

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

JUDICIAL REVIEW MISCELLANEOUS APPLICATION

NO. E005 OF 2025

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW**

BETWEEN

**CHARLES CHEGE GITAU
APPLICANT**

=VERSUS=

**GOVERNOR, COUNTY GOVERNMENT
OF KIAMBU.....1ST
RESPONDENT**

**COUNTY ATTORNEY, KIAMBU
COUNTY GOVERNMENT 2ND
RESPONDENT**

COUNTY GOVERNMENT OF KIAMBU 3RD RESPONDENT

SPEAKER COUNTY ASSEMBLY OF KIAMBU4TH RESPONDENT

COUNTY ASSEMBLY OF KIAMBU 5TH RESPONDENT

RULING

1. The Ex-Parte Applicant moved the court by way of a Chamber Summons pursuant to Article 22, 23 (3) (F), 40,47,199 (1) of the Constitution of Kenya, Sections 8 and 9 of the Law Reform Act Cap 26, Sections 24 and 25 of the County Governments Act of 2012, seeking the following orders:

- a) *An order of prohibition directed at the 1st, 2nd, 3rd Respondents prohibiting the respondents from charging or demanding land rates to freehold land save for freehold land that has changed its use to commercial use as amended in The Kiambu Valuation and Rating Act 2016.*
- b) *An order of prohibition directed at the 1st, 2nd and 3rd Respondents, prohibiting them from charging or demanding accrued land rates, penalties, and interest on any property that was previously subject to land rates but was exempted through the amendments to the Kiambu Valuation and Rating Act, 2016, passed by the 4th Respondent on or about 3rd September 2024.*
- c) *An order of mandamus directed at the 1st, 2nd, and 3rd Respondents, compelling the Respondents to assent and publish the amended Kiambu Valuation and Rating Act, 2016, passed by the 4th Respondent on 3rd September 2024, in both the County and National Gazette, in accordance with the requirements of Article 199(1) of the Constitution of Kenya, 2010 and section 24 and 25 of County Governments Act of 2012.*
- d) *An order of mandamus to compel the 3rd Respondent to refund all landowners for land rates paid from the 50th day after the passage of the amendments to the Kiambu Valuation and Rating Act, 2016, on freehold land, except for freehold land that has changed its use to commercial purposes. This refund shall also include land rates, penalties, and interest for any property that was previously subject to land rates but was later exempted through the amendments to the Kiambu Valuation and Rating Act, 2016.*

- e) *That the leave so granted shall operate as a stay against the actions of the 1st, 2nd, and 3rd Respondents from charging or demanding land rates on freehold land, except for freehold land that has been converted to commercial use, as amended in The Kiambu Valuation and Rating Act, 2016. This stay shall also apply to payment to accrued land rates, penalties, and interest on any property that was previously subject to land rates but was exempted through amendments to the Kiambu Valuation and Rating Act, 2016, passed by the 4th Respondent on or about 3rd September 2024, pending inter parte hearing.*
- f) *That costs of this application be provided for.*
- g) *Any other relief that this Honourable Court will be pleased to issue in the circumstances.*

- 2. The Application is based on the grounds set out on the face of the Application and the Verifying Affidavit of Charles Chege Gitau, the Ex-parte Applicant herein.
- 3. He depones that he is a land owner in various parts of Kiambu County. He further depones that the suit seeks to challenge the failure of the Respondents to Assent and Publish the Kiambu Valuation and Rating Act, 2016 in the Kenya and County Gazette, as required under Article 199(1) of the Constitution of Kenya and Sections 24 and 25 of the County Governments Act. 2012. He adds that the 5th Respondent passed the amendments on 3rd September 2024.
- 4. He contends that he wrote a letter to the 2nd Respondent requesting an update on the implementation status of the

Amended Act, but he did not receive any response. He further contends that he also wrote a letter to the Commission on Administrative Justice (Ombudsman) for intervention, but nothing has come up to date.

5. The Applicant faults the Respondent for continuing to charge the Land rates for the exempted land. In conclusion, the Applicant states that the interests of justice would be better served by admitting this Application.
6. The 2nd Respondent opposes the application through a Replying Affidavit sworn by her on 4th April 2025. She contends that this Application is devoid of merit, bad in law, and amounts to an abuse of the court process, and she urges that it be dismissed at the preliminary stage.
7. She explains that the County Government of Kiambu, through its County Assembly, passed the Kiambu County Valuation and Rating Bill, 2024 on 3rd September 2024, and that the same was assented into law on 4th September 2024. Contrary to the Applicant's averments, she maintains that the Act was duly assented into law barely a day after passage by the Assembly.
8. The Respondent points out that although the Applicant seeks an order of mandamus to compel publication of the Act, the Act had already been published in the Kenya Gazette Supplement No.16 (Kiambu County Acts No.7).

