



Muthomi & Karanja Advocate v Nairobi City County Assembly & another (Miscellaneous Civil Application E042 of 2025) [2026] KEHC 3575 (KLR) (Judicial Review) (12 March 2026) (Ruling)

Neutral citation: [2026] KEHC 3575 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
MISCELLANEOUS CIVIL APPLICATION E042 OF 2025
JM CHIGITI, J
MARCH 12, 2026**

BETWEEN

MUTHOMI & KARANJA ADVOCATE APPLICANT

AND

THE NAIROBI CITY COUNTY ASSEMBLY 1ST RESPONDENT

THE CLERK, NAIROBI CITY COUNTY ASSEMBLY 2ND RESPONDENT

RULING

1. The Application that comes up for ruling is the Chamber Summons Application dated 7th April 2025 wherein the Applicant seeks the following orders; thereafter so that counsel for the Applicant can be heard on an Application for the following orders:
 1. The application is hereby certified urgent and service thereof is hereby dispensed with in the first instance.
 2. Leave is hereby granted to the applicant to apply for the Judicial Review compelling the Respondents to pay to the Applicant within fourteen (14) days the sum of KShs.32,926,954.64 plus interest at the rate of 14% p.a from 7th April 2025 until payment in full in accordance with the Decrees and Certificates of Costs issued in High Court (Nairobi) Miscellaneous Civil Application No. E013 of 2021 and High Court at Nairobi Miscellaneous Civil Application No. E199 of 2023.
 3. In default of the above, a Notice to Show Cause be issued against the 2nd Respondent to show why he should not be cited for contempt of court for failing to settle the Decrees and Certificates of Costs issued in High Court (Nairobi) Miscellaneous Civil Application No.



E013 of 2021 and High Court at Nairobi Miscellaneous Civil Application No. E199 of 2023 on time and expeditiously.

4. The costs of and incidental to this Application be provided for.
5. Such other, further, alternative, and/or incidental orders as this Honourable Court may deem expedient.

The Applicant's case;

2. A Decree was issued on 31/07/2024 for KShs.24, 376,063.70 on account of Judgment dated 16/07/2024 entered in High Court at Nairobi Miscellaneous Civil Application No. E199 of 2023 in favour of the Applicant, together with costs of the Claim and interest on the principal amount at the rate of 14% p.a. from 10/03/2023. Thereafter on 30.9.24, the High Court issued a Certificate of Order and Costs against the Respondents for a sum of KShs.29, 705,684.85.
3. The Applicant also holds a Decree dated 09/07/2024 for KShs.1, 168,916.80 on account of a Ruling dated 28/06/2024 entered in High Court at Nairobi Miscellaneous Civil Application No. E013 of 2021 in favour of the Applicant, together with costs of the Claim and interest on the principal amount at the rate of 14% p.a. from 01/08/2023 until the date of full and final settlement.
4. For this, The Applicant holds another valid Certificate of Order and Costs against the 1st Respondent dated 26/09/2024 for a sum of KShs.1, 168,916.80, entered in High Court at Nairobi Miscellaneous Civil Application No. E013 of 2021, where this Honourable Court certified that the amount was payable to the Applicant by the Respondents, together with interest.
5. The cumulative amount of KShs.32,926,954.64 plus interest at 14% p.a. until payment in full on account of the various Decrees obtained by the Applicant against the Respondents is outstanding.
6. The Respondents have neglected, omitted, refused and failed to satisfy the decretal sums despite due demand and notice.
7. The Respondents' refusal and unwillingness to pay the decretal sums violates the national values and principles of governance, especially those relating to the rule of law, obedience to court orders/decrees, good governance, integrity, transparency, accountability and public finance management.
8. It is unfair, oppressive and contemptuous of this Honourable Court for the decretal sums to remain unpaid indefinitely or for a prolonged period merely because of the Respondents' recalcitrance.
9. Responding to the replying Affidavit dated 7th April 2025 the Applicant argues that in summary, the Affidavit principally contends that the Applicant has been progressively receiving payments from the Respondents and hence has no valid claim before this Court, that compared to the amounts taxed by the Court in the various claims, the 1st and 2nd Respondents overpaid the Applicants for the legal services rendered, and upon setoff, the Applicant is owed by the Respondents a total sum of KShs.7,032,827.78 and the Applicant's complaint with the Controller of Budget ousts the jurisdiction of this Court.
10. The factual background to this dispute is uncontested, and the Applicant reiterates its averments in its Verifying Affidavit to the Application dated 7th April 2025.
11. The Respondents' main contention is that it has overpaid for the various matters it had instructed the Applicant and that a set-off should be conducted to arrive at the correct amount payable. This contention is and as the same should have been raised during the taxation proceedings or in a subsequent Reference Application for consideration.



