



Kitetu v Machakos County Government & another (Judicial Review Miscellaneous Application E035 of 2024) [2025] KEELC 18459 (KLR) (4 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18459 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

JUDICIAL REVIEW MISCELLANEOUS APPLICATION E035 OF 2024

J OMANGE, J

DECEMBER 4, 2025

THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW PROCEEDINGS

AND

IN THE MATTER OF: SECTIONS 8 & 9 OF THE LAW REFORM ACT CAP 26

AND

IN THE MATTER OF: EXECUTION OF A COURT DECREE

AND

IN THE MATTER OF: ORDER 53 OF THE CIVIL PROCEDURE RULES 2010

AND

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

BETWEEN

JUSTUS MAKAU KITETU APPLICANT

AND

MACHAKOS COUNTY GOVERNMENT 1ST RESPONDENT

MAKUENI COUNTY GOVERNMENT 2ND RESPONDENT

RULING

1. By an Ex Parte Chamber Summons, and a Statutory statement, sworn on 14th November 2024, the Applicant sought leave to take out judicial proceedings, to assist in executing an order dated 10th July



- 2017, a certificate of order against the government dated 21st May 2024 for the cumulative sum of KES 58,821,479.21 and costs of KES 457,534 pursuant to a Certificate of Taxation dated 30 April 2013.
2. The Application is based on the grounds set out in the Statutory Statement by the Applicant. Vide an order dated 10th July 2017, and in consonance with the certificate of order against the Government dated 21st May 2024, it was ordered that the Respondents pay the amount of KES 457,534 in costs, KES 13,000,000 as the decretal sum and interest at 12% per annum from April 1995 to 21st May 2024 at KES 45,363,945 totaling KES 58,821,479.21.
 3. That there was a previous Certificate of Order against the Government dated 6 February 2023 for a total sum of KES 55,377,561.37 which was not honoured hence the consequent one of 21st May 2024. That the said orders arose from HCC 2491 OF 1995.
 4. The Applicant posited that he has sent several reminders dated 24 August 2022, 19 October 2023 and 21 May 2024 but the Respondent has failed and or refused to settle the decretal amount.
 5. The Applicant contends that he has suffered mental and emotional anguish as a result of the Respondents actions which have caused him great distress.
 6. The Applicant exhibited a copy of the said order of 10 July 2017, the Certificate of Order dated 21 May 2025, the Certificate of Order dated 6 February 2023, letters dated 24 August 2022, 19 October 2023 and 21 May 2024 as well as the Certificate of Taxation dated 24 April 2013.
 7. The Application was served upon the Respondents, who filed a Notice of Preliminary Objection dated 27 January 2025.
 8. The Respondents contend that the calculations made by the Applicants in the Application are erroneous. They acknowledge that vide the order dated 10th July 2017 the Court had ordered the Respondents to pay the decretal sum of KES 9,000,000, costs of KES 457,534 and interest thereon at 12% per annum from April 1995 to 21 May 2024.
 9. The 2nd Respondent asserts that the decretal sum of KES 13,000,000 is incorrect and therefore urges the Court to dismiss the application with costs.
 10. In response thereto, the Applicant filed a Replying Affidavit sworn on 1 April 2025 and argued that the Preliminary Objection is not merited as it fails to meet the test of a Preliminary Objection.
 11. Parties filed respective written submissions on the Application dated 14 November 2024 and the Respondents' preliminary Objection. The Applicant filed submissions dated 17 April 2025 while the 2nd Respondent's submissions are dated 12 May 2025.
 12. The Applicant addressed the validity of the Preliminary Objection, relying on the case of *Kyule v Gitaari* (Civil Appeal 217 of 2023) [2024] KEHC 5819 (KLR) (23 May 2024) (Ruling) wherein the court defined a preliminary objection and the case of *Hassan Nyanje Charo v Khatib Mwashetani & 3 others* [2014] Eklr where it was held that a preliminary objection should be on a pure question of law.
 13. The Applicant further placed reliance on *Republic v County Government of Embu Ex parte Peterson Kamau Muto t/a Embu Medical And Dental Clinic & 6 others* [2022] KEHC 2113 (KLR) on the place of judicial review applications. He urged the Court to allow his Summons.
 14. The Respondent further submitted that the application is an abuse of the Court process as the relief of mandamus cannot be used to compel payment of disputed claims. The 2nd Respondent thus urged the Court to allow the Preliminary Objection and strike out the dismiss the Application.



15. This Court has considered the Applicants’ Application, the statutory statement, affidavit, exhibits, the submissions and the authorities cited. The Court has also considered the 2nd Respondent’s objection.
16. The court will first consider the 2nd Respondent’s Preliminary objection. As correctly submitted by the parties, it is trite law that preliminary objections may only be raised on pure points of law as outlined in the Mukisa Biscuit Case.
17. To further fortify this position, in the case of Mwangi Stephen Muriithi v Daniel T. Arap Moi & another [2017] eKLR, the Court (Ohungo J) held at paragraph 18 of his Ruling that

“It is clear from the foregoing that the following ingredients must be present for a preliminary objection to succeed: It should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

(Emphasis added)
18. The 2nd Respondent’s preliminary objection is a factual contest on the figures disclosed in the Orders and Decrees of the trial Court and is thus not a pure point of law. Be that as it may, this Court holds that if the 2nd Respondent has an objection or contention as to the correctness or otherwise of a decree of this Court, the Civil Procedure Act and Rules provides mechanisms for such correction.
19. Order 53 Rule 1 of the Civil Procedure Rules provides that no application for judicial review orders should be made unless leave of the court was sought and granted. The reason for the leave was explained by Waki J. (as he then was), in Republic vs. County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996 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”.
20. In an application for leave such as this the court does not have to delve deeply into the merits of the case, but simply make a determination whether on the face of it, the facts as presented are sufficiently meritorious as to justify leave.
21. It is not in dispute that there is a decree which has not been satisfied, various demands and notices have been served. The application is allowed as followed;
 - a. Leave is hereby granted to institute Judicial Review Proceedings within 21 days from today.

RULING SIGNED DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 4TH DAY OF DECEMBER 2025

JUDY OMANGE



JUDGE

In the presence of

Court Assistant Catherine

In the absence of parties

