



**Juneja v Director of Public Prosecutions (Judicial Review E032 of 2024)
[2024] KEHC 14475 (KLR) (18 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14475 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW E032 OF 2024
RE ABURILI, J
NOVEMBER 18, 2024**

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW BY WAY OF CERTIORARI & PROHIBITION AND IN THE MATTER OF THE DECISION OF THE DIRECTOR OF PUBLIC PROSECUTION TO CHARGE AMIN AHMED JUNEJA WITH THE ALLEGED OFFENCES OF CONSPIRACY TO COMMIT A MISDEMEANOR; OBTAINING REGISTRATION BY FALSE PRETENCE; FORCIBLE ENTRY AND MALICIOUS DAMAGE TO PROPERTY CONTRARY TO SECTIONS 394, 320 90 AND SECTION 339(1) OF THE PENAL CODE AND IN THE MATTER OF THREATENED INFRINGEMENT OF THE APPLICANT’S RIGHTS GUARANTEED UNDER ARTICLES 22,27(1), 40(1) AND 47(1) OF THE CONSTITUTION OF KENYA 2010 AND IN THE MATTER OF ARTICLES 23(1) & (3) OF THE CONSTITUTION OF KENYA 2010 AND IN THE MATTER OF CIVIL PROCEDURE RULES 2010 ORDER 53 RULE (1) & (2)

BETWEEN

AMIN AHMED JUNEJA APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. The Applicant Amin Ahmed Juneja seeks leave of court to file Judicial Review application for orders of Certiorari and Prohibition to bring into this court for purposes of quashing and to quash the decision of the Respondents to charge the Applicant with the offences of conspiracy to commit a misdemeanour, obtaining registration by false pretences, forcible entry and malicious damage to property contrary to Section 394, 320, 90 and 339(1) of the *Penal Code* respectively, relating to the title acquired by the Applicant’s deceased wife Hamida Amin Ahmed alias Hamida Amin Juneja alias Hamida Hassan Adam being title No. Kisumu/Korando/1837 on 17th April 1989.



2. The Applicant also seeks leave to apply for prohibition directed at the Respondent prohibiting and or restraining them from preferring, commencing and or sustaining any criminal charges against the Applicant including proceedings in Kisumu MCCR Case No. E698 of 2022 Republic vs Dilipkumar Shantilala Patel, Amin Ahmed Juneja & Rashau Iqbal Juneja, the applicant Amin Ahmed Juneja being the registered lawful owner of property title No. Kisumu/Korando/1837.
3. The Applicant prays that the leave so granted to operate as stay of all actions or proceedings to investigate, prefer, commences and or sustain any criminal charges against the Applicant including proceedings in Kisumu MCCR Case No. E698 of 2022.
4. He also prays for costs of the application.
5. The application is brought under Order 53 Rule (1), (2) and (3) of the [Civil Procedure Rules](#) which provides that:

“ 1. Applications for mandamus, prohibition and certiorari to be made only with leave

1. No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.
2. An application for such leave shall be made ex parte to a judge in chambers, and shall be accompanied by —
 - a. a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought; and
 - b. affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the respondent, over the same subject matter and that the cause of action relates to the applicants named in the application.
3. The judge may, where leave denotes stay, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.
4. The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise:

Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and



whether grant of leave shall operate as stay may be heard and determined separately within seven days.

2. Time for applying for certiorari in certain cases.

Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

6. The essence of the application is leave by the applicants to commence judicial review proceedings. Under Order 53 Rule 1 of the *Civil Procedure Rules* 2010, which mandates that an applicant in such an application must seek leave before filing the substantive notice of motion application.

7. The reasons for leave were 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 and the dictum in that decision is that:

“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.”

8. The Learned Judge 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 partes 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.

9. It is therefore clear from the above that in an application for leave, such as the present one, this court ought not to delve deep into the arguments of the parties, but should make cursory perusal of the evidence presented before court and make the decision as to whether an applicant’s case is sufficiently meritorious to justify leave.

