



Kenya Human Rights Commissions (KHRC) & another v Kenya Airports Authority & 4 others; Kenya Aviation Workers Union (KAWU) & another (Interested Parties) (Judicial Review E199 of 2024) [2024] KEHC 14594 (KLR) (Judicial Review) (8 October 2024) (Ruling)

Neutral citation: [2024] KEHC 14594 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E199 OF 2024
JM CHIGITI, J
OCTOBER 8, 2024**

BETWEEN

**KENYA HUMAN RIGHTS COMMISSIONS (KHRC) 1ST APPLICANT
LAW SOCIETY OF KENYA 2ND APPLICANT**

AND

**KENYA AIRPORTS AUTHORITY 1ST RESPONDENT
AIRPORTS INFRASTRUCTURE PLC 2ND RESPONDENT
GLOBAL AIRPORTS OPERATOR PLC 3RD RESPONDENT
ADANI ENTERPRISES LIMITED 4TH RESPONDENT
ADANI AIRPORT HOLDINGS LIMITED 5TH RESPONDENT**

AND

**KENYA AVIATION WORKERS UNION (KAWU) INTERESTED PARTY
TRANSPORT WORKERS UNION (TAWU) INTERESTED PARTY**

RULING

1. When this matter came up for directions on 8th October 2024 at 9 a.m., parties were supposed to report the status of the compliances in relation to the order of the court of 1st September 2024.
2. In the process of reporting compliance, the 1st Ex-parte Applicants' counsel informed the court that it had filed an application dated for 4th October 2024 seeking the following orders that:



- a. ...spent.
 - b. The court be pleased to certify that this matter raises substantial questions of law warranting *the constitution* of a bench, of an odd number of not less than three judges, by the Chief Justice under Article 165(4) of *the Constitution* to hear and determine the application.
 - c. The matter be listed before the bench formed in (b) for further directions on consolidating this application with similar matters pending before this court.
3. On its part, counsel for the 1st Respondent informed the court that it had filed a Replying Affidavit, an Application and Grounds of Objection dated 7th October 2024 as well as the notice of preliminary objection date 7th October 2024.
 4. In the Notice or Motion dated 7th October, the 1st Respondent seeks inter alia an order;

“That the Court be pleased to issue an Order setting aside the Order issued on 9th September 2024 for Leave to take out judicial review orders and for such leave to operate as a stay or conservatory order prohibiting any person from implementing or acting on the privately initiated proposal for the development and operation of JKIA by Adani Airport Holdings Ltd pending the hearing and determination of the substantive Notice of Motion Application by the Court.”
 5. The Notice of Preliminary Objection raises the following grounds;
 1. The jurisdiction to hear and determine any complaint arising from a PIP lies with the Public Private Partnership Petition Committee established under Section 75 of the *Public Private Partnerships Act*.
 2. The application is contra statute as it violates provisions of Section 75 of the *Public Private Partnerships Act*, 2021 (the Act) as follows:
 - i. Section 75(1) of the Act establishes the Petition Committee with jurisdiction to hear and determine any petitions regarding the decisions of the Public Private Partnership Committee, the Directorate of Public Private Partnerships or a contracting authority.
 - ii. Section 75(2) - (7) provides an elaborate process of challenging the decision of a contracting authority before the Petition Committee.
 - iii. Section 75(8) provides that an appeal from the decision of the Petition Committee shall be lodged in the High Court.
 3. The Ex -Parte Applicants have failed to exhaust the statutory dispute resolution mechanism stipulated and established under Section 75 of the *Public Private Partnerships Act* and therefore this court lacks jurisdiction to hear and determine this matter.
 4. There is no jurisdiction to injunct a statutory process.
 6. The 1st Respondents counsel further informed the court that it was interested in engaging the parties in alternative resolution under Article 159 at *the constitution*.
 7. Counsel for the 2nd, 3rd, 4th, and 5th Respondents indicated that they had filed grounds of objection and a replying affidavit date 16th September 2024.
 8. Counsel for the interested party informed the court that it had filed a replying affidavit on 2nd October 2024.



9. All the parties indicated that they are not opposed to the proposal that parties engage in the alternative dispute resolution mechanisms, save for the Exparte Applicants who are not keen on pursuing alternative resolution mechanisms.
10. The counsel representing the parties could not agree on which of the processes should precede the hearing and determination of the suit.
11. They were divided on whether the 1st Respondent's Notice of preliminary objection should be determined first or whether the Ex-parte application for the certification of the matter article 165(4) of *the Constitution* should be heard first. That informs the substratum of this ruling.
12. I am of the informed view that the issue of the certification under Article 165(4) of *the Constitution* of a bench shall be determined first.
13. Proceeding to hear and determine any of the issues that are raised by the parties herein at this stage in the suit will slow down the determination of this suit and I so hold.
14. Should a bench be set up, then it shall be in a position to address its mind on all the issues conclusively.
15. The following directions commend themselves:
 1. The application dated 4th October 2024 by the 1st Ex-parte Applicant shall be heard on a priority basis before any other application and the Notice of Preliminary Objection.
 2. The 1st Exparte Applicants shall file and serve its submissions within seven days of today's date.
 3. The Respondents and the Interested Parties shall there after file their respective submissions within seven days.
 4. The ruling shall be delivered on 25th October 2024.

It is so directed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF OCTOBER, 2024.

.....

J. M. CHIGITI (SC)

JUDGE

