



Kungu v County Government of Nairobi (Judicial Review Miscellaneous Application E034 of 2023) [2023] KEHC 23107 (KLR) (Judicial Review) (3 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23107 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E034 OF 2023
JM CHIGITI, J
OCTOBER 3, 2023**

BETWEEN

FRANCIS MWAURA KUNGU APPLICANT

AND

THE COUNTY GOVERNMENT OF NAIROBI RESPONDENT

RULING

1. This court has been called upon to determine the Chamber Summons dated 06/03/2023 wherein The Applicant seeks the following orders:
 - a. That the Applicant be granted leave to apply for an Order of *mandamus* compelling the Respondent to pay the Applicant the sum of K.Shs. 2,025,800.00, with interest at court rates from 13th November 2009 until payment is made in full, on account of Judgment dated 15th February 2016 and delivered on 17th March 2016 in Nairobi Environment and Land Court Case Number 700 of 2007: Francis Mwaura Kungu v Bernard Muceke and Nairobi City Council together with costs taxed at K.Shs. 266,643.30 with interest.
 - b. That costs of this application be provided for.
2. The Applicant relies on the grounds on the face of the application and the statement of facts as well as the averments contained in the verifying affidavit sworn by the Applicant.
3. The Application is unopposed.

Brief Background:

4. The Applicant seeks leave to apply to this Honourable Court for an Order of *mandamus* compelling the City County of Nairobi to settle the decretal sum due to him pursuant to Judgment issued in



Milimani ELCC 700 of 2007: Francis Mwaura Kungu v Bernard Muceke & Nairobi City Council, together with taxed costs and interest.

5. Judgment in this matter was issued against the then Nairobi City Council being the predecessor in title of the Respondent on 17th March 2016.

These proceedings are brought against the Respondent as the successor in title to the Nairobi City Council.

6. A Decree was issued on 5th October 2022.

The Applicant has consistently followed up with the Respondent's officials to secure satisfaction of the decretal sum.

7. The Applicant issued the Respondent with the Certificate prescribed under Section 21(2) of the Government Proceedings Act prior to the commencement of these proceedings; which Certificate was dated 2nd February 2023 which was served upon the Respondent on 3rd February 2023.

Analysis and determination:

8. The applicable law on leave to commence judicial review proceedings is Order 53 Rule 1 of the Civil Procedure Rules, which provides that no application for judicial review orders should be made unless leave of the court was sought and granted.

9. The reason for the leave was explained by 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 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”.

10. 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.

11. I have perused the evidence before court and in particular I confirm that a Judgment in was issued against the then Nairobi City Council being the predecessor in title of the Respondent on 17th March 2016.

12. I am further satisfied that a Decree was issued on 5th October 2022 pursuant to which the Applicant issued the Respondent with the Certificate prescribed under Section 21(2) of the Government



Proceedings Act prior to the commencement of these proceedings; which Certificate was dated 2nd February 2023.

13. Based on the foregoing, I am satisfied that the applicant's case is sufficiently meritorious to justify leave which I hereby grant.

Order:

1. The Application March 6, 2023 is allowed in the following terms:
2. The Applicant shall file and serve the substantive motion within 14 days of today's date.
3. The Respondents shall file and serve their respective responses to the application within 14 days of service.
4. The Applicant shall thereafter file and serve its submissions within 7 days.
5. The Respondents shall thereafter file and serve their submissions within 7 days of service.
6. The submissions shall be limited to 6 pages each.
7. The matter shall be mentioned on to report compliance and for further directions on the judgment.

DATED, SIGNED AND DELIVERED THIS 3RD DAY OF OCTOBER, 2023.

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J. CHIGITI (SC)

JUDGE

