



REPUBLIC OF KENYA



KENYA LAW
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**Smart Coach Limited v County Government of Nairobi (Judicial Review E259 of 2025)
[2026] KEHC 1334 (KLR) (Judicial Review) (11 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E259 OF 2025
JM CHIGITI, J
FEBRUARY 11, 2026**

BETWEEN

SMART COACH LIMITED APPLICANT

AND

THE COUNTY GOVERNMENT OF NAIROBI RESPONDENT

RULING

1. The Application that is before this court for determination is the one dated 20th August 2025, wherein the Applicant seeks the following Orders:
 1. That the Applicant be granted leave to apply for Judicial Review orders of Mandamus compelling the Respondent to reinstate and secure Smart Coach Limited's exclusive use of the previously allocated picking and dropping zone along Mfangano Street, Nairobi, as per its lawful allocation.
 2. That the leave so granted do operate as a stay against any interference, obstruction, or unlawful occupation of the said zone by any other SACCO or entity pending the hearing and determination of the substantive motion.
 3. That the costs of this Application be provided for.
2. It is the Applicants case that it is a licensed PSV operator with a valid allocation for a picking and dropping zone along Mfangano Street from the Nairobi County Government as set out in the letter detailing the allocation dated 8th June 2023.
3. It is the applicant's case that the allocation was made after due administrative process, and the Applicant has at all times complied with all obligations, including payment of requisite fees.



4. The Applicant is aggrieved that Respondent has permitted another SACCO to operate from the same picking and dropping zone, causing operational chaos, loss of customers, and withdrawal of several member vehicles from the Applicant's SACCO.
5. It argues that its letter to the Respondent dated 17th April 2025 seeking intervention, has not elicited any response and The Respondent's inaction has resulted in severe financial losses and is threatening the very survival of the Applicant's business. The Application is unopposed.

Analysis and Determination;

Upon perusing the Application, the issue that stands out for determination are:

1. Whether the Applicant is entitled to leave to institute Judicial Review proceedings or not.
2. Whether the leave so granted do operate as a stay against any interference, obstruction, or unlawful occupation of the said zone by any other SACCO or entity pending the hearing and determination of the substantive motion.
6. The requirement that leave must be obtained before making an Application for judicial review under Order 53 of The Civil Procedure Rules was 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.
7. 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.
8. It is an exercise of the court's discretion but as always it has to be exercised judicially.
9. In *Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others*, Mombasa HCMCA No. 384 of 1996 Waki J. (as he then was) made the following findings:

“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.”
10. In *Uwe Meixner & another v Attorney General* [2005] eKLR, it was held that the leave of court is a prerequisite to making a substantive Application for Judicial Review with a view to filtering out frivolous Applications and the grant or refusal involves an exercise of judicial discretion and the test to be applied is whether the Applicant has an arguable case. Thus, the first step in the Judicial Review procedure involves the mandatory "leave stage." At this stage an Application for leave to bring Judicial Review proceedings must first be made. The leave stage as held by Waki J is used to identify and filter out, at an early stage, claims which may be trivial or without merit.
11. This court is satisfied that the Applicant before granting leave to file judicial review, the court must ascertain that the following three principals have been met:
 - a. The Application discloses a prima facie case,
 - b. The Applicant has locus standi



- c. The Application is not time barred.
12. The first principle is that the court should, through a mere cursory or a quick perusal of evidence before it establishes that not merely arguable case has been set out but also it is one with a reasonable chance or possibility of success on inter parties hearing.
 13. In the case of Republic vs. Land Disputes Tribunal Court Central Division and Another Ex Parte Nzioka [2006] 1 EA 321 it 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.”
 14. The court is satisfied that the applicant has the locus standi to move this court and that it has made out a prima facie case.
 15. The court will now address the 2nd prayer wherein the Applicant seeks an order that the leave so granted do operate as a stay against any interference, obstruction, or unlawful occupation of the said zone by any other SACCO or entity pending the hearing and determination of the substantive motion.
 16. In determining this prayer, the court has looked at the conduct of the Applicant and noted that it took very long for it to move the court after it noted that there was a challenge in using the parking slot that forms the subject matter of this Application.
 17. The Applicant confirms that it was aware of the fact that the Respondent had issued a license, authorizing another SACCO to occupy the suit premises, that it had been assigned.
 18. The Applicant has not disclosed when it became aware that the Respondent had allocated the suit property to another SACCO.
 19. The issuance of the stay order will no doubt interfere with the interested parties.
 20. Further to this, the Applicant did not identify nor seek to add the said SACCO to this suit. It would have been necessary for the court to hear the sentiments of the third party who the Applicant is confirming is in occupation of the parking slot.
 21. To issue the stay order in the circumstances will amount to condemning an unknown party unheard.

Determination;

22. The Application meets the legal threshold for the grant of the prayer for leave under Order 53 Rule 1 of the Civil Procedure Rules.
23. The prayer for stay lacks merit.

Orders:

1. Leave is hereby granted to the Applicants to file judicial review proceedings seeking the orders of Mandamus.
2. The prayer that the leave so granted do operate as a stay against any interference, obstruction, or unlawful occupation of the said zone by any other SACCO or entity pending the hearing and determination of the substantive motion is declined.
3. This file is closed.



4. The Substantive Notice of Motion shall be filed and served within Seven (7) days from the date hereof.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF FEBRUARY 2026.

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J. CHIGITI (SC)

JUDGE

