedings brought under Article 3, 10, 20, 21,23,48, & 50 of Constitution of Kenya, Order 53 of the Civil Procedure Rules, Sections 4,5, & 7 of Fair Administrative Act, Rules 3(1) and (2) of Mutunga Rules, and standing Orders 161, 162, 164, 165 & 173 of Kitui County Assembly. He seeks the following reliefs;
  - i. Spent
  - ii. Spent
  - iii. That the *ex-parte* applicant be granted leave to apply for an order of *Certiorari* to move into this court for purposes of being quashed, the decision of the 1<sup>st</sup> Respondent of removing him as chairperson following a purported vote of no confidence on 5<sup>th</sup> December 2023.
  - iv. That the grant of leave operates as stay to stopping the implementation of the decision of the 1<sup>st</sup> Respondent by the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents pending the hearing and determination of the substantive judicial review application herein.
  - v. That the honourable court be pleased to grant leave to the ex-parte applicant to apply for an order of Prohibition barring the liaison committee, the 5<sup>th</sup> Respondent herein and assembly from endorsing the unlawful decision of the 1<sup>st</sup> Respondent herein pending the hearing and determination of this judicial review application.
  - vi. That pursuant to Article 23 and 50 of Constitution of Kenya and sections 4 and 7 of the Fair Administrative Actions Act, the court does issue and order reinstating and restoring the ex-parte applicant to his position as chairperson committee on Trade Industry, ICT and Co-operatives pending the hearing and determination of this Judicial Review Application.
  - vii. That leave be granted to the ex-parte applicant to apply for an order of *Mandamus* to issue directing the 4<sup>th</sup> and 5<sup>th</sup> respondents to remit the decision to remove the ex-parte applicant as chairperson of the 1<sup>st</sup> respondent back to the 1<sup>st</sup> respondent back to the 1<sup>st</sup> respondent for proper proceeding within the law.
  - viii. Any other order deem fit
  - ix. Cost of the application
2. The application is premised on the grounds on the face of the application, the annexed affidavit by the ex-parte Applicant and on the statement of facts. The Applicant's case is that on 5<sup>th</sup> December 2023, the 1<sup>st</sup> Respondent passed a resolution removing him as Chairperson of the Committee on Trade, Industry, MSEMS, Innovation and Cooperatives. The ex-parte applicant takes issue with the resolution as he avers that the removal process offends the law and was done without any mandate and authority. The ex-parte applicant avers that he was not notified of the motion for his removal, that he was not provided with reasons and that he was not heard. The applicant states his removal was contrary



to 4<sup>th</sup> respondent's standing orders. The applicant avers that the motion was unlawful because it was signed by six members as opposed to 7 members as provided for under Standing Order No. 162. He also avers that he was not notified of the motion because the same was not served through his email or office. The applicant takes issue with the meeting of 5<sup>th</sup> December 2023 for the following reasons;

- i. That the meeting was convened with a defective notice which failed to disclose the time and venue of the meeting and further that members were only notified via WhatsApp at 9.21pm on 4<sup>th</sup> December 2023.
  - ii. That the venue was communicated after 9 pm on WhatsApp on the material day, that the meeting commenced at 10.00am but was adjourned for lack of quorum. That the meeting was then re-convened after an hour without proper notice to all members of the committee including the *ex-parte* applicant.
  - iii. That he was not notified of the reason for his removal and was not afforded an opportunity to present his defense against the motion for his removal.
3. At the oral hearing of this application, the *ex-parte* Applicant through learned counsel M/s Lumalass, mainly concentrated on the prayer for leave to challenge his removal as a chairperson of the committee in the Assembly.
  4. He argues that while the decision to remove him was an administrative one, he was not accorded a chance to be heard as well stipulated under Article 47 as well as standing Order 165 of the County Assembly of Kitui.
  5. He submits that he has an arguable case touches on public interest. He contends that there was a clear breach of procedure as well as his right to be heard. He prays for leave to challenge the said decision on the above grounds.
  6. The 2<sup>nd</sup> Respondent opposed this application vide the Replying Affidavit of the 2<sup>nd</sup> Respondent, the clerk of the County Assembly of Kitui who is also the 2<sup>nd</sup> interested party herein. He reiterates that members of the 1<sup>st</sup> respondent were notified of the meeting on 30<sup>th</sup> November 2023 vide the 1<sup>st</sup> respondent's WhatsApp group and also on the Assembly's notice board because the deponent posted the messages on the group. That Standing Orders 161 (1) and (2) of the Kitui County Assembly Standing Orders were adhered to as firstly, the notice contained date, time, venue and agenda of the meeting and secondly, because the same was duly served. That Standing Order 173 was also adhered to as the meeting was called after expiry of three days from the date of the notice and the resolution was passed by majority of members of the 1<sup>st</sup> respondent. Further, that there is no requirement for committee members to give reasons for a vote of no confidence in their chairperson. The deponent reiterates that the standing orders provide for constitution of a quorum by at least half of the committee membership and in this case, six is the number and were the majority in the vote.
  7. The 3<sup>rd</sup> respondent has equally opposed this application on behalf of the 1<sup>st</sup> respondent and the 1<sup>st</sup> interested party vide the Replying Affidavit of the 3<sup>rd</sup> Respondent, Harrison Maluki Mawia sworn on 22<sup>nd</sup> January 2024. He denies allegations of breach of provisions of Standing Orders 156, 162 and 173. It is averred that members of the 1<sup>st</sup> respondent were informed of the meeting of 5<sup>th</sup> December 2023 on 30<sup>th</sup> November 2023 and that communication was done on the 1<sup>st</sup> Respondent's WhatsApp group as well as the assembly's notice board within the 4<sup>th</sup> respondent's precincts. He denies having a vendetta against the applicant. He gives the sequence of events as follows;
    - i. That on 30<sup>th</sup> November 2023, the deponent drafted a written notice of intention to pass a vote of no confidence in the *ex-parte* applicant which was supported by signatures of six members



