



**Mitsanze & 8 others v Kilifi County Ward Scholarship Fund  
Board & another (Judicial Review Miscellaneous Application  
E008 of 2023) [2024] KEHC 16251 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16251 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E008 OF 2023**

**SM GITHINJI, J**

**DECEMBER 16, 2024**

**IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT (FAAA) 2015**

**AND**

**IN THE MATTER OF: THE KILIFI COUNTY WARD SCHOLARSHIP FUND ACT, 2018**

**AND**

**AND IN THE MATTER OF AN APPLICATION**

**BETWEEN**

**THOMAS IHA MITSANZE ..... 1<sup>ST</sup> APPLICANT**  
**MUSA ODHIAMBO OGELE ..... 2<sup>ND</sup> APPLICANT**  
**HALIMA SHAFAT ..... 3<sup>RD</sup> APPLICANT**  
**MARY JUMA ..... 4<sup>TH</sup> APPLICANT**  
**SAMUEL MOINDI ..... 5<sup>TH</sup> APPLICANT**  
**ALEX JUMBA ..... 6<sup>TH</sup> APPLICANT**  
**SALIM MOHAE FAZA ..... 7<sup>TH</sup> APPLICANT**  
**FREDRICK KIMOMO ..... 8<sup>TH</sup> APPLICANT**  
**MARY JUMWA KARISA ..... 9<sup>TH</sup> APPLICANT**

**AND**

**KILIFI COUNTY WARD SCHOLARSHIP FUND BOARD .... 1<sup>ST</sup> RESPONDENT**  
**THE CHAIRPERSON, KILIFI COUNTY WARD SCHOLARSHIP FUND  
BOARD ..... 2<sup>ND</sup> RESPONDENT**



## RULING

### Representations:

Machuka & Co Advocates for the Ex- Parte Applicants

Munyao, Muthama & Kashindi Advocates for the Respondents

1. Vide a Chamber Summons dated 5<sup>th</sup> December, 2023, the Ex-parte Applicants sought the following orders;
  - a. Spent.
  - b. That Leave be granted to the Applicants to apply for an order of Certiorari to remove and bring into this Honourable court and quash the decision of the 1<sup>st</sup> Respondent dated 7<sup>th</sup> November, 2023 revoking the appointments of Thomas Iha Mitsanze, Musa Odhiambo Ogele, Halima Shafat, Mary Juma, Samuel Moindi, Alex Jumba, Salim Mohame Faza, Fredrick Kimomo and Mary Jumwa Karisa to the Malindi Town Ward Scholarship Committee.
  - c. That Leave be granted to the Applicants to apply for an order of Mandamus to compel the Respondents to reinstate the Applicants' membership to the Malindi Town Ward Scholarship Committee.
  - d. That leave be granted to the Applicants to apply for an order of prohibition directed to the Respondents prohibiting them from proceeding with the proposed election of new committee members to the Malindi Town Scholarship Committee.
  - e. That the leave so granted operates as a stay of the 1<sup>st</sup> Respondent's decision dated 7<sup>th</sup> November, 2023 revoking the appointments of the Applicants to the Malindi Town Ward Scholarship Committee.
  - f. That costs be provided for.
  - g. That the Honourable Court be pleased to grant any relief that it may deem fit and just to grant.
2. The grounds in support of the application are that the applicants were duly elected as members of the Malindi Town Ward Scholarship Committee pursuant to Section 21 of the Kilifi County Ward Scholarship Fund Act, 2018 on 16<sup>th</sup> January, 2023. That the Applicants have served as members of the said committee until 7<sup>th</sup> November, 2023 when the 1<sup>st</sup> Respondent unlawfully and without any lawful mandate, nor power, purported to revoke the respective appointments of the applicants herein.
3. That before the purported revocation, the Respondents and/or their agents allege to have received complaints against the Applicants and summoned the applicants on 4<sup>th</sup> November, 2023 for a Hearing. It is contended that the hearing was conducted in utter violation of the principles of fair hearing as required by Section 21 (3) of the Kilifi County Ward Scholarship Fund Act, 2018 as the complaints against them were neither read out nor heard.
4. Further, that the decision of the 1<sup>st</sup> Respondent to revoke the appointments of the Applicants was made without any legal basis and in bad faith and was actuated by malice. It is their contention that the 1<sup>st</sup> Respondent acted ultra vires since the law does not give him the power to revoke the appointments of the applicants from the board.



5. It is also stated that by dint of Section 21 (3) of the Kilifi County Ward Scholarship Fund Act, 2018, a decision to remove a member of a Ward Scholarship Committee can only be made through a resolution of at least five members of the committee and not by the Respondents as the case herein. That the decision of the Respondents to revoke the appointment of the applicants is tainted with illegality, irrationality and unreasonableness.

