



Republic v Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works (Formerly Works, Transport & Infrastructure, and further formerly, Ministry of Roads) & another; Mbugua & 2 others (Exparte) (Officials of Airportview Neighbours Group) (Judicial Review Miscellaneous Application 154 of 2014) [2023] KEHC 20015 (KLR) (Judicial Review) (7 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 154 OF 2014**

**JM CHIGITI, J
JULY 7, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT & PUBLIC WORKS (FORMERLY WORKS, TRANSPORT & INFRASTRUCTURE, AND FURTHER FORMERLY, MINISTRY OF ROADS 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

AND

GEORGE KIMANI MBUGUA & 2 OTHERS EXPARTE OFFICIALS OF AIRPORTVIEW NEIGHBOURS GROUP

RULING

Brief background:

1. The Applicant herein filed an application by way of a Notice of Motion dated February 9, 2023, under S 3A *Civil Procedure Rules 2010* seeking Orders:

1. Spent.



2. THAT the ex parte directions to terminate or close this file made on the November 12, 2018 be and is hereby set aside and the judicial review proceedings vide the substantive Notice of Motion dated May 15, 2014 be and is hereby reinstated.
 3. THAT costs be in the cause.
 4. THAT this Court shall deem just.
2. The Application is founded on the grounds set out on the face therein and by a supporting affidavit sworn of Andrew Ombwayo, Advocate dated February 9, 2023.
 3. The Applicant avers that from the e-judiciary portal, this case was unilaterally terminated and or closed ex parte on the November 12, 2018 possibly for want of prosecution.
 4. The judicial review proceedings seek orders of mandamus to compel the respondents to pay the certificate of order against them dated March 3, 2014 pursuant to decisions made in NBI CHPT NO 75 OF 2011.
 5. These proceedings were stood over generally on the February 11, 2015 when this Court was notified of orders of stay of execution of the decisions in the aforesaid NBI CHPT NO 75 OF 2011 that are the subject of these judicial review proceedings that had been given on the February 4, 2015, pending the Respondents' appeals that were later lodged in the Court of Appeal, Civil Appeals Nos 244 of 2015 and 245 of 2015.
 6. The appeals were withdrawn by the Respondents on the February 9, 2022.
 7. The Respondents have to date never satisfied the subject judgements and certificate of order against them mentioned above which has necessitated the resuscitation of these judicial review proceedings through the certificate of urgency filed herewith dated February 9, 2023.
 8. The Applicant avers that there has been a mistake in closing these judicial review proceedings as they could not be prosecuted during the life of the orders of stay of execution above dated February 4, 2015 that only lapsed on the February 9, 2022 with the withdrawal of the Respondents' appeals above.

Analysis and determination:

9. I have read the Applicant's written submissions dated March 20, 2023 and the Court notes that the Application remains unopposed.
10. I am satisfied from the affidavit of service that the Attorney General was served with the application, written submissions and mention notices on behalf of the Respondents.
11. The main issue for determination is whether the Court should reinstate the judicial review proceedings vide the substantive Notice of Motion dated May 15, 2014.
12. The Constitution provides for the right to access justice under Article 48 of the Constitution. 'The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.'
13. I am persuaded with the reasons fronted by the Applicant in support of its Application and I do hereby proceed to grant the orders sought.



Orders:

14 The Application dated February 9, 2023 is hereby allowed in the following terms: -

- i. The Notice of Motion dated May 15, 2014 is hereby reinstated.
- ii. The Applicant shall fix the suit for hearing within 30 days from today's date failure to which the suit shall stand dismissed.
- iii. No orders as to cost.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF JULY 2023

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J. CHIGITI (SC)

JUDGE

