



**Ndambiri v Deputy Registrar, High Court of Kenya at Milimani, Family  
Division (Judicial Review Miscellaneous Application E140 of 2025)  
[2025] KEHC 15643 (KLR) (Judicial Review) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15643 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E140 OF 2025  
RE ABURILI, J  
NOVEMBER 4, 2025**

**BETWEEN**

**CHARITY WANJA NDAMBIRI ..... APPLICANT**

**AND**

**THE HON DEPUTY REGISTRAR, HIGH COURT OF KENYA AT MILIMANI,  
FAMILY DIVISION ..... RESPONDENT**

**RULING**

1. Before this Court is a Chamber Summons dated 3<sup>rd</sup> November, 2025 brought under certificate of urgency, in which the Applicant herein, Charity Wanja Ndambiri seeks leave to apply for judicial review orders of certiorari, mandamus and prohibition, challenging the ruling rendered by the Deputy Registrar of the Family Division of the High Court at Nairobi made on 30<sup>th</sup> September, 2025 in HCF MISC APPL NO. E091 of 2025, on an application dated 24<sup>th</sup> September, 2025.
2. I have certified the application as urgent and called on the applicant's counsel to argue the application orally.
3. In the impugned ruling, the Deputy Registrar dismissed the Applicant's application which, among other orders, sought that documents relied upon by an advocate in support of his bill of costs against the applicant herein, to wit, a sale of motor vehicle agreement, be submitted to the court to be subjected to forensic examination to verify its authenticity because the applicant suspected that the same was a forgery since it contains particulars which are fictitious as far as the transaction that involved her and the advocate were concerned, where she surrendered her motor vehicle to the advocate to be taken as legal fees in kind, only for the advocate to produce a sale agreement showing that the applicant had sold the said motor vehicle to a different person at a stated consideration of kshs 500,000.



4. The Applicant now contends that the Deputy Registrar acted illegally by refusing to exercise jurisdiction over the applicant's application, irrationally by ignoring the weighty issues of forgery, fraud and perjury which she had raised against the advocate, with procedural impropriety by refusing to deal with evidentiary issues thereby undermining her constitutional right to a fair hearing, abused process by proceeding to entertain a taxation of the advocate/ client bill of costs without taking into account the motor vehicle given by the applicant to her said advocate, thereby unfairly enriching the advocate and prejudicing her, as the said motor vehicle is currently registered in the advocates name as shown by the records from the NTSA, and that the ruling was unfair and unreasonable, hence amenable to judicial review.
5. I accorded the applicant's counsel the opportunity to demonstrate its urgency and she made oral submissions before me yesterday afternoon.
6. On the urgency of the application dated 3/11/2025, Ms Wambui submitted that the Deputy Registrar is keen on hearing and determining the bill of costs substantially in Milimani HCF Misc No. E091/2025 on merit. That he summarily dismissed her client's application dated 24/9/2025 in which they had sought the authentication of an alleged sale agreement dated 11/12/2010 which was produced to disqualify the fact that their client had paid in kind money to the advocate in a previous Bill of Costs in Milimani HCC No. 586/2010 which payment in that period is being sought in the HCF Misc E091/2025, which, according to the client applicant herein, amounts to unjust enrichment and the act of forgery is a criminal offence.
7. Counsel submitted that her client will be locked out of justice if she is ordered to pay the costs if taxed and that they applied for recusal of the Judicial Officer on 27/10/2025 which application is due for mention on 5/11/2025 before another Deputy Registrar other than the current Deputy Registrar.
8. On the merits of the leave sought, counsel submitted that they intend to file Judicial Review application to quash the Ruling of the Deputy Registrar made on 30/9/2025, mandamus to compel a different Deputy Registrar to handle the matter of costs and prohibition to prohibit the Deputy Registrar from taxing the bill of costs which is dated 2/4/2025 and that leave so granted do operate as stay of further proceedings in the matter pending the hearing and determination of these Judicial Review proceedings.
9. She submitted that on 30/10/2025 the substantive bill of costs came up for taxation and that had it not been for application for recusal, the bill would have been taxed and a Ruling date given on the substantive Notice of Motion.
10. On the prayer that leave so granted do operate as stay of any further proceedings by the said Deputy Registrar, it was submitted that without the stay, the application will be rendered nugatory and the applicant herein will be condemned to pay costs which she already paid.

