



Ngumi (Suing as the Administrator in the Estate of the Late Abigael Douglas (Deceased)) v University of Nairobi & another; Retirement Benefits Authority (Interested Party) (Judicial Review E023 of 2022) [2025] KEHC 14973 (KLR) (Judicial Review) (21 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14973 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E023 OF 2022
JM CHIGITI, J
OCTOBER 21, 2025**

BETWEEN

JOHN NGUMI (SUING AS THE ADMINISTRATOR IN THE ESTATE OF THE LATE ABIGAEL DOUGLAS (DECEASED)) PETITIONER

AND

UNIVERSITY OF NAIROBI 1ST RESPONDENT

UNIVERSITY OF NAIROBI PENSION SCHEME 2ND RESPONDENT

AND

RETIREMENT BENEFITS AUTHORITY INTERESTED PARTY

RULING

1. The application that is before this Court for determination is the Chamber Summons dated 24th February 2022 wherein the Applicant seeks the following orders:
 1. ...Spent.
 2. That leave do issue for the Applicant to apply for a an Order of Mandamus directed to the Respondents to compel them to produce a full Statement m of Accounts with respect to the total deductions made to the late Abigael Wangui's contribution to the c4 Interested Party's scheme.
 3. That costs of this application be provided for.



2. It is the Applicant's case that he made an application to the Retirement Benefits Authority Appeals Tribunal to enforce the Judgment and subsequent orders issued on 18th October, 2021 which application was allowed.
3. The order was promptly served the Respondents with the Orders demanding for compliance thereof.
4. He is aggrieved that instead of complying with the Tribunal's order, the Respondents relied on an Appeal lodged at the Court of Appeal, which Court did not issue any stay of execution of the Tribunal's decision as a basis of not complying with the said finding.
5. It is further his case that Order 42 rule 6(1) and (2) of the Civil Procedure Rules provide that no appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order. It is thus arbitrary for the Respondents to rely on the existence of the appeal to justify their illegalities.
6. He believes that a court order once issued binds all and sundry, the mighty and the lowly equally without exception. An order is meant to be obeyed and not otherwise.
7. It is his case that the dignity and authority of the court must be protected.
8. In opposing the application, the 2nd Respondent relies on the grounds that:
 1. The application is fatally defective for non-compliance with the mandatory provisions of Order 53 Rule 2 of the Civil Procedure Rules, 2010.
 2. Leave should not be granted as the application seeks enforcement of a decision of the Retirement Benefits Authority Tribunal of 24th July 2012 that was ultra vires and therefore null and void for the following reasons:
 - a. The Supreme Court in *Albert Chaurembo Mumba & 7 Others v Maurice Munyao & 148 Others* [2019] eKLR held that all disputes relating to employment must be determined by the Employment and Labour Relations Court.
 - b. Under Article 163 (7), all Courts are bound by the decisions of the Supreme Court. In light of the *Albert Chaurembo* case, the Tribunal had no jurisdiction to determine questions relating to the manner in which the deceased left employment with the First Respondent.
 - c. Accordingly, the decision of 24th July 2012 is a nullity.
 3. The 2nd Respondent has already filed Civil Appeal No. 642 of 2019 challenging the High Court's decision declining to quash the Tribunal's order. That appeal is still pending for determination before the Court of Appeal.
 4. The application therefore lacks merit and ought to be dismissed with costs.

Analysis and Determination;

9. The only issue for determination at this point is whether the Applicant is entitled to an order of leave to institute Judicial Review Proceedings.
10. In *Meixner & Another v A.G* it was held that the leave of court is a prerequisite to making a substantive application for Judicial Review with a view to filtering out frivolous applications and the grant or refusal involves an exercise of judicial discretion and the test to be applied is whether the Applicant has an arguable case. The leave stage is used to identify and filter out, at an early stage, claims that may be trivial or without merit.



11. Order 53 Rule 1 of the Civil Procedure Rules 2010, provides that an Applicant must seek leave to institute judicial review proceedings.
12. 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 to initiate judicial review proceedings.
17. The court has cautioned itself against delving into the merits of the case at the leave stage. 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. This court is satisfied that 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 Respondents shall thereafter file their responses within 14 days of service.
5. The Applicant shall there after file submissions within ten days.
6. The Respondents will upon being served by the Applicant with the submissions file their submission within ten days.
7. This case shall be mentioned for purposes of reporting compliance on the 25th of February 2026 in the new file.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF OCTOBER 2025.

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J. CHIGITI (SC)

JUDGE

