



REPUBLIC OF KENYA



KENYA LAW
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Multiline Services Limited v Nairobi City County Government (Judicial Review Application E025 of 2023) [2023] KEHC 23794 (KLR) (Judicial Review) (19 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23794 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E025 OF 2023
JM CHIGITI, J
OCTOBER 19, 2023

BETWEEN

MULTILINE SERVICES LIMITED EXPARTE APPLICANT

AND

NAIROBI CITY COUNTY GOVERNMENT RESPONDENT

RULING

1. Before this court is a Chamber Summons Application dated March 1, 2023. The Application is brought under Order 53 Rule 1 (1) and 1(2) of the Civil Procedure Rule; Rule 3 (1) 3(2) of the High Court Practice and Procedure Rules made under the Judicature Act Chapter 8; Section 7 of the Fair Administrative Action Act 2015; Section 21 of the Government Proceedings Act Chapter 40 of the Laws of Kenya; and article 47(1), 48 and 159 of the Constitution of Kenya 2010.
2. The applicant seeks for orders:
 1. That this honourable court be pleased to grant leave to the ex-parte applicant to apply for an order of *Mandamus* directed to the accounting officials of Nairobi City County Government, namely: The Chief Finance Officer and or the County Secretary and Head of Public Services to pay to the Ex-Parte Applicant or to the Applicant's Advocates on record herein, namely, Munikah & Company Advocates a sum of Kshs. 3,796,647=38; being a balance of the decretal sum, together with interest thereon at Court rate of 12% per annum and further interest thereon until payment of the decretal amount in full.
 2. That costs of this Application be provided for, in favour of the ex-parte applicant.



3. The Application is supported by the grounds on the face of it, and on the grounds in the accompanying Statutory Statement, and in verifying affidavit deposed by Samson Masaba Munikah, an Advocate of the High Court of Kenya – both similarly dated as the Application.
4. It is the applicant's case that the Chief Magistrates' Court gave and issued a Decree in CMCC No. 6004 of 2016 directing the Respondent to pay to the Ex-Parte Applicant a sum of Kshs. 8,369,515/= inclusive of costs awarded to the Ex-Parte Applicant with interest thereon, at Court rates from 1st July 2019 till payment in full.
5. Thereafter, the Respondent made part payment a sum of Kshs. 7,523,802.50 on the July 26, 2021 leaving a balance of Kshs. 2,754,109.50/= in accrued costs and interest. The Applicant contends that by July 31, 2022 the respondent was still under order and duty to pay to the Ex-parte Applicant, a sum of Kshs. 3,280, 182.50/= in accrued costs and interest at Court rates.
6. It is maintained that despite demand and notice of intention to institute these recovery proceedings (having been served upon the respondent) the respondent has failed, and or refused, and or neglected to pay the outstanding decretal sum to the ex-parte applicant.
7. Resultantly, that it appears the respondent has no intention to pay the said sum, and may continue in such failure and or refusal and or neglect to pay unless compelled by an order of *Mandamus*, given by this honourable court, so to pay. Therefore, it is thus just and proper that leave to apply for a judicial review order of *Mandamus* be granted.
8. Additionally, the ex-parte applicant in buttressing its case filed its written submissions dated June 27, 2023. In sum, it is submitted that this honourable court should consider this instant Application without delving deeply, and to ascertain whether there is an arguable case fit for further examination, to determine whether leave to seek Judicial review orders ought to be granted. Relied on the case of *Patel Ravji Lalji & another v Attorney General & 3 others* (2021) eKLR which is said to have found the same.
9. Accordingly, the ex-parte applicant, maintains that in applying the foregoing principles of laws, case laws to the facts of the instant case, it is clear that the ex-parte applicant has met the threshold required in granting leave to commence Judicial Review.
10. The court on June 19, 2023 ordered inter alia that the Application be served, and the Respondents given timelines to put in their responses. From the record before this court, there is no response by the respondents filed.
11. I have considered the materials on record: Application, annexures, and the written submissions. The issue for determination is: Whether the Application for leave to institute Judicial proceedings is merited.
12. It is a requirement of the law under Order 53 Rule 1 of the *Civil Procedure Rules* 2010, that an Applicant must seek leave to institute judicial review proceedings.
13. Leave is meant to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless; 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; 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.



This reason for leave was discussed in the case of *Republic v County Council of Kwale & another ex parte Kondo & 57 others*, Mombasa HCMCA No. 384 of 1996.

14. The Learned Judge, in *Republic v County Council of Kwale & another Ex Parte Kondo & 57 others* (*supra*), further held that leave may only be granted 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 parties hearing of the substantive application for judicial review. Granting of leave to file for judicial review is an exercise of the court's discretion, but as always it has to be exercised judiciously.
15. From the foregoing, in an Application for leave, such as the instant one, this court ought not to delve deeply into the arguments of the parties; but should make cursory perusal of the evidence before it [court] and make the decision as to whether an applicant's case is sufficiently meritorious to justify leave.
16. Also, in *Republic v National Transport & Safety Authority & 10 others* [2014] eKLR, the court held that in judicial review, the threshold for obtaining leave to commence is low and obtaining leave is not in itself evidence of a strong case. In order to obtain leave to commence judicial review proceedings, an applicant only needs to show that he has an arguable case.
17. In the instant matter, the gist of the Application before this court is that the applicant is seeking for leave to commence judicial review proceedings for orders of Mandamus. It is not contested that the applicant was awarded cost in CMCC No. 6004 of 2016.
18. Having invoked the judicial review jurisdiction of this court, it was upon the applicant to demonstrate an arguable case that requires ventilation at a substantive hearing. I have carefully perused through the record and submissions. A prima facie case is established to warrant the grant of the leave sought
19. In the end, I find that the Application dated March 1, 2023 for leave has merit.

Order:

1. Leave to file judicial review proceedings is granted.
2. The applicant shall file and serve the substantive motion within 14 days of today's date.
3. The respondent shall file and serve its responses to the application within 14 days of service.
4. The applicant shall thereafter file and serve its submissions within 10 days.
5. The respondents shall file and serve their submissions within 10 days of service.
6. The matter will be mentioned on December 13, 2023 to report compliance.

SIGNED, DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF OCTOBER 2023.

J.CHIGITI (SC)

JUDGE

