



Republic v Nairobi City County & 8 others; Umoja Old Ngara Estate Welfare Association & another (Ex parte Applicants) (Judicial Review E040 of 2025) [2026] KEELC 236 (KLR) (22 January 2026) (Ruling)

Neutral citation: [2026] KEELC 236 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
JUDICIAL REVIEW E040 OF 2025**

**J OMANGE, J
JANUARY 22, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

NAIROBI CITY COUNTY 1ST RESPONDENT

COUNTY CHIEF OFFICER, HOUSING AND URBAN RENEWAL, NAIROBI CITY COUNTY 2ND RESPONDENT

CHIEF EXECUTIVE COMMITTEE MEMBER, BUILDING ENVIROMENT & URBAN PLAN, NAIROBI CITY COUNTY 3RD RESPONDENT

CHIEF EXECUTIVE COMMITTEE MEMBER, FINANCE AND ECONOMIC PLANNING NAIROBI CITY COUNTY 4TH RESPONDENT

**THE GOVERNOR, NAIROBI CITY COUNTY 5TH RESPONDENT
OFFICER COMMANDING STATION, NGARA POLICE STATION 6TH RESPONDENT**

THE COUNTY ATTORNEY, NAIROBI CITY COUNTY 7TH RESPONDENT

THE INSPECTOR GENERAL OF POLICE 8TH RESPONDENT

THE HONOURABLE ATTORNEY 1 GENERAL 9TH RESPONDENT

AND

UMOJA OLD NGARA ESTATE WELFARE ASSOCIATION EX PARTE APPLICANT

MARTIN IRERI NJOROGE EX PARTE APPLICANT



RULING

1. Before the court is the ex parte applicants application dated 20th May 2025 seeking leave to institute Judicial Review proceedings against the Respondents. The applicants seek the following prayers;
 - a. That the honourable court be pleased to grant leave to the ex-parte applicants to apply for orders of Prohibition restricting the 1st, 2nd and 3rd Respondents, their agents, servants and/ or whosoever acting upon their instructions from evicting the Applicants/Applicants from County Residential Rental Houses located in Old Ngara estate within Nairobi City County pending hearing and determination of this Application.
 - b. That the honourable court be pleased to grant leave to the ex-parte applicants to apply for orders of Prohibition restricting the 1st,2nd and 3rd Respondent/Respondents by themselves, their agents, servants and/or whosoever is acting upon their instructions from evicting the 2nd Applicant from House Number 54 of County Residential Rental Houses located in Old Ngara estate within Nairobi City County pending hearing and determination of this Application.
 - c. That the honourable court be pleased to grant leave to the ex-parte applicants to apply for orders of PROHIBITION against the 1st ,2nd and 3rd Respondents restricting them from reallocating Residential Rental houses in Old Ngara Estate within Nairobi City County pending hearing and determination of this Application.
 - d. That the honourable court be pleased to grant leave to the ex-parte applicants to apply for orders of Mandamus compelling the 1st, 2nd, 3rd and 4th Respondents to implement the Gazette Notice Number 2728, Dated 18th March,2021 issued by the 1st and 4th Respondents.
 - e. That the honourable court be pleased to grant leave to the ex-parte applicants to apply for orders of MANDAMUS compelling the 1st ,2nd and 3rd Respondents to comply with the Orders issued by the honourable court on 7th June,2007 in Civil, Suit Number 2019 of 2007, Chief Magistrate’s Court at Milimani, Peter Njuguna Kuria & 214 others -versus-Town Clerk City Council of Nairobi and City Council of Nairobi.
 - f. That the honourable court be pleased to grant leave to the ex-parte applicants to apply for orders of Mandamus compelling the 1st, 2nd and 3rd Respondents to return goods that they unlawfully took away from the members of the 1st Applicant on 14th May,2024.
2. The application is brought on grounds that the Respondents have conducted unlawful evictions on the ex parte applicant’s members alleging rent arrears in spite of a waiver that was given by the defunct Nairobi City Council vide gazette notice number 2728 dated 18th March 2021.
3. That the Respondents are in violation of a court order issued on the 7th June 2007 in Civil suit Number 2019 of 2007 Chief Magistrate’s court Milimani which restricted the respondents from demanding or increasing rent until repairs are done in the houses, which repairs the applicants indicate have not been done.
4. The 1st to 5th respondents filed grounds of opposition dated 17th June 2025 raising the following grounds;
 - i. That the chamber summons application is defective as it has failed to comply with the mandatory requirements of order 53 rule 1 of the civil procedure rules 2010 being that the



application was not accompanied by a statutory statement and a verifying affidavit to verify the facts in the statutory statement