9. She argues that there is no legal requirement for a law to take effect immediately upon publication. She refers to section 24(2) of the County Governments Act, which provides that county legislation comes into force on the fourteenth day after publication unless it specifies a different date. In this case, she states that the Act expressly stipulated a commencement date of 10th December 2024, and it only became operational on that date.
10. According to the Respondent, the court lacks express or residual powers to interfere with the legislative process merely because an Act stipulates a commencement date later than the date of assent. She insists that legislation providing for a later commencement date is not illegal, since the law itself sanctions such practice.
11. She emphasizes that a court cannot be called upon to declare as illegal an action that is sanctioned by law. She further urges the court to take judicial notice that it is common, especially with legislation concerning revenue, for Acts to provide later commencement dates to facilitate a transition period. In this instance, the transition period was between 4th September and 10th December 2024, approximately three months.
12. The Respondent disputes the Applicant's assertions under prayer (a) of the Chamber Summons, stating that no demands were made for rates after the commencement of the Amendment Act on 10th December 2024. She adds that the Applicant relies on an invoice dated October 2024, a period when the 2016 Act was still in force and the County Government was legally entitled to demand rates.

Since the 2016 Act has never been declared unconstitutional, she argues that the County Government acted lawfully in demanding rates then.

13. In her view, the Applicant is improperly seeking leave to challenge an invoice issued at a time when rates were lawfully due. She submits that judicial review does not apply to the lawful exercise of power and that the Applicant has failed to show why the County Government's demand for rates in October 2024 was illegal.

14. She stresses that the fact of a law being passed but scheduled to commence later does not exempt a person from complying with obligations under the law that was in force in the interim. Accordingly, any refusal to settle demands issued before the commencement of the Amendment Act cannot be justified by reference to the later Act.

15. The Respondent adds that if any person felt aggrieved by rates demanded after the Amendment Act came into operation on 10th December 2024, such a person could have lodged an objection with the Directorate of Valuation and Rating, which would have withdrawn any erroneous assessment. However, she notes that no such request was made by the Applicant.

16. In her response to prayer (b), she argues that it is already addressed by section 9 of the Amendment Act, which provides for saving and transitional provisions. On prayer (d), she contends that the Applicant has not proved payment of any rates and

merely alleges that the Respondents should refund landowners for rates, penalties, and interest accrued after the passage of the Amendment Act. She maintains that the Applicant has not demonstrated a prima facie case of illegality or identified any provision in the Amendment Act or other law to support such a refund claim.

17. On the issue of publication timelines, the Respondent argues that even if an Act is not published within set timelines, this does not render it invalid. She contends that the only logical consequence of a finding of illegality would be invalidation of the Act itself, and unless the Amendment Act is invalidated, the Applicant cannot benefit from any relief inconsistent with its provisions. She maintains that in the absence of invalidation, the applicable law at the material time remained the Kiambu County Valuation and Rating Act, 2016.

18. In conclusion, she asserts that the application for leave to commence judicial review proceedings is unmerited, illusory, and unlikely to yield any substantive relief. She therefore prays that the application be dismissed.

EX-PARTE APPLICANT'S SUBMISSIONS

19. Learned counsel for the Applicant identified four issues for determination: (i) whether the Applicant has established an arguable case meriting leave for judicial review; (ii) whether the continued imposition and collection of land rates on exempt land is ultra vires the amended Kiambu Valuation and Rating Act, 2016;

(iii) whether the Respondents have failed in their statutory duty to implement and operationalize duly enacted legislation in breach of Article 199(1) of the Constitution and sections 24 and 25 of the County Governments Act; and (iv) whether the court should issue the remedies of prohibition and mandamus in the circumstances.

20. On the first issue, counsel argued that the County Assembly, as the legislative arm of the County, passed amendments to the Kiambu Valuation and Rating Act on 3rd September 2024. Counsel contends that the Respondents were under a constitutional and statutory obligation to assent to, publish, and operationalize the amended law. Counsel noted that the Respondents themselves concede that the Act was published on 10th December 2024, which triggered its legal effect. It was submitted, however, that the continued issuance of rate demands thereafter was inconsistent with the prevailing legal framework, since exempt freehold land was no longer subject to such rates.