### **Analysis and determination**

11. The main issues for determination at this stage is whether the applicant has demonstrated that she has an arguable case to warrant leave of this court to be granted to enable her apply for the judicial review orders sought and if so, whether the leave if granted should operate as stay of any further proceedings by the Deputy Registrar in the impugned proceedings involving advocate/ client bill of costs.
12. The other issue is whether this Court has jurisdiction to entertain this application for judicial review, or whether the matter falls within the supervisory and inherent jurisdiction of the High Court in its ordinary civil jurisdiction.



13. The requirement for leave to apply for judicial review order was explained by Bosire, Mbogholi-Msagha & Oguk, JJ in *Matiba v Attorney General Nairobi H.C. Misc. Application No. 790 of 1993* wherein the Court held that leave stage is supposed to exclude frivolous vexatious or applications which prima facie appear to be abuse of the process of the Court or those applications which are statute barred.
14. Similarly, in *Republic v Land Disputes Tribunal Court Central Division and Another Ex Parte Nzioka [2006] 1 EA 321*, Nyamu, J (as he then was) held that leave should be granted, if on the material available the court considers, without going into the matter in depth, that there is an arguable case for granting leave and that leave stage is a filter whose purpose is to weed out hopeless cases at the earliest possible time, thus saving the pressure on the courts and needless expense for the applicant by allowing malicious and futile claims to be weeded out or eliminated so as to prevent public bodies being paralysed for months because of pending court action which might turn out to be unmeritorious. The same position was taken in *Republic v The P/S Ministry of Planning and National Development Ex Parte Kaimenyi [2006] 1 EA 353*.
15. In *Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others Mombasa HCMCA No. 384 of 1996* the Court stated thus:

“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 position was confirmed by the Court of Appeal in *Meixner & Another v Attorney General [2005] 2 KLR 189* in which the Court held that the leave of the court is a prerequisite to making a substantive application for judicial review and that the purpose of the leave is to filter out frivolous applications hence the granting of leave or otherwise involves an exercise of judicial discretion.
17. The circumstances which guide the grant of leave to apply for judicial review remedies were enumerated in *Mirugi Kariuki v Attorney General Civil Appeal No. 70 of 1991 [1990-1994] EA 156; [1992] KLR 8* as follows:

“The law relating to judicial review has now reached the stage where it can be said with confidence that, if the subject matter in respect of which prerogative power is exercised is justiciable, that is to say if it is a matter on which the Court can adjudicate, the exercise of the power is subject to review in accordance with the principles developed in respect of the review of the exercise of statutory power...the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject matter... It is not the absoluteness of the discretion nor the authority of exercising it that matter but whether in its exercise, some of the person’s legal rights or interests have been



affected. This makes the exercise of such discretion justiciable and therefore subject to judicial review. In the instant appeal, it is of no consequence that the Attorney General has absolute discretion under section 11(1) of the Act if in its exercise the appellant's legal rights or interests were affected. The applicant's complaint in the High Court was that this was so and for that reason he sought leave of the court to have it investigated. It is wrong in law for the Court to attempt an assessment of the sufficiency of an applicant's interests without regard to the matter of his complaint. If he fails to show, when he applies for leave, a prima facie case, on reasonable grounds for believing that there has been a failure of public duty, the Court would be in error if it granted leave. The curb represented by the need for the applicant to show, when he seeks leave to apply, that he has a case, is an essential protection against abuse of the legal process. It enables the Court to prevent abuse by busybodies, cranks and other mischief-makers...In this appeal, the issue is whether the appellant in his application for leave to apply for orders of certiorari and mandamus demonstrated to the High Court a prima facie case for the grant of those orders. Clearly, once breach of the rules of natural justice was alleged, the exercise of discretion by the Attorney General under section 11(1) of the Act was brought into question. Without a rebuttal to these allegations, the appellant certainly disclosed a prima facie case. For that, he should have been granted leave to apply for the orders sought."

