



Wambua v Chief Magistrate, Kitui Law Courts; Kimanthii & 10 others (Interested Parties) (Judicial Review E007 of 2023) [2024] KEHC 8219 (KLR) (2 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8219 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
JUDICIAL REVIEW E007 OF 2023**

**RK LIMO, J
JULY 2, 2024**

BETWEEN

PHILIP NGONDE WAMBUA APPLICANT

AND

THE CHIEF MAGISTRATE, KITUI LAW COURTS RESPONDENT

AND

MUTAVE KIMANTHII INTERESTED PARTY

ESTHER WAMBUA INTERESTED PARTY

JOAN MULI INTERESTED PARTY

MTUNGA NZOKA INTERESTED PARTY

CLESTINA NZAMBI MWILU INTERESTED PARTY

JOSPHAT MUTISYA WILLY INTERESTED PARTY

NGUI MUTHAMA INTERESTED PARTY

KASEMBI KAKUNDI INTERESTED PARTY

ESTHER MAWIA MUEMA INTERESTED PARTY

SOFIA SUNDAY INTERESTED PARTY

PARTYLINET NZOMO INTERESTED PARTY

RULING

1. The ex-parte applicant herein, Philip Ngonde Wambua, vide chamber summons dated 20th November 2023 seeks leave to apply for Judicial Review order of certiorari and prohibition in respect to execution in a number of Judgments entered against him in a number of cases in Kitui CM's court. He has



invoked the provisions of Article 165(6) and (7) of *the Constitution*, Section 8 & 9 of the *Law Reform Act* Cap 26 Laws of Kenya and Order 53 Rules 1 & 2 of the Civil Procedure Rules and seeks the following order namely:

- i. Spent
- ii. That leave be and is hereby granted to the Ex-Parte Applicant to apply for orders of judicial review by way of;
 - a. An order of certiorari be and is hereby issued to bring into this court for the purpose of quashing the unlawful warrants of arrest as issued against the ex-parte applicant in execution of all those judgments as delivered in the subject suits registered as Kitui CMCC NO.223 of 2009, Kitui CMCC NO.29 of 2009 Kitui CMCC NO.30 of 2009, Kitui CMCC NO.31 of 2009, Kitui CMCC NO.32 of 2009, Kitui CMCC NO.33 of 2009, Kitui CMCC NO.34 of 2009, Kitui CMCC NO.35 of 2009, Kitui CMCC NO.36 of 2009, Kitui CMCC NO.37 of 2009, Kitui CMCC NO.38 of 2009
 - b. An order of prohibition be and is hereby issued prohibiting the Chief Magistrate's Court at Kitui or any other person from any or further proceedings and/or execution of all those judgments as delivered in the subject suits registered as Kitui CMCC NO.223 of 2009, Kitui CMCC NO.29 of 2009 Kitui CMCC NO.30 of 2009, Kitui CMCC NO.31 of 2009, Kitui CMCC NO.32 of 2009, Kitui CMCC NO.33 of 2009, Kitui CMCC NO.34 of 2009, Kitui CMCC NO.35 of 2009, Kitui CMCC NO.36 of 2009, Kitui CMCC NO.37 of 2009, Kitui CMCC NO.38 of 2009, during the pendency of the moratorium as declared by the statutory manager of Blue Shield Insurance Company Limited
 - c. That the grant of leave herein do operate as a stay of execution proceedings of whatever nature and all other consequential steps therefrom in suits registered as Kitui CMCC NO.223 of 2009, Kitui CMCC NO.29 of 2009 Kitui CMCC NO.30 of 2009, Kitui CMCC NO.31 of 2009, Kitui CMCC NO.32 of 2009, Kitui CMCC NO.33 of 2009, Kitui CMCC NO.34 of 2009, Kitui CMCC NO.35 of 2009, Kitui CMCC NO.36 of 2009, Kitui CMCC NO.37 of 2009, Kitui CMCC NO.38 of 2009 filed by Interested Parties against the ex-parte applicant pending the hearing and determination of this suit.
 - d. That costs of the application be borne by the Interested Parties.
2. The grounds upon which leave is sought are as follows:
 - a. That at all material times relevant to the suits namely, Kitui CMCC Nos. 223/09, 29/09, 30/09, 31/09, 32/09, 33/09, 34/09, 35/09, 36/09, 37/09, and Kitui CMCC No 38/2009 (herein after to be referred to as the cited suits), the ex-parte's applicant's Motor Vehicle Registration No. KBB 340 A was covered/insured by Blue Shield Insurance Co. Ltd which was placed under statutory management on 16th September 2011 and is still under receivership.
3. The applicant avers that the term of the statutory manager has been extended from time to time and that it was last extended on 3rd November 2017 adding that the extension was done pending winding up cause No. Milimani High Court Misc. Cause No. 238 of 2017.
4. The applicant claims that there was a declaration of moratorium after the statutory manager moved the court in Nairobi HCC No. 465 of 2011 and obtained orders of stay of proceedings of whatever nature