21. On the second issue, counsel contended that the Respondents' conduct amounted to abuse of power and administrative mala fides. It was further contended that by continuing to demand land rates after the effective date of the amendment, the Respondents violated Articles 47 and 40 of the Constitution, thereby infringing the right to fair administrative action and the right to property. The inaction in refunding payments made after the commencement of the amended law is, in counsel's view, was tantamount to unjust

enrichment and contrary to the principles of accountable governance.

22. On the third issue, counsel submitted that the court is empowered under sections 8 and 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules to grant orders of mandamus and prohibition. According to counsel, the circumstances justified leave to institute substantive judicial review proceedings seeking, first, an order of prohibition to restrain the Respondents from any further unlawful assessment and collection of rates from exempt landowners, and second, an order of mandamus compelling a refund of monies collected contrary to the amended Act.

23. Counsel submitted that the Applicant brought the claim in the public interest under Article 22(2)(c) of the Constitution for the benefit of all freehold landowners adversely affected by the Respondents' actions. Counsel added that evidence, such as sample invoices, had been provided by the Applicant. Counsel submitted that at the leave stage, such evidence was sufficient to disclose a *prima facie* case warranting ventilation at a substantive hearing.

24. In conclusion, counsel urged the court to find that the Applicant had met the threshold under Order 53 Rule 1(1) of the Civil Procedure Rules. It was argued that the Applicant had raised arguable constitutional and legal issues, demonstrated unlawful acts and omissions by public officers, and thereby satisfied the requirements for leave to commence judicial review.

RESPONDENT'S SUBMISSIONS

25. Learned counsel for the Respondents submitted that the Applicant had not met the threshold for leave to institute judicial review proceedings. According to counsel, the Application was devoid of merit, misconceived in law, and amounted to an abuse of the court process.
26. On the issue of publication and commencement of the law, counsel explained that the Kiambu County Valuation and Rating (Amendment) Act, 2024 had been duly passed by the County Assembly on 3rd September 2024 and assented into law on 4th September 2024. Contrary to the Applicant's averments, the Act had subsequently been published in the Kenya Gazette Supplement No.16. Counsel stressed that there was no legal requirement that legislation must take effect immediately upon publication. Section 24(2) of the County Governments Act was cited, which provided that county legislation came into force on the fourteenth day after publication unless a different date was specified. In this case, the Act had expressly provided for commencement on 10th December 2024, and it only became operational on that date.
27. Counsel argued that the court lacked jurisdiction to interfere with the legislative process merely because an Act provided for a commencement date later than the date of assent. Counsel further argued that the very fact of a later commencement date was not *prima facie* illegal, since the law expressly sanctioned the practice.

Counsel added that one could not properly invoke judicial review to challenge actions that were sanctioned by law.

28. Further, counsel submitted that most revenue-related statutes provided for deferred commencement dates to allow a transition period. In this case, the transition had spanned from 4th September to 10th December 2024. During this time, the 2016 Act remained valid and enforceable, and the County Government was legally entitled to demand rates. Counsel added that the Applicant's reliance on an invoice dated October 2024 was therefore misplaced, since the 2024 Amendment Act was not yet in force, and the 2016 Act had never been declared unconstitutional.

29. On the prayers sought, counsel maintained that prayer (a) was spent by virtue of section 3 of the Amendment Act, which provided for the exemption of freehold land only from 10th December 2024. Prayer (b) was similarly spent, as section 9 of the Amendment Act already provided for transitional and saving provisions. With respect to prayer (d), counsel argued that the Applicant had not proved payment of the alleged rates, had not established illegality, and had failed to cite any provision in the Amendment Act or other law anchoring a claim for refund.

30. Counsel further submitted that if any person had been erroneously assessed for rates after the commencement of the Amendment Act, the proper recourse was to object to the Directorate of Valuation and Rating, which could have corrected the error. Since

the Applicant had not lodged any such objection, the present claim was not ripe for adjudication.

31. On the question of publication timelines, counsel contended that even if there had been delay, non-publication within a particular period did not invalidate an Act. Counsel further contended that unless the court was prepared to strike down the Amendment Act altogether, the Applicant could not seek relief inconsistent with its provisions. He added that if invalidated, the applicable law would have remained the 2016 Act.

32. In conclusion, counsel submitted that the intended judicial review proceeding was illusory and incapable of yielding substantive relief. The application for leave was therefore unmerited and ought to have been dismissed with costs.