18. In *R v Communications Commission of Kenya & 2 Others Ex Parte East Africa Televisions Network Ltd.* Civil Appeal No. 175 of 2000 [2001] KLR 82; [2001] 1 EA 199, the Court of Appeal was of the view that leave should be granted if, on the material available, the Court considers, without going into the matter in depth, that there is an arguable case for granting leave.
19. In *Re Bivac International SA (Bureau Veritas)* [2005] 2 EA 43 (HCK), the Court stated:

"Application for leave to apply for orders of judicial review are normally ex parte and such an application does restrict the Court to threshold issues namely whether the applicant has an arguable case, and whether if leave is granted, the same should operate as a stay. Whereas judicial review remedies are at the end of the day discretionary, that discretion is a judicial discretion and, for this reason a court has to explain how the discretion, if any, was exercised so that all the parties are aware of the factors which led to the exercise of the Court's discretion. There should be an arguable case which without delving into the details could succeed and an arguable case is not ascertained by the court by tossing a coin or waving a magic wand or raising a green flag, the ascertainment of an arguable case is an intellectual exercise in this fast growing area of the law and one has to consider without making any findings, the scope of the judicial review remedy sought, the grounds and the possible principles of administrative law involved and not forget the ever expanding frontiers of judicial review and perhaps give an applicant his day in court instead of denying him....Although leave should not be granted as a matter of routine, where one is in doubt one has to consider the wise words of Megarry, J in the case of *John v Rees* [1970] Ch 345 at 402. In the exercise of the discretion on whether or not to grant stay, the court takes into account the needs of good administration."
20. It is therefore clear from the above judicial pronouncements that the grant of leave to commence judicial review proceedings is not a mere formality and that leave is not granted as a matter of course. The applicant for leave is under an obligation to show to the court that he/she has a prima facie arguable case for grant of leave.



21. Whereas he or she is not required at that stage to go into the depth of the application, he/she has to show that he/she has not come to court after an inordinate delay and that the application is not frivolous, malicious and futile.
22. Needless to say, that the applicant had the option of bringing an application under the Fair Administrative Rules, 2024 but chose to approach the court under common law, which is still a valid approach save that under the Fair Administrative Action Rules, no leave is required in filing judicial review applications by way of Originating Motion, noting that judicial review remedy is now elevated to the level of a constitutional remedy under Article 23 of *the Constitution*. That said, a party is at liberty to choose the common law practice under Order 53 and sections 8 and 9 of the *Law Reform Act* as is the case with the present applicant, or to file proceedings exclusively under the *Fair Administrative Action Act* and Rules, 2024.
23. Therefore, does the present application disclose a prima facie arguable case and therefore does this Court have jurisdiction to entertain the intended proceedings.
24. The jurisdiction of this Court to entertain judicial review proceedings arises under Sections 8 and 9 of the *Law Reform Act* and Order 53 of the Civil Procedure Rules as well as the *Fair Administrative Action Act* and Rules, 2024, implementing Article 47 and 23 of *the Constitution*. Judicial review is a special jurisdiction directed at bodies, persons, authorities or tribunals performing administrative or quasi-judicial functions. It serves to ensure that such bodies act within the bounds of their lawful authority, observe procedural fairness, and refrain from irrational or unreasonable decision-making.
25. The remedy, however, is not available to correct errors within the hierarchy of the court itself. Where the impugned decision emanates from a judicial officer or a court officer acting under delegated judicial authority, the appropriate mechanism is internal review or reference within the same judicial structure, not judicial review.
26. In this regard, it is important to outline the powers of the Deputy Registrar of the High Court. Deputy Registrars of the High Court derive their authority from Order 49 of the Civil Procedure Rules, 2010, and act under delegated powers of the Judge. Their functions are not those of an external administrative body but rather an extension of the judicial power of the High Court.
27. Accordingly, decisions made by a Deputy Registrar are subject to the direct supervisory control of a Judge of the same court. This is an established principle which stipulates that the Deputy Registrar exercises powers delegated by the Judge. Therefore, the Judge has inherent jurisdiction to review or set aside any order made by the Deputy Registrar, where justice so demands, even where no specific provision is made under ORDER 49 Rule 7 (1) of the Civil Procedure Rules.
28. For that reason, a party aggrieved by a Deputy Registrar's decision must approach the Judge under Order 49 Rule 7 or the inherent jurisdiction of the Court, not through judicial review.
29. This old position is supported by the provisions of section 22 of the High Court Organization and Administration Act which provides:
  22. Review of decisions of the Registrar
    - (1) Any person aggrieved by a decision of the Registrar or Deputy Registrar on matters relating to judicial functions of the Court may apply for review by a Judge of the Court in accordance with the Rules.
    - (2) A Judge may confirm, vary or reverse the decision of the Registrar referred to in subsection (1).



