



**Kokwo Multi-Purpose Co-operative Society v Principal Secretary Ministry of Lands,
Housing and Urban Development & another (Environment and Land Judicial Review
Case E001 (B) of 2024) [2025] KEELC 122 (KLR) (22 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 122 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 (B) OF 2024
CK NZILI, J
JANUARY 22, 2025**

BETWEEN

KOKWO MULTI-PURPOSE CO-OPERATIVE SOCIETY APPLICANT

AND

**THE PRINCIPAL SECRETARY MINISTRY OF LANDS, HOUSING AND
URBAN DEVELOPMENT 1ST RESPONDENT**

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. What is before the court is an application dated 14/11/2023. The *ex parte* applicant is seeking leave to institute judicial review proceeding for an order of mandamus directed at the respondents to settle a decree issued against them in Kitale High Court Petition No. 16 of 2013 on 1/10/2015 for Kshs.7,896,644/=. The *ex parte* applicant relies on written submissions and a list of authorities dated 20/9/2024 namely Republic -vs- County Government of Nairobi and Others *Ex parte* Kingpost Ltd [2021] eKLR, Republic -vs- Kenya National Examination Council *Ex parte* Gathenji and Others [1997] eKLR, Joseph Muriithi Nyaga -vs- Embu County Government [2021] eKLR and Mirigo & Others -vs- Minister for Lands & Others (Civil Appeal 277 of 2011)[2014] KECA (881)KLR.
2. The application is opposed by the respondents on the grounds of opposition dated 17/7/2024 for non-exhaustion of the Government Property Act Cap 40 Laws of Kenya. The respondents rely on written submissions dated 30/10/2024 that there is no certificate of order for costs or a demonstration of a demand on the respondents to pay, which has been declined. Reliance is placed on Co-operative Bank of (K) Ltd -vs- Banking Insurance & Finance Union (K) [2015] eKLR, Trust Bank Ltd -vs- Amako Co. Ltd [2003] eKLR, Kenya Shell Ltd -vs- Kobil Petroleum Ltd [2006] eKLR and Nyamogo & Nyamogo Advocates -vs- Barclays Bank of (K) Ltd [2002] eKLR.



3. The discretion on whether to grant leave in Judicial Review is ordinarily exercised ex parte. A party seeking leave must meet the threshold set by the courts. It acts as a sieving stage to avoid frivolous or unmeritorious applications. There must be prima facie evidence of an arguable case as held in *Agha Khan Educational Services Kenya -vs- Rep Ex parte Self* [2000] eKLR. The applicant must avail enough material for the court to consider without going into the matter in depth to decipher if an arguable case has been demonstrated calling for determination by way of a substantive motion.
4. Once the court is satisfied that there is an arguable case, it proceeds to issue leave as prayed. The respondents are not saying that there is no prima facie case for consideration past the leave stage. The issue of whether or not a certificate of order of stated costs exists and has not been honoured has nothing to do with an arguable case. Such defence or response will only be available to the respondents once leave is granted and the substantive motion is filed and served.
5. At the leave stage, the respondents have not said that the claim by the ex parte applicant is frivolous, unmeritorious or has been honoured or is overtaken by events. The upshot is that I grant the application dated 14/11/2023. The substantive notice of motion shall be filed and served within 21 days from the date hereof. Mention on 11/02/2025.

RULING DATED, SIGNED AND DELIVERED AT KITALE THIS 22ND DAY OF JANUARY 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