- against Blue Shield Insurance Company and its policy holders such as the ex-parte applicant herein. He cites Section 67 C (11) *Insurance Act* Cap 487 to back up the assertions.
5. That the Interested Parties instituted the cited suits against the ex-parte applicant and Judgments were delivered in favour of the Interested Parties and damages amounting to a total of Kshs. 3,227,423/= plus costs and interests were given.
 6. He avers that the cited suits emanated from a road traffic accident involving his Motor Vehicle Registration No. KBB 340A which at the material time was insured by Blue Shield Insurance Co. Ltd.
 7. He further states that the Interested Parties have made steps to execute the decree in the cited suits and intend to commit him to civil jail without issuing a Notice to Show Cause.
 8. He pleads that unless stay is granted he stands to suffer irreparable loss yet he is entitled to protection of the law.
 9. He opines that the executions are a nullity because the order of execution made are tainted with illegality.
 10. The claims that it is his insurer, now under liquidation, which should settle the claims and not him.
 11. He has sworn affidavit where he has majorly reiterated the above.
 12. In his written submissions dated 13/3/2024 the applicant has raised issues with preliminary objections raised in respect to the fact that the applicant is yet to exhaust other forms of dispute resolution before seeking orders of judicial review. It is submitted that this offends the rules on preliminary objections for two reasons first, that the court would have to interrogate the proceedings before the trial court to determine whether all dispute resolution mechanisms have been exhausted and secondly, that the court would have to further investigate when the warrants of arrest subject to these proceedings were issued to determine whether the six months' period provided for under order 53 has lapsed. The applicant's submission is that the warrants were issued on 7th November 2023 and the present application was filed on 21st November 2023. The applicant has cited the case of *R vs County Assembly of Kisii & 4 Others ex-parte Karen Nyamoita Magara (2020) eKLR* where the court held that a preliminary objection ought to be restricted to points of law and determining whether all dispute resolution mechanisms have been exhausted would require an inquiry into the facts to ascertain the truth.
 13. It is also submitted that the six months limitation period provided for under Order 53 of the Civil Procedure Rules only applies to the order of certiorari and not other orders such as prohibition which have been sought herein. Counsel has cited the case of *Joseph Muriithi Nyaga vs Embu County Government (2021) eKLR* where the court reiterated that the specific timeline is given for application for the order of certiorari.
 14. On the order of prohibition, the applicant submits that the same is sought to prohibit the respondent or any other person from proceeding with execution of judgments delivered in the trial court during the pendency of the moratorium declared against its insurer.
 15. The applicant has also submitted that the doctrine of exhaustion is inapplicable in the circumstances of this suit. It is submitted that the applicant is only challenging the legality of the process and not the decision of the trial court which is the reason why he opted to invoke this court's supervisory and judicial review jurisdiction as opposed to filing an appeal or review. It is also submitted that an applicant can be exempted from the obligation of exhausting alternative dispute resolution mechanisms because of existence of exceptional circumstances. The applicant cites the case of *Chief Justice and President*



of the Supreme Court of Kenya & Anor vs Khaemba (2021) KECA 322 (KLR) where it was held that the court can intervene where there is a clear abuse of discretion by public bodies or persons charged with statutory powers. In this instance, the applicant submits that there exist exceptional circumstances requiring this court's intervention the same being that he was not served with the notice to show cause before the warrants were issued.

