

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E380 OF 2025

ROCKCREST GROUP LIMITED.....1ST APPLICANT

MUNENE M. CHRISTOPHER.....2ND APPLICANT

VERSUS

THE GOVERNOR

NAIROBI CITY COUNTY.....1ST RESPONDENT

THE EXECUTIVE MEMBER FINANCE

NAIROBI COUNTY GOVERNMENT.....2ND RESPONDENT

THE CHIEF FINANCE OFFICER,

NAIROBI COUNTY GOVERNMENT.....3RD RESPONDENT

THE COUNTY GOVERNMENT OF NAIROBI.....4TH RESPONDENT

AND

ATTORNEY GENERAL.....1ST INTERESTED PARTY

YETU SACCO SOCIETY.....2ND INTERESTED PARTY

JUDGMENT

1. The Originating Motion before this court is dated 28th November 2025. The application seeks an order of Mandamus compelling the 2nd, 3rd and 4th Respondents to ensure the payment of the sum of Kshs.13,483,000 together

with interest accruing at court rates at the time the contract was to have been duly executed being remuneration due in respect of tender number NCC/ENV/ONT/078/2022-23.

2. The Motion also seeks an order of prohibition against the Respondents prohibiting them from further withholding and declining to remunerate the said monies to the Applicants. The application is supported by the affidavit of Munene M. Christopher sworn on 28th November 2025.
3. The Applicant's case is that they entered into a contract with the 4th Respondent however that during the subsistence of the contract for collection and disposal of solid waste, the County began to violate some of the terms of the agreement and as such they opted to exit from the contractual obligation, and to recover the funds used for the work done. The amount owing according to the Applicant was Kshs.13,483,000.
4. They urge that in order for the 2nd Applicant to seamlessly execute the contract through his other company Brickman Construction Limited, he obtained from the 2nd Interested Party the sum of Kshs. 5,400,000, which given the delay in paying the same the 2nd Interested Party has resorted to recover by attaching property belonging to the 2nd Applicant's father being LR No. ABOTHUGUCHI/L-KAONGO/33-ZAKAYO MBOBUA IMANENE which was used as security in the advancement of the said loan facility.

5. The 2nd Applicant's sons and daughters are said to have moved to court to stop the sale of the land through **MELC/035 of 2025-Betty Kagwiria vs. Zakayo Mbobua, Christopher Munene and Others**. The Applicants state that they wrote demand letters and even petitioned through consultants which petition was responded to by the County on 22nd July 2025. The Applicants urge that no prejudice will be suffered by the Respondents if the orders sought are granted.
6. Despite service of the application upon the respondents and interested party. None of them appeared to respond.
7. The Applicants filed written submissions dated 22nd December 2025.
8. The Applicants submit that courts should uphold contractual sanctity and party autonomy, arguing that a binding contractual relationship arose from the tender award as is evidence from the documents annexed in the supporting affidavit. They urge that as was held in **William Muthee Muthami v Bank of Baroda [2014] KECA 591 (KLR)(Civ) (23 May 2014) (Judgment)** even where there is no documentation as to the existence of the contractual agreement, the same does not preclude the possibility of a binding contract provided the conduct of the parties aligns with contractual principles.
9. They contend that unforeseen circumstances frustrated full performance after substantial execution, yet the Respondents refused payment for

completed work, thereby unjustly enriching themselves contrary to equitable principles recognised in **Morjaria v Patel [2025] KEHC 2930 (KLR) (Commercial & Admiralty) (6 March 2025) (Judgment)**, while maintaining they approach the court with clean hands as emphasised in **Onyancha & another v Lagat [2025]KEELC 672 (KLR) (20 February 2025) (Judgment)**.

10.They seek reimbursement of Ksh 13,483,000 plus interest and costs, asserting that costs should follow the event in line with **Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others Petition No. 4 of 2012 [2014] eKLR** and **Joseph Oduor Anode v Kenya Red Cross Society [2012] eKLR**, and highlight related financial hardship arising from recovery proceedings in **MCELC NO.E034 OF 2025;Betty Kagwiria v Zakayo Mbobua & Others**.

11.The Respondents and Interested Parties did not file any response to the application or written submissions.

Analysis and Determination

12.I have considered the application as presented and the written submissions filed by the Applicants. The issue for determination is whether the application is merited and if so, what orders to make.

13.The Originating Motion seeks orders of mandamus compelling payment of Kshs. 13,483,000 allegedly due in regards to a waste collection contract

entered between the Applicants and Nairobi County Government and prohibition restraining continued withholding of the same.

14. The nature and scope of mandamus is now well settled, that mandamus only issues to compel performance of a public duty imposed by law where the applicant has demonstrated a clear legal right and the respondent has failed to discharge that duty. It neither creates obligations nor serves as a mechanism for enforcing private law rights or resolving contested claims, as articulated by the Court of Appeal in **Kenya National Examinations Council v Republic ex parte Geoffrey Gathenji Njoroge [1997] eKLR**.

15. From the material placed before this Court, the Applicants' claim arises from an alleged contractual relationship stemming from Tender No. NCC/ENV/ONT/078/2022–23, partial performance thereof, and a demand for remuneration for work done. Determination of such entitlement necessarily entails inquiry into the existence, validity, breach, and terms of the contract, as well as quantification of the sum claimed. These are typical private law issues suited for adjudication through an ordinary civil suit and not within the supervisory remit of judicial review, whose concern is legality of public action rather than enforcement of contractual obligations.