### **Response**

6. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents in response filed a Replying Affidavit sworn by Fredrick Nguma on the 16<sup>th</sup> day of January, 2024. He deponed that following receipt of complaints from members of the public, invoked the provisions of Section 16 (1) of the Act and called for a meeting and following deliberations, a resolution was passed by the Board to disband the Scholarship Committee for Malindi Town where the 1<sup>st</sup> to 9<sup>th</sup> Applicants were members, for gross misconduct and embezzlement of public funds.
7. He also deponed that having received the complaints from the public, the 2<sup>nd</sup> Respondent duly informed the applicants of the accusations leveled against them and invited them for hearing of the Petition by members of the public on 31<sup>st</sup> October, 2023. That the complaints by the members of the public were heard and the proceedings minuted and recorded. He asserted that the Board subsequently invited the Fund Board members for a meeting on 6<sup>th</sup> November, 2023 for the purpose of reaching a determination. That a Resolution was subsequently passed to disband the Committee on the grounds provided for under Section 21 (12) (a), (b), (c), (d) and (e).
8. That the 2<sup>nd</sup> Respondent issued the Applicants with letters of revocation of their appointments as Committee members of the Malindi Town Ward Scholarship Fund and the matter was reported to the Malindi County Director of Criminal Investigations and also to the Ethics and Anti-Corruption Commission for investigations and further action. Further, that the allegations contained in paragraphs 10 of the Statutory Statement and 12 of the Supporting Affidavit that the decision of the 2<sup>nd</sup> Respondent was marred with illegality, irrationality and unreasonableness is substantiated or established.

### **Disposition**

9. I have considered the application herein and further perused through the annexures thereto. I have further considered the Respondent's Response and written submissions and it is my considered view that the main issue for determination is whether the applicants' application for leave to operate as stay is merited.
10. Judicial review jurisdiction is a special jurisdiction which is neither Civil nor Criminal and it is governed by Section 8 and 9 of the [Law Reform Act](#) which is the substantive law, while Order 53 of the Civil Procedure Rules sets out the procedural law. By those provisions the court is mandated to issue orders of mandamus, certiorari or prohibition in appropriate judicial review proceedings.
11. At the leave stage an applicant must show: -
  - i. 'sufficient interest' in the matter otherwise known as locus standi;
  - ii. that he/she is affected in some way by the decision being challenged;
  - iii. that he/she has an arguable case and that the case has a reasonable chance of success;
  - iv. the application must concern a public law matter, i.e. the action must be based on some rule of public law;



- v. the decision complained of must have been taken by a public body, that is a body established by statute or otherwise exercising a public function. All these tests are important and ought to be demonstrated before an application for leave is allowed in Judicial Review proceedings.
12. The gist of the application is leave by the applicant to commence judicial review proceedings as sought in the application dated 5<sup>th</sup> December, 2023. Under Order 53 Rule 1 of the Civil Procedure Rules 2010, it is mandatory that the applicant in such applications must seek leave before he can file the substantive application. 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 if it were actually pending even though misconceived.
13. Further, 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 judicial review proceedings 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.
14. Having invoked the judicial review jurisdiction of this court, it was upon the Applicants 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.
15. Nevertheless, it is worth noting that the parties delved into the substantive issues of the case, prematurely. The case as ventilated herein, the applicants contend that 1<sup>st</sup> Respondent unlawfully and without any lawful mandate nor power purported to revoke their respective appointments. It is also their contention that the 1<sup>st</sup> Respondent acted ultra vires since the law does not give him the power to revoke the appointments of the applicants from the board. The Respondents on the other hand assert that due process was followed and a fair hearing accorded to the applicants.
16. To that end, I find that the Application for leave before this court is merited.
17. On the issue of stay; the applicable law on whether leave granted should operate as a stay is Order 53 Rule 1(4) of the Civil Procedure Rules, which 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.”
18. In the cases of *Republic vs Cabinet Secretary for Transport & Infrastructure & 4 Others ex parte Kenya Country Bus Owners Association and 8 Others (2014) eKLR*; and in *James Opiyo Wandayi vs Kenya National Assembly & 2 Others, (2016) eKLR*, the court observed that it is only where the decision in question is complete that the Court cannot stay the same. However, where what ought to be stayed is a continuing process, the same may be stayed at any stage of the proceedings.
19. In my view, there is no evidence that the Respondents’ decisions have been implemented completely. Further, the question of an arguable case was determined in the finding that the Application merits granting of leave. To guard the outcome of the substantive motion from being rendered nugatory, it thus befits granting of leave to operate as stay.



20. The application is therefore merited and is granted as prayed. Costs be in the cause.
21. Further, the applicants are directed to file the Notice of Motion within 21 days and serve, failure to which the granted leave and stay orders lapses.
22. Mention on 30<sup>th</sup> January, 2025.

**RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 16<sup>TH</sup> DAY OF DECEMBER, 2024.**

.....

**S.M. GITHINJI**

**JUDGE**

In the Presence of; -

1. Ms. Mwai for the Respondent
2. Machuka Advocate is for the Applicant (absent)