16. The applicant further cites two additional cases on exceptions to the doctrine of exhaustion being Robert Khamala Situma & 8 Others vs Acting Clerk of the Nairobi City County Assembly (2022) eKLR and R vs Land Dispute Taveta Senior Resident Magistrate Taveta & Others (2023) eKLR where in both cases it was held that in certain exceptional situations a court can deal with the merits of an administrative decision without requiring exhaustion of other dispute resolution mechanisms.
17. The applicant also seeks this court's interpretation of Section 67 C (11) of the *Insurance Act* which provides that a policy holder is not to be held liable to pay claims not payable by the insurer due to a moratorium.
18. The applicant has also taken the position that the requirement for leave as a prerequisite to institute judicial review order contravenes Article 159 (3) (c) & (d) of *the Constitution* and basically deems the requirement as a technicality. Counsel has cited the case of Felix Kiprono Matagei vs Attorney General; Law Society of Kenya (Amicus Curiae) (2021) eKLR where the court called for the repeal of Section 8 and 9 of the *Law Reform Act* which provides for the requirement of leave in Judicial Review proceedings.
19. The applicant has also cited the case of R vs Senior Principal Magistrate Kiambu Law Courts & 2 Others ex-parte David N. Nthumbi (2011) eKLR where the court issued orders of prohibition against execution of a decree through warrants of attachment issued during subsistence of a moratorium against the applicant's insurer in the matter.

The Respondent's case

20. In response to the application, the respondents filed a Notice of Preliminary Objection dated 19th December 2023 raising the following grounds;
 - i. That the application offends the mandatory provisions of the law in respect to the time limitation under Section 9 (3) of the *Law Reform Act* in that "in the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of it being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree.
 - ii. That the application as drawn and filed grossly violates the provisions of Order 53 Rule 2 of the Civil Procedure Rules 2010 in that "leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of it being quashed, unless the application for leave is made not later than six months after the date of the proceedings or such shorter period as may be prescribed by any act.
 - iii. That the application further offends the Doctrine of Exhaustion as provided for under Section 9 (2) and (4) of the Fair Administrative Actions Act in that;
 - a. The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.



- b. Notwithstanding sub-section (3), the High Court or subordinate court may in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.

Submissions by the Respondents.

21. It is submitted that Order 53 rule 2 of the Civil Procedure Rules provides that an order of certiorari has to be sought within six months of the decision that seeks to be quashed. That in this instance, the applicant is silent on when the order issuing warrants of arrest against him was granted by the court which has been submitted is outside the six months period. For that reason, it has been submitted that this court lacks jurisdiction to entertain the application.
22. The respondents submits that this application offends the doctrine of exhaustion. The respondent submits that the applicant has not proven that he has avenues available to have the present dispute resolved before opting for Judicial Review orders considering that the applicant's insurer was placed under statutory management on 16th September 2011.

A case for the Interested Parties

23. On their part, the Interested Parties opposes this application vide Replying Affidavit sworn on 6th February 2024 by Mutave Kimanthi together with a Notice of Preliminary Objection dated the same day. The preliminary objection is premised on the following ground;
 - i. That the application offends the provisions of Section 9(3) of the *Law Reform Act* and Order 53 of the Civil Procedure Rules and the same is fatally defective considering that the judgments were delivered in the year 2009 and the warrants were issued on 3/1/2023
24. In the replying affidavit, it is averred that the applicant is seeking review orders for judgments which were entered in 2010. It is also averred that the applicant already filed appeals in reference to judgments arising from the trial court and that all the appeals were dismissed on 2nd February 2017. They aver that it has been 13 years since entry of the trial court's judgment. They also claim that the applicant filed declaratory suits against his insurer which are pending before the trial court and simultaneously also filed applications for stay of execution of the trial court's original judgments. It is averred that the trial court dismissed the application for stay vide its ruling of 10th January 2023 and the applicant turned to the high court on appeal against the ruling but the appeals have yet to be prosecuted. That besides to the appeal, the applicant also filed an application for stay of execution before this court which was similarly dismissed on 15th May 2023. The allegation that the applicant was not served with a notice to show cause has also been denied. They insist that service was done and return of service filed in court. It is averred that the applicant is only forum shopping through this application because all his efforts of stopping execution have failed.