16. In the context of this case, no specific statutory or public duty has been demonstrated that obliges the Respondents to pay the claimed sum absent prior judicial determination. Any enforceable obligation to satisfy the

alleged debt would crystallise only upon the Applicants establishing their claim and obtaining a decree and certificate of order against the Government pursuant to section 21 of the Government proceedings Act, in appropriate proceedings.

17. Mandamus cannot therefore issue to compel payment of a disputed contractual sum, which has not been subjected to appropriate legal proceedings and a decree issued. Equally, the order of prohibition sought cannot restrain what is essentially a contested contractual non-payment rather than an unlawful exercise of public power.

18. Accordingly, this Court is not persuaded that the dispute falls within the province of judicial review or that the threshold for the grant of mandamus or prohibition has been met.

19. In **Republic v Judiciary of Kenya & another; Canaries Holdings Limited (Ex parte Applicant) [2025] KEHC 17953 (KLR)** this Court held as follows in a similar matter:

“42. Besides, in as much as judicial review is a constitutional remedy, it is not every time one claims that their rights and, in this case, the rights arise from a contract entered into between the judiciary and the applicant, that they must approach the court by way of judicial review or constitutional petitions. I am fortified on this point by the decision in Greater Busoga Sugarcane Growers Co-

op Union v UDC & Others (Misc. App. No. 129/2024 where the High Court in our neighbouring jurisdiction in Uganda stated, persuasively, that judicial review was not available to enforce private contractual rights against a public body.

43. The Court stated as follows and I find this to be good law that:

“It is settled law in Uganda, as was held in High Court Misc. Cause No. 0003/2016: Arua Kubala Park Operators And Market Vendors’ Cooperative Society Limited v Arua Municipal Council, which quoted with approval R v East Berkshire Health Authority Ex Parte Walsh [1984] 3 WLR 818, that the remedy of judicial review is only available where the issue is of breach of “public law”, and not of breach of a “private law” obligation. To bring an action for judicial review, it is a requirement that the right sought to be protected is not of a personal and individual nature but a public one enjoyed by the public at large. According to of the text Public Law in East Africa, Ssekaana Musa, 2009, Law Africa Publishing, the learned author states, at page 36, that 2 (two) things must be established for judicial review to be available, 1) the body under challenge must be a public body whose activities can be controlled by judicial review, 2) the subject matter of the challenge must involve claims based on public law principles, not the enforcement of private law rights. Public law

is the system which enforces the proper performance by public bodies of the duties which they owe the public. On the other hand, private law is concerned with enforcement of personal rights of persons, human or juridical, such as those emanating under property, contract, duty of care under tort and mainly regulates relations between private persons: Arua Kubala Park Operators And Market Vendors' Cooperative Society Limited v Arua Municipal Council. (supra) In Arua Kubala Park Operators And Market Vendors' Cooperative Society Limited v Arua Municipal Council (Supra), the Honourable Mr. Justice Stephen Mubiru held that where a relationship is regulated by the law of contract, like in the instant Application, administrative law remedies should generally not be available. The Learned Judge further held that it is important that parties are held to their contractual obligations through ordinary suits and not by invoking public law remedies. A party should not take advantage of public law simply because it contracted with a public body, and thereby obtain an advantage in the enforcement of that contract, that would otherwise not be available against a non-public body or private person. The subject matter of the claim being pursued in the judicial review application must involve strictly matters of public law not private law. Public bodies

(like private bodies) may enter into contracts or commit torts. Individuals may only be seeking to enforce essentially private law rights. Judicial review is not available to enforce purely private law rights. Contractual and commercial obligations are enforceable by ordinary action and not by judicial review. See R v Lord Chancellor ex p. Hibbit and Saunders [1993] C.O.D 326.”

20. In **Daniel Mutisya Kivuva v Machakos Golf Club [2019] KEHC 1262**

(KLR) the Court had this to say:

“The application seems to be a judicial review camouflaged as a constitutional petition as judicial review is not available to the petitioner. Judicial review is not available to enforce purely private law rights. Contractual and commercial obligations are enforceable by ordinary action and not by judicial review. See R v Lord Chancellor ex parte Hibbit and Saunders [1993] COD 326.”

21. Additionally, as the Applicants have not shown what delimited statutory duty is owed to them by the Respondents, the Order of Mandamus as intended is legally untenable. See the Supreme Court decision in **SGS Kenya Limited And Energy Regulatory Commission, Public Procurement Administrative Review Board And Intertrek Testing Services-SC Petition No. 2 OF 2019** at para [45].

22. Accordingly, this Court finds the dispute to be one of private contractual enforcement outside the scope of judicial review and that the threshold for mandamus or prohibition has not been met.

23. The Originating Motion dated 28th November 2025 is hereby dismissed.

24. The orders of mandamus and prohibition sought are declined.

25. The Applicants are at liberty to pursue their claim through appropriate civil proceedings, if so advised.

26. Each party shall bear its own costs.

27. This file is closed.

28. I so order.

Dated, Signed & Delivered at Nairobi this 25th Day of February, 2026

**R.E. ABURILI
JUDGE**