ISSUES FOR DETERMINATION

33. I have carefully considered the Application, the Replying Affidavit, and the rival submissions by both parties. At this stage, the court is not called upon to determine the merits of the substantive judicial review but only to assess whether the Applicant has satisfied the threshold for the grant of leave under Order 53 Rule 1 of the Civil Procedure Rules.

34. The principles governing leave for judicial review are well settled. Leave is designed to filter out frivolous or hopeless cases at the earliest stage and to ensure that only cases disclosing an arguable case proceed to full hearing. The Applicant must therefore

demonstrate a *prima facie* case that raises arguable constitutional or legal issues worthy of further interrogation.

35. On whether the Applicant has disclosed an arguable case, I note that the County Assembly passed the Kiambu County Valuation and Rating (Amendment) Act, 2024 on 3rd September 2024, which was assented to on 4th September 2024 and subsequently published in the Kenya Gazette Supplement No. 16. The Respondents have produced evidence of publication, and the Act itself specified a commencement date of 10th December 2024. By virtue of Section 25(2) of the County Governments Act, the law permits county legislation to specify a future commencement date. I therefore find no illegality in the legislative process itself.

36. As regards the Applicant's reliance on invoices dated October 2024, these were issued at a time when the 2016 Act was still in force. Since the 2016 Act had not been repealed and had not been declared unconstitutional, the County Government acted within its lawful mandate in demanding rates. Judicial review does not lie to challenge a lawful exercise of statutory power.

37. On the issue of the rates paid after the commencement date (10th December 2024), counsel for the Respondents has argued that the Applicant has not provided proof of payment for such post-commencement demands or payments and that the proper recourse was to object to the Directorate of Valuation and Rating. However, at the leave stage, the Applicant is not required to provide conclusive proof but only to show an arguable case.

38. I find that the Applicant has raised an arguable case on this ground. If the Amendment Act exempted certain freehold lands from rates with effect from 10th December 2024, then any continued demand or enforcement of payment of rates for those lands after that date is *prima facie* unlawful. The obligation to pay rates is created by statute; if the statute removes that obligation, the legal basis for the demand vanishes. The claim for a refund of any monies paid under such arguably unlawful demands is connected to the principle that public bodies should not be unjustly enriched. This issue requires a substantive hearing to examine evidence of any post-10th December 2024 demands and payments.

Are the orders for Prohibition and Mandamus available to the Applicant?

39. The prayer for mandamus to compel assent and publication is now spent, as the 2nd Respondent has provided evidence that the Act was assented to on 4th September 2024 and published in the Kenya Gazette. However, a prayer for mandamus to compel the Respondents to comply with the enacted law (i.e., to stop demanding rates on exempted land) and to process refunds remains arguable.

40. The prayer for an order of prohibition to restrain the Respondents from charging rates on exempted land is highly arguable. If the Applicant can demonstrate at the substantive hearing that such

demands are ongoing post-commencement, prohibition would be a suitable remedy to prevent a public body from acting *ultra vires*.

41. This court finds that the Applicant has successfully demonstrated that there are arguable points of law, particularly concerning the Application of the Amendment Act *after* its commencement on 10th December 2024, that warrant a full *inter-partes* hearing.

42. Accordingly, the following orders are made:

i). Leave is hereby granted to the Ex-Parte Applicant to apply for Orders of Judicial Review for:

a. An Order of Prohibition directed at the 1st, 2nd, and 3rd Respondents, prohibiting them from charging or demanding land rates on freehold land exempted under the Kiambu County Valuation and Rating (Amendment) Act, 2024, with effect from 10th December 2024.

b. An Order of Mandamus directed at the 1st, 2nd, and 3rd Respondents, compelling them to comply with the Kiambu County Valuation and Rating (Amendment) Act, 2024, and to consider and process, in accordance with the law, any claims for refund of rates paid on exempted land after the Act's commencement.

ii). The grant of leave shall operate as a temporary stay against the 1st, 2nd, and 3rd Respondents from taking any coercive recovery measures (including the accrual of penalties and interest) against the Applicant in relation to rates

demanded on freehold land exempted under the Amendment Act, for the period after 10th December 2024. This stay shall remain in effect until the substantive application is heard and determined.

- iii). The Applicant shall file the substantive Notice of Motion within the next 21 days.***
- iv). Costs of this application shall be costs in the main application for Judicial Review.***

Dated, signed and delivered virtually at Thika this 29th day of September 2025.

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**J. M ONYANGO
JUDGE**

In the presence of:

1. Mr Ometo for the Respondent
2. No appearance for the Applicant

Court Assistant: Hinga