Submissions by the Interested Parties

25. They submit that the present application for judicial orders of certiorari is time barred as the same was made outside the statutory 6 months period since the court issued warrants of arrest against the applicant. They fault the applicant for mischief sating he has failed to disclose when warrants of arrest were issued.



26. They further posit that the present application is a delaying tactic employed by the applicant to avoid execution of decree obtained against him for judgments which were delivered in 2010. It is submitted that the applicant filed appeals against the original judgments which were all dismissed by this court.
27. The Interested Parties have also defended the process of execution and submitted that the same has always been lawful but the applicant has frustrated the process by filing multiple suits and that the declaratory suits have remained unprosecuted. They have accused the applicant for abusing the court process.
28. The Interested Parties submit that the purpose of the leave in judicial review proceedings is to eliminate frivolous proceedings and, in this case, they hold the view that the application is another attempt by the applicant to delay execution. Counsel cites the case of *R vs Chief Magistrate Milimani Commercial Court & 2 Others Ex-parte Fredrick Bett (2022) eKLR* on the rationale for requirement of leave in Judicial Review proceedings. The purpose for leave to apply for Judicial Review is to eliminate applications which are frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to the substantive stage if the court is satisfied that there is a case fit for consideration. The case of HCJR Case No. E087AAR *Insurance vs Public Procurement Administrative Review Board, Secretary IEBC and Zamara Risk Insurance Brokers Limited (Interested Parties)* (unreported) cited by counsel for the Interested Parties is referenced in the above decision. The court in the matter emphasized the role of the leave and the court's discretion to interrogate the legitimacy of the application for orders of Judicial Review before granting leave.
29. This court has considered this application and the response made by the respondent and the Interested Parties. The applicant is seeking leave to file Judicial Review orders to quash warrants issued against him in execution of Judgements delivered in the cited suits. He is also seeking prohibitions to stop further execution against him emanating from the cited suits.
30. On their part, the respondent and the Interested Parties have raised preliminary objection premised on two grounds, first that the application for leave to file for judicial orders of certiorari is time barred as it is made outside the statutory period for filing provided under Section 9 of the [Law Reform Act](#) and Order 53 of the Civil Procedure Rules. The second ground is that the application offends the doctrine of exhaustion.
31. There are three issues emerging from this matter which are:
 - i. Whether the application to challenge the execution process in the cited suits is time barred.
 - ii. Whether the applicant should be granted leave.
 - iii. Whether there is a moratorium declared.

Whether the application is time barred.

32. The applicant herein has invoked the provisions of Order 53 of the Civil Procedure Rules as well as Sections 8 & 9 of the [Law Reform Act](#) which provides for the procedure and timelines for Judicial Review proceedings.
33. Order 53 Rule 1 of the Civil Procedure Rules provides that no application for Judicial Review orders should be made unless leave of the court was sought and granted and Section 9 of the [Law Reform Act](#)



provides for a six-month time limitation for filing an application for leave from the time of the decision sought to be quashed. Section 9(3) of the [Law Reform Act](#) provides;

In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

34. While Order 53 rule (1) and rule (2) of the Civil Procedure Rules provides as follows;

Rule 1 (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

Rule 2

Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave.