of the 1<sup>st</sup> respondent and thereafter served the *ex-parte* applicant on his WhatsApp number. He avers that he also served the motion on the 1<sup>st</sup> respondent's members' WhatsApp group and also pinned the motion on the 4<sup>th</sup> respondent's notice board within the Assembly's precincts.

- ii. That on 4<sup>th</sup> December 2023, the 2<sup>nd</sup> respondent posted a notice of the meeting on the 1<sup>st</sup> respondent's WhatsApp group notifying members that the meeting would be held on 5<sup>th</sup> December 2023 to deliberate on the notice to remove the *ex-parte* applicant as chairperson of the 1<sup>st</sup> respondent. That the same notice was pinned on the 4<sup>th</sup> respondent's notice board within the Assembly's precincts and that the deponent also sent the same to the *ex-parte* applicant on email.
  - iii. That on 5<sup>th</sup> December 2023, the 2<sup>nd</sup> Respondent informed members of the venue and time of meeting which was 10.00am. The deponent avers that he was with the *ex-parte* applicant when the *ex-parte* applicant cancelled the meeting before the other members arrived. That the meeting was eventually held at 11.00am and a vote of no confidence was passed against the *ex-parte* applicant.
8. The deponent avers that the *ex-parte* applicant was duly served with the notice of intention to pass a vote of no confidence in him. It is also averred that the 1<sup>st</sup> respondent has no official email and further that communication to members of the assembly is officially done vide WhatsApp. It is also averred that *Standing Order* No. 173 does not require issuance of reasons for a vote of no confidence in a chairperson as such, there is no basis for the *ex-parte* applicant's request for reasons. It is also averred that the *ex-parte* applicant was unwilling to engage with the 1<sup>st</sup> respondent's members. That there is no requirement under the Standing Orders to have signatures of seven members supporting a notice of removal and that what is required is to have the same supported by the majority members and that in this case, it was supported by six members. It is also averred that the *Standing Orders* do not provide for hearing for removal of a chairperson from the position.
  9. The only issue for determination in this matter is whether the *ex-parte* Applicant has met the threshold for a grant of the leave sought to file substantive motion to challenge his removal and whether such leave should operate as a stay of decision to remove him.
  10. The reason for obtaining leave was discussed in the case of *Republic v County Council of Kwale & another ex parte Kondo & 57 others* (1998) 1 KLR (E&L) where the court held that leave is meant to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless; 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. it held as follows;

“... is to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the application is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case 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 offices 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.”
  11. The applicant's main issue is that the process leading to the vote of no confidence against his chairmanship at the 1<sup>st</sup> respondent was unprocedural therefore unlawful. The applicant avers that the



process was in breach of the following standing orders of the Kitui County Assembly; Standing Order No. 161 which he provides for notice of meetings as follows;

- i. A notice of a meeting of a select committee shall be given by the Clerk to all Members of the committee showing the date time, venue and agenda of the meeting.
- ii. A notice under paragraph (1) shall be deemed to have been given upon circulation through the official email addresses of a Member, the County Assembly website, by delivery of the notice in the office of a Member or posting of the notice in the precincts of County Assembly.

12. Standing Order No. 162 which provides;

A sitting of a committee shall be held at such place, date and time as shall be determined by the Chairperson or on a petition made by at least seven members of that committee but no meeting of a Committee may be held outside the precincts of County Assembly without the approval of the Speaker.

13. Standing Order No. 164 which provides;

A Member who is adversely mentioned in a matter under deliberation by a Committee shall not be present at any meeting at which the Committee is deliberating on the matter, but the Member may appear to adduce evidence as a witness before the Committee.

