



**Republic v County Government of Machakos; Easy PC Kenya Ltd (Exparte Applicant) (Judicial Review E180 of 2022) [2023] KEHC 18969 (KLR) (Judicial Review) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18969 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW E180 OF 2022  
JM CHIGITI, J  
JUNE 22, 2023**

**BETWEEN**

**REUBLIC ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF MACHAKOS ..... RESPONDENT**

**AND**

**EASY PC KENYA LTD ..... EXPARTE APPLICANT**

**RULING**

1. The Applicant herein filed an application by way of Chamber Summons dated December 14, 2022 seeking orders that:-
  1. Leave be and is hereby issued to the Applicant to apply for the order of *mandamus* compelling the Respondent and its minister of finance and or/the accounting officer in charge of the treasury and money in the Respondents government to pay the Applicant Kshs 2,253,600/= together with interest from March 22, 2022 until payment in full.
  2. The costs of this application be provided for.
2. The application is anchored on the grounds that are on the face of it supported by the Verifying Affidavit sworn on December 14, 2022 by Adam Maina Karuga annexed together with the Statutory Statement.
3. The Decree which the applicant seeks to execute is in no doubt as it was issued after an interpartes hearing before the High Court Nairobi.



4. The Respondent is also not disputing the amount sought to be recovered by way of seeking the orders of *mandamus*.
5. The money sought to be paid to the Applicant has only been pending due to technicality which this application is meant to cure.
6. To verify the aforementioned the Applicant annexed and marked the following documents as exhibit AMK-1:-
  - i. Ruling of the Hon Justice Majanja dated September 21, 2021 in High Court Arbitration case no E019 of 2021.
  - ii. The decree issued further to (i) above on December 8, 2021.
  - iii. The NTSC against the Respondent for Kshs 2,253,600/=.
  - iv. The Ruling of the Deputy Registrar dated July 7, 2022.
7. On or about September 23, 2021, the High Court (The Hon Mr Justice Majanja) ruled and / or ordered that the Arbitrators award was a Decree of the court with costs assessed at Ksh 50.000/=.
8. On December 8, 2021 a Decree and costs was issued by the High Court for execution against the Respondent.
9. On or about March 22, 2022 a NTSC was issued for Ksh 2.253.600/= against the minister of finance of the respondent.
10. On July 7, 2022, the Deputy Registrar of the High Court ruled and/or ordered that execution against the respondent can only be through Judicial Review orders of mandamus.

**Analysis and Determination:**

11. In *Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others*, Mombasa HCMCA No 384 of 1996 Waki J (as he then was) made the following findings:

“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.”

12. 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.
13. It is also trite that in an application for leave, the Court ought not to delve deeply into the arguments of the parties, but should make cursory perusal of the evidence before court and make the decision as to whether an applicant’s case is sufficiently meritorious to justify leave. In the present application,



the Applicant has filed a chamber summons application seeking judicial review orders instead of one seeking leave to institute judicial review orders.

14. In *Uwe Meixner & another v Attorney General* [2005] eKLR, it was held that the leave of court is a prerequisite to making a substantive application for Judicial Review with a view to filtering out frivolous applications and the grant or refusal involves an exercise of judicial discretion and the test to be applied is whether the applicant has an arguable case. Thus, the first step in the Judicial Review procedure involves the mandatory "leave stage."

**Disposition:**

15. Upon a cursory perusal of the evidence placed before the court by way of the Statutory Statement and the Verifying Affidavit both dated 14.12.22, I am persuaded that the Application has merit. Without going into the depth of the matter, I form the find and I so hold that the Applicant has made out an arguable case for granting the relief claimed.
16. The Applicant has surmounted the test being whether there is a case fit for the hearing of the substantive application for judicial review.

**Orders:**

1. The Application dated December 14, 2022 is allowed as prayed.
2. The Applicant shall file and serve the substantive Application within 14 day of today's date.
3. The Respondent shall file and serve their response to the application within 14 days of service.
4. The Applicant shall thereafter file and serve its submissions within 7 days.
5. The Respondent shall thereafter file and serve their submissions within 7 days of service.
6. The matter shall be mentioned on September 19, 2023 for further directions.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF JUNE, 2023.**

.....

**J. CHIGITI (SC)**

**JUDGE**