35. The respondents and the Interested Parties insist that the applicant has brought this application beyond the time stipulated by statute. The applicant on the other hand has skirted around this issue because he does not state when the decrees in the cited suits were issued and/or when the warrants were issued. The applicant made a belated attempt in his submissions stating that the warrants were issued on 7th November 2023. It is however well settled now that parties are bound by their pleadings and are stated by the court of Appeal in *Daniel Toroitich Arap Moi –vs- Mwangi Stephen Muriithi & Another [2014] eKLR*,

“submissions cannot take the place of evidences”.

36. The applicant’s position is that the court would be going into a fact-finding mission to try and determine when the orders were issued making the preliminary objection raised obsolete but I do not agree with that position. In his supporting affidavit in the application for leave at paragraph 11, the applicant has made averments on execution of the decrees of the trial court and he has also referred to the orders made for his committal to civil jail which is the crux of the matter. The applicant has also referred to copies of warrants of arrest which are exhibited at page 59 of his bundle of documents. These warrants are dated July 2021 (in respect to Civil Suit No. 223 of 2009) hence based on the evidence tendered by the applicant, the warrants of arrest complained of were issued in 2021 while this application was made on 21st November 2023. In essence, the process leading to issuance of the warrants is what the court is concerned about in the substantive motion for Judicial Review. If the same took place in 2021, this court lacks the jurisdiction to interrogate the process leading to issuance of the orders because the application is time barred. Going by the evidence tendered by the applicant, this application for leave to file for orders Judicial Review orders of certiorari was filed outside the time given under Section 9 (3) [Law Reform Act](#) and Order 53 (2) of the Civil Procedure Rules.



37. The applicant has attempted to seek for refuge under Article 159(d) of *the Constitution* contending that leave to apply for Judicial Review Orders of certiorari under Sections 9 (3) of the *Law Reform Act* & Order 53 of the Civil Procedure Rules is a technicality curable under Article 159 (d) of *the Constitution*. This court is however, not persuaded because while a litigant is perfectly in order to file a Constitutional Petition and seek for Judicial Review relief, under Article 23 (3) of Constitution, there is a distinction and difference when a party chooses the Judicial Review route under Order 53 and Section 8 & 9 of the *Law Reform Act*. The latter route is provided by statute and where an action sought to be challenged is outside the period stipulated by the statute, this court lacks jurisdiction to entertain it. This is so because limitation of time is not just a technical technicality. In the case of *Thitu Wambua –vs- Minister for Land & 2 others* [2008] eKLR the court held that view when it observed;

“On the issue of limitation of time, the Motion was filed without any Application to enlarge time. Without an Application for enlargement of time, the provision of Section 9(3) of the *Law Reform Act* prevails. The issue of limitation of time is not a procedural technicality because it goes to the root of the jurisdiction of the court.”

38. Further, in *Felix Kiprono Matagei v Attorney General; Law Society of Kenya (Amicus Curiae)* [2021] eKLR Korir J was of the view that

“the procedural rules in Order 53 of the CPR governed Judicial Review prior the promulgation of *the Constitution* and are still in force as they have not been repealed.”

39. The Supreme Court in the case of *Dande & 3 others v Inspector General, National Police Service & 5 others* (Petition 6 (E007), 4 (E005) & 8 (E010) of 2022 (Consolidated)) [2023] KESC 40 (KLR) (16 June 2023) (Judgment) decided that a Judicial Review court ought to carry out a merit review of a case when a party approaches it under the provisions of *the Constitution*. The supreme court however also indicated that the way in which a court is to proceed is determined by the pleadings filed by a party. The court held as follows;

“It is clear from the above decisions that when a party approaches a court under the provisions of *the Constitution* then the court ought to carry out a merit review of the case. However, if a party files a suit under the provisions of order 53 of the Civil Procedure Rules and does not claim any violation of rights or even violation of *the Constitution*, then the court can only limit itself to the process and manner in which the decision complained of was reached or action taken and following our decision in *SGS Kenya Ltd* and not the merits of the decision per se.