30. Thus, a Deputy Registrar's ruling, whether it relates to taxation, interlocutory applications, or administrative directions, is made within the judicial hierarchy of the High Court. Such a decision is not a public-law act susceptible to review under Order 53, but rather a judicial act reviewable within the High Court's own supervisory framework.
31. Additionally, it is trite law that judicial review will not issue where an adequate alternative remedy exists. In this case, the Applicant had a clear and efficacious remedy, to file a Reference or Application to the Judge under Order 49 Rule 7 (where applicable) or under the Court's inherent jurisdiction under Sections 3 and 3A of the *Civil Procedure Act*, inviting the Judge to vary, review, or set aside the Deputy Registrar's ruling.
32. This internal appellate or supervisory procedure provides an adequate mechanism for redress. It would therefore be contrary to judicial policy and a misuse of the supervisory jurisdiction for this Court to entertain judicial review against its own Deputy Registrar.
33. This court further emphasizes that judicial review is concerned not with the merits of a decision, but with the decision-making process. Yet the Applicant's grievance here, is that the Deputy Registrar erred in declining to allow her application to subject the documents to wit, a sale of motor vehicle agreement for forensic examination to determine its authenticity, which is essentially a merit-based complaint.
34. Judicial review is not an appeal and should not be used to substitute the Court's own decision for that of the authority under review.
35. Accordingly, the Applicant's claim properly falls for determination before a Judge through a reference, or an appeal or simply an application under the inherent jurisdiction of the High Court under sections 3 and 3A of the *Civil procedure Act* and not by invoking the remedy of judicial review.
36. Therefore, having considered the pleadings and submissions, I am satisfied that the decision sought to be challenged was made by an officer of this Court acting under delegated judicial authority. It is therefore not amenable to judicial review under Order 53 of the Civil Procedure Rules, but rather to the inherent supervisory jurisdiction of the High Court or a reference under Order 49 Rule 7 of the Civil Procedure Rules.
37. Consequently, this Court finds and holds that it is devoid of jurisdiction to entertain the present application for leave to commence judicial review proceedings.
38. In the end, I find and hold that the Chamber Summons dated 3/11/2025 seeking leave to apply for judicial review orders of certiorari, Mandamus and prohibition challenging the ruling of the Deputy Registrar of the Family Division of the High Court is incompetently filed before this Court and therefore the same is hereby struck out for want of jurisdiction.
39. The Applicant is at liberty to pursue the appropriate remedy by way of a reference or application to a Judge under the Court's inherent jurisdiction.
40. I make no order as to costs, this Court taking the view that the Applicant acted in a mistaken belief of procedure.
41. This file is closed.
42. Orders accordingly.

**DATED, SIGNED & DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**R.E. ABURILI**



**JUDGE**

