



Paragon Electronics Limited v Kariuki (Arbitrator); Commission on Administrative Justice (Interested Party) (Miscellaneous Civil Application E021 of 2022) [2025] KEHC 15792 (KLR) (Constitutional and Human Rights) (31 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15792 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
MISCELLANEOUS CIVIL APPLICATION E021 OF 2022**

**EC MWITA, J
OCTOBER 31, 2025**

BETWEEN

PARAGON ELECTRONICS LIMITED APPLICANT

AND

NJERI KARIUKI (ARBITRATOR) RESPONDENT

AND

COMMISSION ON ADMINISTRATIVE JUSTICE INTERESTED PARTY

RULING

1. On 11th January 2022, the Commission on Administrative Justice (the commission) made a determination under article 35 that Paragon Electronics Limited (Paragon) was entitled to information it had sought from the Njeri Kariuki (Ms. Kariuki) relating to arbitral proceedings between Paragon and another party. Paragon later filed an application seeking to have the decision of the commission adopted as an order of the Court and leave to enforce that decision as a decree of the court.
2. In a ruling delivered on 3rd June 2022, (Mrima, J), the court allowed the application and adopted the decision by the commission as a judgment of the court and ordered a decree be issued in that regard.
3. Ms. Kariuki intends to challenge that decision at the Court of Appeal and has now filed this application, seeking leave to appeal against the court's ruling and enlargement of time within which the application ought to have been made. Ms. Kariuki further seeks an order to the effect that the application be deemed to have been filed on time.
4. Ms. Kariuki states that leave is required before an appeal is filed and that even though an oral application for leave was made, the court directed that a formal application be filed. According to Ms. Kariuki,



the issues to be raised on appeal are of public importance, affecting the practice of arbitration in the country, both domestic and at international level, touching on the interplay between *the Constitution*; *Access to Information Act* and the *Arbitration Act*. Ms. Kariuki asserts that it is in the interest of justice that leave be granted. Ms. Kariuki admits that there was delay in filing this application but attributes the delay to her counsel, though she believes that no prejudiced will be occasioned if the application is allowed.

5. Ms. Kariuki relies on the decision in *M/s Muthaura Construction Ltd v Moyale Suppliers & Transporters Ltd* [2017] eKLR for the position that the orders issued on 3rd June 2022 were erroneous; that the role of the commission does not apply to arbitral proceedings instituted by parties in their individual capacities and that she was sitting as an arbitrator in her personal capacity and therefore as a tribunal as defined under the *Arbitration Act*, thus a private person.
6. Ms. Kariuki argues that that the intended appeal has high chances of success and relies on the decision in *Nyutu Agrovet Limited v Airtel Networks Limited* [2015] eKLR to urge that the application be allowed as prayed.

Response

7. Paragon has opposed the application through grounds of opposition, contending that Ms. Kariuki is in contempt of the orders of 3rd June 2022 since the information is yet to be given. Paragon also asserts that this court has no jurisdiction to grant leave to appeal where the right of appeal is automatic and further, that the orders sought for leave are now moot.
8. According to Paragon, Ms. Kariuki has not filed a Notice of Appeal; has not sought extension of time to file a Notice of Appeal and has not demonstrated the grounds on which the court should enlarge time to file a Notice of Appeal. A draft memorandum of appeal has not been attached.
9. Paragon maintains that the intended appeal is moot because Ms. Kariuki has ceased to be an arbitrator in the underlying arbitral proceedings and has, in any event, already complied with some of the orders to be appealed against. Any orders issued herein will be in vain.
10. According to Paragon, the decision to be appealed against was final leading to issuance of a decree, hence leave to appeal is not needed. Paragon relies on the decision in *Judicial Service Commission & Secretary, Judicial Service Commission v Kalpana H. Rawal* [2015] eKLR.
11. Paragon again argues that under Order 43 (3) of the Civil Procedure Rules, an application for leave to appeal ought to be made within 14 days from the date of the decision to be appealed against which was not done. Reliance is placed on *Pelican Engineering & Construction Company Limited v Nairobi Golf Hotels Limited* [1997] eKLR; *Okiya Omtatah Okoit & 2 others v Attorney General & 4 others* [2020] eKLR; *National Assembly of Kenya & another v Institute of Social Accountability & 6 others* [2017] eKLR and *Joseph Odide Walome v David Mbadi Akello* [2022] eKLR.
12. Paragon further argues that the substratum of the matter on which the court rendered the decision was on adoption of the decision of the commission and not interrogation of the lawfulness of the decision. If Ms. Kariuki intended to challenge the decision by the interested party, she should have appealed to the High Court under section 23(3) of *Access to Information Act*. The jurisdiction of this court leading to the decision of 3rd June 2022 was therefore limited to section 23(5). Paragon relies on the decision in *Republic v Isaiah Kubai & another; Commission on Administrative Justice (Interested party) Ex-parte Duncan Muthusi* [2019] eKLR.
13. According to Paragon, Ms. Kariuki had a chance to challenge the decision by the commission by way of appeal to the High Court under section 23(3) of the Act but lost the chance when no appeal was