A court cannot issue judicial review orders under *the Constitution* if it limits itself to the traditional review known to common law and codified in order 53 of the Civil Procedure Rules. The dual approach to Judicial Review does exist as we have stated above but that approach must be determined based on the pleadings and procedure adopted by parties at the inception of proceedings.”

40. From the supreme court’s decision, the manner in which a party approaches the court will determine the orders available in judicial review proceedings and in this case, the applicant made the choice to make his application for leave anchoring it on the provisions of the *Law Reform Act* and Order 53 of the Civil Procedure Rules, he is therefore bound by the procedural timelines provided under the statutes.



ii) Whether the applicant should be granted leave.

41. It is now well settled that the purpose or reason behind the leave sought under Order 53 Rule 1 for Judicial Review orders is to enable a court weed out or sieve frivolous applications from going to substantive stage in order to save time and costs to parties.

42. The reason for the leave was explained in the case of Republic v Chief Magistrate Milimani Commercial Courts & 2 others Ex Parte Fredrick Bett [2022] eKLR as follows;

Waki J. (as he then was), in Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996 explained the reason for leave 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”.

43. The applicant is seeking to quash warrants of arrests issued pursuant to Judgments delivered in he cited suits. The applicant is not seeking to quash the Judgments in the cited suits per se but the execution process. He has however, not explained why he has not followed the procedure provided under Order 22 of the Civil Procedure Rules to challenge execution process on grounds that the Notice to Show Cause was not served. The respondents have averred in an affidavit that the applicant made the application for stay in the cited suits and failed. If that is the position, the applicant ought to have appealed to this court and invoke the appellate jurisdiction of this court. The supervisory jurisdiction if this court can only be applied in special circumstances and where there evidence of obvious miscarriage of justice. There is no evidence of such in this instance. The applicant has not demonstrated that he has exhausted all the lawful channel procedures open to him in law before commencing the present action.

44. The applicant also sought leave to file for orders of prohibition against the respondent or any other person from proceeding and/or executing judgments issued by the trial court during the pendency of the moratorium. In the case of Kenya National Examination Council versus Republic ex part Geoffrey Gathenji Njoroge & 9 other [1997] eKLR, the Court of Appeal stated the grounds upon which an order of prohibition may issue as follows;

“What does an ORDER OF PROHIBITION do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings



Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision made. Prohibition cannot quash a decision which has already been made. It can only prevent the making of a contemplated decision.”

45. In my view, the decrees of the trial court remain unchallenged as the appeals lodged against them were dismissed. Secondly, execution is a legal process and could only be challenged if the same was carried contrary to the law. The forum for which to challenge the execution process is through the suits where the warrants were issued or through an application for review or appeal. The trial court’s judgments and decrees are valid and enforceable. A decree-holder has a right to enjoy the fruits of his judgment unless there is a compelling reason to deprive him of that right and in this situation the warrants of arrest have already been issued, the applicant is seeking to further prohibit the execution process basically staying it when he has already filed an application for stay before this court vide Civil Appeal No. E008 of 2023 which again he avoided providing details pertaining to the stage which the same has reached.

Whether there is moratorium declared.

46. The applicant asserts that there was a declaration of moratorium declared by the Manager under the *Insurance Act* (Cap 487) and that the mandate of the said Manager has been extended from time to time and argues that under Section 67 C (11) of the Act, a policy holder is not liable to pay any claim arising from the policy. I have checked at the said Section (Section 67 C (11)) and while the position taken by the applicant is true, the applicant has not placed any evidence to demonstrate that the moratorium or the appointment of the Manager was extended pursuant to the provisions of Section 67 C (3) of the Act. In the absence of proof of existence of a moratorium this court is unable to find that Section 67 C (11) bars execution against the applicant.
47. In the premises, this court finds merit in the Preliminary Objection raised. The application dated 20th November 2023 is an abuse of court process and is also time barred. The same also lacks merit and it is struck out with costs.

DATED, SIGNED AND DELIVERED AT KITUI THIS 2ND DAY OF JULY, 2024

HON. JUSTICE R. K. LIMO

JUDGE