10. The applicant avers that the respondent’s decision to charge the Applicant with the offences of conspiracy to commit a misdemeanour, obtaining registration by false pretences, forcible entry and malicious damage to property contrary to Section 394, 320, 90 and 339(1) of the *Penal Code* respectively, relating to the title acquired by the Applicant’s deceased wife Hamida Amin Ahmed alias Hamida Amin Juneja alias Hamida Hassan Adam being title No. Kisumu/Korando/1837 on 17th April 1989 is unreasonable and unjustified.

11. To this extent, and in light of the material placed before this court, and upon a cursory perusal of the evidence before court and without delving into the arguments by the ex-parte applicant, it is my view that the case cannot be said to be frivolous or vexatious.



12. On the question of whether the said leave should operate as a stay of the impugned actions by the respondent being the decision to charge or continue the prosecution of the *ex parte* applicant, the applicable principle is that the grant of such leave is discretionary, but the Court should exercise such discretion judiciously. Order 53 Rule 1(4) of the *Civil Procedure Rules* provides that:

“The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise.”
13. In *R (H). v Ashworth Special Hospital Authority* (2003) 1 WLR 127, it was held that such a stay halts or suspends proceedings that are challenged by a claim for judicial review, and the purpose of a stay is to preserve the status quo pending the final determination of the claim for judicial review. The main consideration is always whether or not the decision or action sought to be stayed has been fully implemented. In *Taib A. Taib v The Minister for Local Government & Others* Mombasa HCMISCA. No. 158 of 2006 the court held that:

“... The purpose of a stay order in judicial review proceedings is to prevent the decision maker from continuing with the decision making process if the decision has not been made or to suspend the validity and implementation of the decision that has been made and it is not limited to judicial or quasi-judicial proceedings as it encompasses the administrative decision making process being undertaken by a public body such as a local authority or minister and the implementation of the decision of such a body if it has been taken. It is however not appropriate to compel a public body to act....”
14. It is therefore clear that where the action or decision is yet to be implemented, a stay order can normally be granted in such circumstances. Where the action or decision is implemented, then the Court needs to consider the completeness or continuing nature of such implementation. If it is a continuing nature, then it is still possible to suspend the implementation.
15. In the present application, the action of the respondent’s charging or prosecuting the applicant with the offences stated which relate to acquisition of title to land Kisumu/Korando/1837 on 17th April 1989 by the *ex parte* applicant’s deceased wife is put to question and challenge. As to whether the applicant can be vicariously liable for acts of his deceased wife is an issue that is arguable and therefore there is need to prevent the implementation of the said decision until the legality of the respondent’s decision is established, in light of the prejudice pleaded by the *ex-parte* applicant. It is my view therefore that the order of stay ought to be issued.
16. In the premises aforesaid, I find that the application as presented is merited I allow the prayers for leave as sought and order that the leave so granted shall operate as stay of all decisions made by the respondent to charge the applicant or continue any criminal charges related to the acquisition of title to land No. Kisumu/Korando/1837 on 17th April 1989 by the appellant’s deceased wife including including proceedings in Kisumu MCCR Case No. E698 of 2022 *Republic vs Dilipkumar Shantilala Patel, Amin Ahmed Juneja & Rashau Iqbal Juneja*, the applicant Amin Ahmed Juneja being the registered owner of property title No. Kisumu/Korando/1837 until the substantive motion once filed is heard and determined on its merits.
17. The substantive motion shall be filed and served within 21 days of today upon the respondent and the complainants in the pending criminal proceedings and the motion shall be prosecuted within 90 days from the date of filing, failing which the stay herein shall lapse.



DATED, SIGNED AND DELIVERED AT KISUMU THIS 18TH DAY OF NOVEMBER, 2024

R. E. ABURILI

JUDGE