filed. Allowing the application would amount to appealing against the decision by the commission to the Court of Appeal which is not envisaged by *Access to Information Act* since the application to the high court was made pursuant to section 23(5). Reliance is placed on the decisions in Republic v Sam Nthenya, Chief Executive Officer, Nairobi Women’s Hospital & another Ex parte Christine Nzula; Commission on Administrative Justice (Interested Party) [2021] eKLR and Republic v Isaiah Kubai & another; Commission on Administrative Justice (Interested Party) Ex-Parte Duncan Muthusi [2019] eKLR.

Interested party’s case

14. The commission opposes the application and relies on the decision in Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR) for the proposition that an order for extension of time should not be granted because Ms. Kariuki did not file the application promptly after the orders were issued adopting its decision.
15. The commission argues that Ms. Kariuki was ordered to avail time sheets and ETR receipts which Paragon had requested for use in defending a Bill of Costs. When the request was denied, Paragon approached it under section 14(a) of *Access to Information Act*. The matter was investigated and resolved through the determination made on 11th January 2022 ordering Ms. Kariuki to give the information sought.
16. According to the commission, the argument that it had no jurisdiction to delve into matters on arbitral proceedings is misguided since the issue that was on violation of the right of access to information and not about the conduct of the arbitral proceedings.

Determination

17. I have considered the application; responses; arguments and the decisions relied on. The issue here is whether this court should allow the application and grant leave to appeal. The decision to be appealed against was made on 3rd June 2022, adopting the decision of the commission as a judgment of the court for purposes of enforcement. Ms. Kariuki has filed this application seeking leave to appeal and extension of time for filing this application.
18. Even though the application has been filed within one month from the date of the decision sought to be appealed against, this court has to be satisfied on the propriety of the intended appeal if the application is granted.
19. The decision of the court the applicant seeks to impugn at the Court of Appeal was made on 3rd June 2022 adopting the decision by the commission dated 11th January 2022 granting the request for access to information. That was the principal decision by the commission that the court adopted on 3rd June 2022.
20. Under section 23(2) of the Act, one of the orders the commission may make is an order for the release of any information withheld unlawfully. Section 23(3) provides that a person who is not satisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days from the date the order was made. The section gives an aggrieved party an automatic right of appeal against the decision of the commission. Ms. Kariuki, did not exercise this right and appeal against the decision by commission.
21. Section 23(5) provides that:

If no appeal is filed under subsection (3), the party in favour of whom the order is made by the Commission may apply ex-parte by summons for leave to enforce such order as a decree,



and the order may be executed in the same manner as an order of the High Court to the like effect.

22. There being no appeal under section 23(3), Paragon applied for adoption of the decision by the commission and leave to enforce which was allowed on 3rd June 2022 thus, the decision by the commission crystalized.
23. Ms. Kariuki does not intend to appeal against the decision by the commission and has not applied to set aside the judgment that was entered following the adoption of the decision by the commission. In that respect, Ms. Kariuki has not demonstrated the utility of granting leave to appeal to the Court of Appeal against this court's decision made pursuant to section 23(5) of *Access to Information Act*.
24. Challenging the order adopting the decision by the commission when the decision that was adopted has not been challenged, would amount to allowing a party to appeal against a decision that has not been challenged by invoking section 23 (3) of the Act which granted the applicant automatic leave to appeal to the High Court through the back door. In other words, Ms. Kariuki cannot be heard to argue now that leave should be granted to challenge the decision of this court adopting the decision by commission when the principal decision that was adopted has not been challenged.
25. In the circumstances, no basis has been laid for granting leave to appeal. Consequently, and for reasons stated herein above, the application is declined and dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER 2025.

E C MWITA

JUDGE

