



Mulekyo & Company Advocates v Kajiado County Government & another (Miscellaneous Judicial Review E029 of 2024) [2024] KEHC 15245 (KLR) (Judicial Review) (3 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15245 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
MISCELLANEOUS JUDICIAL REVIEW E029 OF 2024
JM CHIGITI, J
DECEMBER 3, 2024**

BETWEEN

MULEKYO & COMPANY ADVOCATES APPLICANT

AND

KAJIADO COUNTY GOVERNMENT 1ST RESPONDENT

**COUNTY SECRETARY, KAJIADO COUNTY GOVERNMENT 2ND
RESPONDENT**

RULING

Brief Background

Ex-Parte Applicant's case;

1. The Applicant herein filed an application by way of Chamber Summons dated 19th March, 2024 seeking orders that: -
 1. That the Honourable Court be pleased to certify this matter as urgent and hear it ex-parte in the first instance.
 2. That leave be granted to the Applicant to institute an application for Judicial Review for an Order of Mandamus to compel the Respondents herein to comply with the order of this Honourable Court given on 28th April 2023 in Nairobi Constitutional and Human Rights Misc. Application No. E026 of 2022 by paying the decretal sum of Kshs. 1,898,536.40 with an interest of 14% and costs from 7th April 2022 until payment in full.
2. The application is anchored on the grounds that are on the face of it and supported by a Verifying Affidavit Anthony M. Mulekyo sworn on 19th March, 2024.



3. The Applicant deponed that they filed an Advocate client bill of costs against the Respondents on 6th June 2022 being Milimani High Court Constitutional Misc. Application No. E026 of 2022.
4. The Applicant avers that on 23rd August 2022 the Deputy Registrar issued a Certificate of taxation to the Applicant, awarding the Applicant against the Respondents costs of Kshs. One Million Three Hundred and Eighty-Seven Thousand Five Hundred and Eight and Sixty-Eight Cents only. (Kshs. 1,387,508.68)
5. It is the Applicant's case that judgment was entered against the Respondents to pay a decretal sum of Kshs. 1,387,508.68 together with costs and interest at 14% p.a as from 7th April 2022 until payment in full and a decree was subsequently issued to that effect on 19th June 2023 against the Respondents.
6. The Applicant deponed the costs of the application were assessed by the Deputy Registrar at Kenya Shillings One Hundred and Forty-five Thousand, Nine-Hundred Forty-one and Eighty-Seven cents. (Kshs. 145,941.87) on 13th December 2023 and on 22nd February 2024 issued a Certificate of Order against the Government compelling the Respondents to pay KShs. 1,898,536.40.
7. The Applicant avers that despite numerous reminders, the respondents have refused to pay the decretal sum ordered by this Honourable court and failure by the respondents to adhere to the terms of the judgment is greatly prejudicing the rights and interests of the applicant.
8. The Applicant invokes Article 1(4) of *the Constitution* of Kenya, County Governments are defined as a level of Government. Consequently, we submit that attachment against a County Government is regulated by Section 21 of the *Government Proceedings Act*.
9. They rely on the case of James Waweru Karanja v County Government of Nakuru 120201 eKLR where the Court stated that

“It is clear that even though one may not pursue execution proceedings against the government per se, a party wishing to realize the fruits of a judgement against the government must first start by securing a certificate of costs and certificate of order against the Government as held in the case of Republic versus Principal Magistrate's Court at Mavoko & another Ex-Parte Joseph Ole Lenku Governor Kajiado County & another 120181 eKLR.

Armed with the certificate of costs and certificate of order against the respondent. County government of Nakuru, the next step would have been for the claimant to seek a writ of mandamus compelling the relevant officer in the county government of Nakuru to honour the decree as held in the case of Judicial Review Miscellaneous Application No. 44 of 2012 between the Republic versus The Attorney General & Another ex parte James Alfred Koroso and the finding that;

...In the present case the ex parte applicant has no other option of realizing the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realized...”

10. The Applicant submits that in the interest of justice that leave be granted to the Applicant to file an application for Mandamus.



Analysis and Determination;

11. Upon perusing the Exparte application, the issue that stands out for determination is whether the Applicant is entitled to leave to institute Judicial Review proceedings or not.
12. The requirement that leave must be obtained before making an application for judicial review under Order 53 of The Civil Procedure Rules was 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.
13. In *Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996* Waki J. (as he then was) made the following findings:

“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.”
14. This court is satisfied that the applicant is entitled to the orders sought.

Order;

 1. The Application is allowed.
 2. The Applicant shall file and serve the Application within 14 days of today’s date.
 3. The Respondent shall file and serve its responses within 14 days of service.
 4. The Applicant shall thereafter file and serve its submissions within 7 days thereafter.
 5. The Respondent shall thereafter file and serve submissions within 7 days of service.
 6. The matter shall be mentioned on 13.3.25 for further directions.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF DECEMBER 2024

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J. CHIGITI (SC)
JUDGE