14. Standing Order No. 165 which provides;

Unless quorum is achieved within thirty minutes of the appointed time, a meeting of a committee of the County Assembly shall stand adjourned to such time on another day as the chairperson of the committee may appoint.

15. Standing Order No 173 (most relevant) which provides for Vote of no confidence in the chairperson or vice-chairperson as follows;

- i. "A Committee may, a resolution supported by a majority of its members, resolve that it has no confidence in the chairperson or vice-chairperson and a member designated by the committee for that purpose shall thereupon report the resolution to the Liaison Committee which shall, as soon as it is practicable, direct the Clerk to conduct an election for the chairperson or vice-chairperson, as the case may be, in accordance with Standing Order 160 (Conduct of election).
- ii. The members desiring to make a resolution under paragraph (1) shall serve the chairperson or vice-chairperson with a written notice of the intended vote of no confidence and may, if they constitute a majority, request the Clerk to call for a meeting at the expiry of three days after the giving of such notice.
- iii. the Notice under paragraph (2) shall be deemed to have been given upon circulation of the notice in the offices of the members and positing on notice boards in the precincts of the county assembly
- iv. A notice under paragraph (2) shall be deemed to have been given upon delivery to the chairperson's or vice-chairperson's official email address and by delivery of the notice to the office of the chairperson or vice-chairperson, as the case may be."



16. The ex-parte applicant has also cited various constitutional provisions which he alleges are in danger of violation the most relevant ones in my view are Articles 27 & 47. Article 27 provides for equality and freedom from discrimination it states;

“27

- (1) every person is equal before the law and has the right to equal protection and equal benefit of the law
- (2) equality includes the full and equal enjoyment of all rights and fundamental freedoms.
- (3) women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social spheres.
- (4) the state shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4)”

17. On the question of the right to fair administrative action, the applicant has cited the provisions of Article 47 of Constitution of Kenya. The provision states;

1. “Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”

18. The Respondent’s main thrust in their opposition in my view centers around the merits of the ex-parte applicant’s application to overturn the impugned decision. At this stage of the proceedings however, the court does not concern itself with the actual merit of the main or substantive motion. At this stage, the standard required for an applicant to obtain leave is low. It is merely on prima facie standard. An application is only required to show that he has an arguable case to challenge an adverse administrative decision passed against him. The threshold is met if it is shown that on a prima facie basis, the decision is unfair, irrational or illegal.

19. Mativo J. in Republic v Kenya Revenue Authority Commissioner Ex Parte Keycorp Reals Advisory Limited [2019] eKLR also stated as follows with regards to considerations when determination the question of leave to seek judicial review orders;

“At the leave stage, the Applicant has the burden of demonstrating that the decision is illegal, unfair and irrational. The Applicant must persuade the Court that the application raises a serious issue. This is a low threshold. A serious issue is demonstrated if the Judge believes that the Applicant has raised an arguable issue that can only be resolved by a full hearing of the judicial review application. If the Court is not persuaded as aforesaid, leave will be denied and the matter proceeds no further.”



20. The ex-parte applicant's contention is that he was not provided sufficient notice before the meeting of 5<sup>th</sup> December 2023. He also challenges the structure of the notice which he states is different from what is provided for under Standing Order No. 161 which provides for venue, date, time and agenda. He avers that the notice only contained the venue and time and that he only received communication at 21.42pm. The *ex-parte* also takes issue with manner in which the notice was circulated which he terms was contrary to the procedure provided for under the Standing Orders as it was served via WhatsApp.
21. The ex-parte applicant also takes issue with the procedure citing that he was not given an opportunity to defend himself against reasons raised in the vote of no confidence. The ex-parte applicant's further position is that on the day of the meeting, there was no quorum by 10.57 am and he proceeded to adjourn the meeting to 8<sup>th</sup> December 2023, but allegedly another meeting was held an hour after the session had been adjourned which he terms as unprocedural. The *ex-parte* applicant has brought out several other procedural issues which ought to be interrogated further at the substantive stage. The Respondent has equally brought out strong views which can only be canvassed at the substantive stage.
22. This court is satisfied based on what has been placed before me that the *ex-parte* applicant has met the threshold to be granted leave to challenge the decision made on 5<sup>th</sup> December 2023 to remove him from chairmanship on Trade Industry ICT and Cooperatives. He is hereby granted leave and has 21 days to file the substantive motion. Costs shall be in the main motion.

The parties did not address me on whether leave granted should operate as a stay and therefore, I will leave out the issue because the same was not canvassed during the hearing. This order shall apply to Judicial Review E001 of 2024

**DATED, SIGNED AND DELIVERED AT KITUI THIS 23<sup>RD</sup> DAY OF JULY 2024.**

**HON. JUSTICE R. LIMO**

**JUDGE**

