

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR NO. E023 OF 2025

BETWEEN

DORCAS THAMBI KIMEU
.....APPLICANT

VERSUS

PRINCIPAL REGISTRAR NATIONAL REGISTRATION
BUREAU
RESPONDENT

RULING

1. The applicant has moved this court through the application dated 26.2.25 seeking the following orders:
 - 1) ...spent.
 - 2) THAT leave do issue to the Applicant to apply for:-
 - a)AN ORDER OF MANDAMUS directed to the Respondent to compel them to carry out its mandate by changing the particulars of name in the Applicant's National Identity card from her former name DORCUS NTHAMBI MAILU to her newly adopted name DORCUS NTHAMBI KIMEU

without divorce documents (decree absolute) from a court of law.

- 2.** It is the applicant's cases that she was married to Benjamin Mailu Muli in the year 1994 under Kamba Customary Law, adopting her former husband's name Mailu in her national identity card.
- 3.** In the year 2001 or thereabout, the marriage was dissolved under Kamba Customary Law in the presence of elders from both sides.
- 4.** Subsequently on 24th November 2022, she filed a deed poll in which she sought to renounce her ex-husband's name.
- 5.** On 10th February 2023, her change of name was gazetted in the Kenya Gazette Volume CXXV- No.30 under notice number 1634 indicating that she had renounced her former name Dorcus Nthambi Mailu and adopted her new name Dorcus Nthambi Kimeu.
- 6.** She thereafter sought to change the name in her National Identity Card by filing an application for change of particulars in Identity Card dated 29th March 2023 at the National Registration Bureau office in Makadara. The Respondent demanded that she attaches divorce documents from a court of law.

7. She claims that she is unable to comply with the Respondent's request since she was divorced under the Kamba Customary Law.
8. It is her argument that the divorce took place before the enactment of the new Marriage Act of 2014 when a party to a customary marriage did not have to approach the court for divorce.
9. She is aggrieved that the Respondent has refused to approve the change of particulars in her Identity Card.
10. The application is unopposed.

Analysis and Determination;

11. The only issue for determination at this point is whether the applicant is entitled to an order of leave to institute Judicial Review Proceedings.
12. Order 53 Rule 1 of the Civil Procedure Rules 2010, provides that an Applicant must seek leave to institute judicial review proceedings. The Section stipulates that, Applications for mandamus, prohibition and certiorari must be made only with leave.
13. In Rule (2) it provides that an application for an order of mandamus, prohibition or certiorari shall be made unless leave therefore has been granted in accordance with this rule.

14. The importance of obtaining leave in a Judicial Review application was eloquently elucidated in **Republic v County Council of Kwale & Another Ex-parte Kondo & 57 others** as follows:-

“is 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 for further consideration. The requirement that leave must be obtained before making an application for judicial review is 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..”(Emphasis added)

15. In **Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996** it was held as follows:

“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. The requirement that leave must be obtained before making an application for judicial review is 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".

- 16.** This court is satisfied that the applicant has made out a prima facie case that warrants the grant of the of leave initiate judicial review proceedings.

17. From a cursory look at the case, this court is satisfied that the applicant's case is not frivolous. It is one that calls for the inter parties hearing of the merits of the case.
18. The applicant has made out a prima facie case that merit the grant of the orders sought and I do hold.

Disposition;

19. The application has merit.

Order;

- 1) The application is allowed.
- 2) The applicant shall file its substantive suit within 14 days.
- 3) The suit shall be filed in a separate file with this file being marked as closed.
- 4) The respondent shall thereafter file its responses within 14 days of service.
- 5) The applicant shall there after file submissions within ten days
- 6) The respondent will upon being served by the applicant with the submissions file its submission within ten days.

7) This case shall be mentioned for purposes of reporting compliance on the 25th of February 2026.

It is so ordered.

Dated, signed and delivered at Nairobi this 21st day of October, 2025.

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**J. CHIGITI (SC)
JUDGE**