



Republic v National Irrigation Authority & 3 others; Ngigi (Suing as the Administrator of the Estate of Stephen Kimani Njine) (Ex parte Applicant) (Judicial Review Miscellaneous Application E004 of 2024) [2024] KEHC 8085 (KLR) (5 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8085 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E004 OF 2024**

**JM OMIDO, J
JULY 5, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**NATIONAL IRRIGATION AUTHORITY 1ST RESPONDENT
CHAIRMAN OF THE DISPUTE RESOLUTION COMMITTEE MWEA
IRRIGATION SETTLEMENT 2ND RESPONDENT
PRINCIPAL MAGISTRATE’S COURT WANG’URU 3RD RESPONDENT
ANDREW MURIUKI 4TH RESPONDENT**

AND

**PURITY WACERA NGIGI (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF STEPHEN KIMANI NJINE) EX PARTE APPLICANT**

RULING

1. Before me is an ex parte Notice of Motion dated 4th July, 2024 that seeks for the following orders:
 - a. That this application be certified as urgent and be heard ex parte in the first instance.
 - b. That this Honourable Court be pleased to grant the ex parte applicant leave to commence Judicial Review proceedings out of time in respect to the Resolution Committee of the 1st and 2nd Respondents of 25th August, 1998 touching on Rice Holding No. 2451 – Thiba Section – Mwea Irrigation Settlement and the subsequent adoption of the resolution by the 3rd Respondent vide Misc. Case No. 27 of 1998.



- c. That the grant of leave do operate as a stay of the order until the hearing and determination of the substantive application seeking the orders under the Judicial Review application.
 - d. Costs of this application be provided for.
2. The ex parte applicant has listed on the face of the application eight (8) grounds upon which the same is premised.
 3. The applicable law on leave to commence judicial review proceedings is found in Order 53 Rule 1 of the [Civil Procedure Rules](#) and provides as follows:

Order 53 Rule 1. Applications for mandamus, prohibition and certiorari to be made only with leave –

- (1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.
 - (2) An application for such leave shall be made ex parte to a judge in chambers, and shall be accompanied by —
 - (a) a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought; and
 - (b) affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the respondent, over the same subject matter and that the cause of action relates to the applicants named in the application.
4. I have had the occasion of carefully going through the application as filed and I cannot help noticing that the same defies the above provision in the sense that it is not accompanied with a statement that sets out the name and description of the Applicant, the relief sought and the grounds on which that relief is sought. The application is also not accompanied with the necessary affidavit(s) as is the requirement under the law.
 5. Further to that, the ex parte Applicant has not stated the specific orders that he intends to apply for as the application just refers to Judicial Review orders but does not specify the nature thereof.
 6. The reason for the need to seek and obtain leave before commencing Judicial Review proceedings was discussed in the case of [Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others](#), Mombasa HCMCA No. 384 of 1996 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".

7. The jurisprudence I get from the above decision is that leave to file an application for substantive Judicial Review orders can only be granted if the Court is satisfied, upon considering the material filed, without delving into the deep of the matter, that there is a case fit for further consideration. In other words, at the leave stage, the court ought to interrogate the intended application for Judicial Review, albeit superficially.
8. In the matter before me, in the absence of a statement and affidavit(s) under Order 53 Rule (2) and (3), and there being lack of specificity on the nature of orders intended to be pursued, there is no material before me to consider whether the application is one that provides a case fit for granting leave. Considering that the documents that the above provision refers to must mandatorily accompany the application as the word used is "shall", the application as presented is incomplete.
9. The only fate that can befall the application is for the same to be struck out, which I hereby do.

DELIVERED, DATED & SIGNED THIS 5TH DAY OF JULY, 2024

J.M. OMIDO.

JUDGE

