



**Frejed Engineering Limited v Chief Magistrate, Milimani Commercial Court;  
Tuffsteel Limited (Interested Party) (Judicial Review Miscellaneous Application  
E160 of 2025) [2025] KEHC 18262 (KLR) (Judicial Review) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18262 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E160 OF 2025  
RE ABURILI, J  
DECEMBER 4, 2025**

**BETWEEN**

**FREJED ENGINEERING LIMITED ..... APPLICANT**

**AND**

**CHIEF MAGISTRATE, MILIMANI COMMERCIAL COURT ..... RESPONDENT**

**AND**

**TUFFSTEEL LIMITED ..... INTERESTED PARTY**

**RULING**

1. The chamber summons dated 3rd December, 2025 filed under certificate of urgency seeks leave of court to institute judicial review proceedings challenging ex parte orders issued by Hon. Daniel Ole Keiwa in Milimani CMCCOM U/E1626 of 2025 in which the court, on an application in a commercial civil suit filed by way of a plaint issued ex parte orders freezing the applicant's bank accounts on account of an alleged unpaid civil debt which has remained unsettled, due to the respondents by the applicant. The applicant also seeks that the leave granted do operate as stay and or unfreezing of the freezing order issued ex parte by the Hon. Magistrate.
2. I have considered the application as filed and supported by the verifying affidavit and statutory statement as well as annexures which include the pleadings in the Magistrate's Court and the impugned order which the applicant seeks to quash and prohibit the court from freezing the accounts of the applicant.
3. I am satisfied that the application is urgent and I certify the chamber summons as urgent.



4. On whether leave and stay sought are available to the applicant, not only is the applicant expected to demonstrate a prima facie arguable case, but also, that judicial review is the only adequate, sufficient relief available to the applicant. Leave to apply is discretionary and the Court may, if satisfied at this ex parte stage that it has no jurisdiction to entertain and grant the orders sought, it may decline that jurisdiction, giving its reasons, while saving judicial time and resources, noting that jurisdiction is everything, without which, a court of law must say no more.
5. In this case, the challenge by the applicant is against ex-parte orders of the Hon Magistrate in a commercial case involving a civil debt. The magistrate on an application under certificate of urgency granted an ex-parte order freezing the accounts of the applicant.
6. The applicant claims that the order was illegal, irrational, violated the right to fair administrative action and procedural fairness, guaranteed under Article 47 of *the Constitution*, Violated Article 50(1) of *the Constitution* on the right to a fair hearing, among other rights.
7. In my humble view, the applicant has approached the wrong court for the following reasons:
  - a. The orders of the Magistrate issued ex parte on 27/11/2025 are amenable for review with an application being made before the same court for setting aside.
  - b. In the event that the Magistrate dismisses the application for review or setting aside, the applicant has the right of appeal to the High Court Commercial Division
  - c. Judicial Review cannot be used as an appellate forum for challenging judicial decisions made by subordinate courts and therefore not every decision of the Magistrates Court can be challenged via judicial review. If that were to be the case, all parties who are aggrieved by the decisions of magistrate Courts would file for judicial review yet there are established review or appeal mechanisms for resolving the grievances.
8. Section 9 of the *Fair Administrative Action Act* which provides the procedure for judicial review provides:
  - “9. 9. Procedure for judicial review
    - (1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of *the Constitution*.
    - (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
    - (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under subsection (1).
    - (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on



application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.

(5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal”.

9. Subsection 2 of section 9 above prohibits this court from entertaining applications for judicial review unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
10. In this case, as stated above, the applicant has the opportunity to file an application before the same magistrate who issued *ex parte* freezing orders seeking orders for setting aside or review of the said orders, giving reasons including the ones advanced in the application subject of this ruling.
11. The decision or order made by the magistrate is a judicial decision which is amenable for review or appeal where applicable and therefore this court not being an appellate court for purposes of judicial review proceedings, finds that the applicant has strayed and filed proceedings in a wrong forum.
12. I decline jurisdiction, there being no special circumstances upon which the applicant can be allowed to file for judicial review to challenge judicial orders made by the magistrates' court in a commercial dispute, where the decision can be challenged through internal review mechanisms and eventually be appealed against.
13. I reiterate that the High Court is hesitant to intervene via judicial review when an effective alternative remedy, such as an application to set aside the order within the magistrates' court, is available.
14. The law does not bar the applicant from raising the same grounds that it has raised before this court, in seeking to set aside the *ex parte* orders of 27/11/2025 and in stating so, this court is aware of the wide discretionary powers that a trial court has in deciding whether or not to set aside *ex parte* orders.
15. For the above reasons, I am not satisfied that the intended substantive proceedings before this court are arguable. This court declines jurisdiction in view of section 9(2) of the *Fair Administrative Action Act* and invoking the same section 9(3) of the *Fair Administrative Action Act*, directs the applicant to first exhaust such remedy by filing an application for setting aside of the impugned order before the magistrate's court and follow the procedure under the Civil Procedure Rules for setting aside orders made *ex parte*.
16. Accordingly, for non-exhaustion of remedies and therefore, for want of jurisdiction, the chamber summons dated 3<sup>rd</sup> December, 2025 is struck out with no orders as to costs.
17. The Registry to notify the applicant forthwith of this ruling made under certificate of urgency.
18. This file is closed.

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

**R.E. ABURILI**

**JUDGE**