- ii. That the application is defective for failure to annex or properly identify the administrative decision being challenged thereby warranting a justifiable cause of action
5. The application was canvassed by way of written submissions. The applicant submitted that failure to file a statement and verifying affidavit is a procedural defect which is curable as it does not go to the substance of the application. Counsel argued that the Respondents will not be prejudiced if the application proceeds. Counsel cited the case of Microsoft Corporation Vs Mistumi Computer Garage Ltd & Another (2001)2 EA 460
6. Counsel for the Respondent cited the case of Republic Vs Kenya Sugar Board & Another, Nzoia Sugar Company Limited & 6 others (Interested parties) ;Manyuru & 5 others insisting that failure to file a statutory statement is not a mere technicality as stated by the applicant. The lack of a statutory statement meant there is no formal pleading to be determined by this court.
7. On his part Counsel for the Applicant argued that there are substantive issues raised in the application concerning unlawful evictions and violations of constitutional rights that should be heard on merit
8. Counsel for the Respondent further submitted that a judicial review application lies to challenge a specific, identifiable and concluded decision of a public body and in this case the decision being referred to by the applicant is an unauthenticated, unsigned internal memo that has no legal force and as such is not a decision and falls outside the scope of judicial review.
9. The twin issues for determination are whether the application for leave should be struck out for failure to annex a statutory statement and verifying affidavit and secondly whether the letter amounts to a decision that can warrant a Judicial Review application.
10. Order 53 Rule 1 of the Civil Procedure Rules which is the procedure for filing of Judicial Review proceedings and orders for mandamus prohibition and certiorari is clear that:
11. “53 (1) No application for an order of mandamus, prohibition and certiorari shall be made unless leave therefore has been granted in accordance with this rule;
12.
 - (2) An application for such leave as aforesaid shall be made ex-parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.”
13. Rule 2 is clear that the application must be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which the relief is sought and by affidavits verifying the facts relied on, then, in the absence of a statutory statement and or verifying affidavit, the application would be unsupported and would be amenable for striking out.
14. Order 53 Rule 4 is clear that:
15. “4(1) copies of the statement accompanying the application for leave shall be served with the notice of motion and copies of any affidavits accompanying the application for leave shall be supplied on demand and no grounds shall, subject as hereafter in this rule provided, be relied upon or any relief sought at the hearing of the motion except the grounds and relief set out in the said statement.”



16. From the above Rule 4(1), the applicant, once granted leave, is mandated to file the substantive motion and serve together with copies of the statement and verifying affidavits accompanying the application for leave.
17. In *Susan Gacheri Kithinji vs OCPD Dadoab and another* [2016] eKLR, the Honourable Dulu J on 26th April 2016 struck out both the application for leave and the substantive motion that were filed without any statement as stipulated under Order 53 Rule 4 of the Civil Procedure Rules.
18. Further, in *John Waweru Vs District Veterinary Office Maragwa & Another* [2006] e KLR, Wendo J in dismissing the application for Judicial Review where there was no statement stated, inter alia, that:
19. “Neither the application for leave, nor the application filed after leave was obtained contains a statutory statement as required by law. On that account, even the application which was filed after leave was obtained, was fatally defective and stands no chance of salvation.”
20. The above decisions are persuasive. A statutory statement accompanying an application for leave to institute Judicial Review proceedings is a mandatory requirement of the law. The statutory statement identifies the parties, sets out the reliefs sought and specifies the grounds upon which the said reliefs are sought.
21. At the leave stage the court must be provided with full information that would enable it to consider the full case the Respondent will face. More so considering that this is the same case the Respondent will answer to. The court cannot give blanket leave.
22. I reiterate the holding of the court JR 249/2015 Republic Vs Registrar General & 2 Others ex-parte Thomas Asogo & 2 Others [2016] eKLR wherein the court held inter alia:
23. “I am not persuaded that in the circumstances of this case, Article 159 of *the Constitution* would come to the aid of the applicant. To hold that failure to file a statutory statement to accompany application for leave or the substantive motion is a procedural technicality would be stretching Article 159 too much and to seek to provide succor and cover to parties who exhibit scant respect for rules and matters of substance that clothe this court with jurisdiction to hear and determine the matters before it, and which rules serve to make the process of judicial adjudication and administration fair, just, certain and even handed.”
24. Equally I find that this is a case where the holding in *Nicholas Kiptoo Arap Korir Salat Vs IEBC & Others Civil Application Nairobi 228/2013* provides useful guidance;

“Courts cannot and in the bending of circumventing of rules and shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is the even- handed and dispassionate application of rules that courts give assurance that there is clear method in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarify where issues of rules and their application are concerned.”
25. The courts jurisdiction to grant leave is only invoked once the mandatory requirements for leave which describe the plaintiffs case are filed. In the absence of that, I find that the application is fatally defective and is hereby struck out with no orders as to costs given the nature of claim.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 22ND DAY OF JANUARY 2026.

JUDY OMANGE



JUDGE

In The Presence Of

Ms. Mathenge for Respondents.

N/A for Petitioners.

Court assistant – Peter.

