



Republic & another v Kisii County Assembly & 2 others (Miscellaneous Case E013 of 2024) [2024] KEHC 9494 (KLR) (17 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9494 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS CASE E013 OF 2024**

TA ODERA, J

JULY 17, 2024

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

AND

IN THE MATTER OF CHIEF MAGISTRATE’S CIVIL SUIT NO.128 OF 2017

AND

**IN THE MATTER OF KISII CHIEF MASGISTRATE’S COURT
JUDGMENT ON 128 OF 2017 PERIKIN AUTO AGENCIES –VS- KISII
COUNTY ASSEMBLY, KISII COUNTY ASSEMBLY CLERK AND KISII
COUNTY ASSEMBLY DIRECTOR FINANCE & PROCUREMENT**

BETWEEN

REPUBLIC APPLICANT

AND

PERIKEN AUTO AGENCIES EXPARTE

AND

KISII COUNTY ASSEMBLY 1ST RESPONDENT

KISII COUNTY ASSEMBLY CLERK 2ND RESPONDENT

**KISII COUNTY ASSEMBLY DIRECTOR FINANCE &
PROCUREMENT 3RD RESPONDENT**



RULING

1. Periken Auto Agencies the ex parte applicant herein filed the application dated 3.6.24 seeking leave to Institute Judicial review proceeding on the nature of mandamus against the respondents for failure to satisfy the amended decree dated 28.3.24 for the sum of Kshs. 7,262,308 /= in Kisii CMCC No. 128 of 2017 *Periken Auto Agencies v Kisii County Assembly & 2 others*.
2. 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.
3. The threshold for leave to file judicial review proceedings was laid down in the case of *Republic v. 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.
4. 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 misconceive. 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 always to be exercised judicially 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 to be exercised Judicially”.
5. I have carefully considered the application and the annexed affidavit. The applicant has annexed the copies of the decree and certificate of costs and I am satisfied that the applicant has an arguable case against the respondents at this stage.
 - a. I proceed to allow the application and grant leave sought by the ex-parte applicant to file Judicial review proceedings of the nature of *mandamus* against the respondent within 21 days from today.
 - b. Costs be in the cause.
 - c. This file is closed.

T.A ODERA

JUDGE

17.7.24

Delivered in open court at Kisii in the Presence of:

Nyamweya for Applicant

Court Assistant: Oigo