12. It is the Applicants case that as it stands, this Court is bound to strictly apply the applicable legal criteria for the enforcement of the taxed amounts since the taxation proceedings are complete with no stay orders, no challenges on the taxed amounts, and neither have the relevant Certificates of Taxation issued been set aside, varied, and/or reviewed.
13. The Applicant confirms the Respondents' assertion in para.6 of their Affidavit that the parties centered into negotiations during the prosecution of High Court at Nairobi Miscellaneous Civil Application No. E199 of 2023.
14. The Applicant and the Respondents thereafter engaged in a reconciliation exercise to establish the amounts that had been paid and what amounts were outstanding.
15. These negotiations were centered on all the matters consolidated in the said Application, which were, High Court Constitutional and Human Rights Division arising from : Hon. Abdi Hassan Guyo vs The Speaker Nairobi City County Assembly & 3 Others, Judicial Review arising from High Court (Nairobi) : Mary Arivisa Mwami vs The Nairobi City County Service Board & Another, Milimani Employment and Labour Relations Court arising from Employment and Labour Relations Court: The Clerk Nairobi City County Assembly vs The Speaker Nairobi City County Assembly & Another, Milimani Employment and Labour Relations Court arising from Employment and Labour Relations Court: Mary Arivisa Mwami vs The Nairobi City County Service Board & Another, Milimani Employment and Labour Relations Court arising from Employment and Labour Relations Court: Mary Arivisa Mwami vs The Nairobi City County Service Board & 2 Others, Milimani Employment and Labour Relations Court arising from Employment and Labour Relations Court: Beatrice Kedeversia Elachi vs Nairobi City County Public Service Board & Others, High Court Civil arising from High Court: Dr. Robert Ayisi, County Secretary, Nairobi City County vs The Speaker, Nairobi City County Assembly & Another and Milimani Environment and Land Court arising from Environment and Land Court: Roy Mutua Kivusyu and Joyce Mutua Kivusyu T/A Joyroys Services vs Nairobi City County & 2 Others.
16. On 16th July 2024, after the conclusion of the negotiations and the reconciliation exercise, the parties recorded a Consent Judgment in favour of the Applicant for an agreed sum of KShs.24, 376,063.70 which the Applicant and Respondent negotiated upon to arrive at the above-stated Decretal sum.
17. The Respondents cannot be heard to raise the same contentions at this stage after they were fully addressed in the parties' negotiations and agreed upon per the Consent Judgment recorded in Court determining the Bill of Costs Application.
18. The Applicant approached the Controller of Budget in line with its functions per of the *Controller of Budget Act*, and it is incumbent on the Respondents to cooperate with the inquiry and furnish the required information per of the *Controller of Budget Act* to enable the Controller of Budget to issue its recommendations.
19. The Applicant urges the Court to disregard the Respondent's Affidavit.

The Applicant's Submissions;

20. The Applicant instituted this suit through a Chamber Summons Application dated 7th April 2025 under Certificate of Urgency.
21. In the Application, the Applicant seeks Judicial Review compelling the Respondents to pay to the Applicant the sum of KShs.32,926,954.64 plus interest at the rate of 14% p.a. from 7th April 2025 until payment in full in accordance with the Decrees and Certificates of Costs issued in Nairobi High



- Court Miscellaneous Civil Application No. E013 of 2021, and Miscellaneous Civil Application No. E199 of 2023. The Applicant contends that it is deserving of the orders sought in the Application as it has complied with all statutory requirements, having secured Decrees and Certificates of Order and Costs against the Government, which have been duly served upon the Respondents.
22. In *Nahashon Omwoha Osiako & 66 Others v Attorney General Amicus Curiae Kenya Section Of International Commission of Jurists (Open Society Justice Initiative)* [2017] KEHC 1579 (KLR), the Court reaffirmed that for Decree Holders to obtain the fruits of their judgment against the Government they had to comply with the above statutory requirements before execution, and the said requirements were not inimical to their right to property under of *the Constitution* of Kenya (available at pg.12,13 of these submissions).
 23. Further, in *V Chokaa & Co Advocate v County Government of Mombasa as Successor of Municipal Council of Mombasa & another* [2016] KEHC 3578 (KLR), the Court held:

“the provisions of *Government proceedings Act* apply to County Government as much as it does to the National Government... all a decree-holder ought to do is to extract a decree, a certificate of order against the government and serve the same against the Respondent and thereafter demand settlement of decree. Where the County Government became adamant or just recalcitrant after all that is done, an Applicant has the remedy in the prerogative orders of mandamus. The decree holder has no justification to seek to enforce his decree otherwise... An order of mandamus would compel the accounting officer to the department concerned with payment to effect payment and on default the matter is then perceived as contempt of court for which one then becomes liable to punishment.” (Available at pg.17 of these submissions)
 24. The Applicant duly obtained:
 - a. A Decree dated 9th July 2024 in Miscellaneous Civil Application No. E013 of 2021, which was duly served on the Respondents on 7th August 2024;
 - b. A Decree dated 31st July 2024 in Miscellaneous Civil Application No. E199 of 2023, which was duly served on the Respondents on 7th August 2024;
 - c. A Certificate of Order and Costs against the Government dated 26th September 2024 with respect to Miscellaneous Civil Application No. E013 of 2021, which was duly served on the Respondents on 16th October 2024; and
 - d. A Certificate of Order and Costs against the Government dated 30th September 2024 with respect to Miscellaneous Civil Application No. E199 of 2023, which was duly served on the Respondents on 16th October 2024.
 25. To date, the Respondents have refused to satisfy the decretal sums or any portion thereof despite due demand and notice.
 26. The Courts have consistently held that upon service with the Certificate of Order and Costs Against the Government, the relevant Government entity through its accounting officer was bound to satisfy the same; failure to which the Applicant was entitled to the Judicial Review Orders of mandamus to enforce the same.



27. In Republic V Permanent Secretary, Ministry Of State For Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza [2012] KEHC 1643 (KLR), the Court held:

“Once the certificate of order against the Government is served ...Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues...the service of the certificate of order against the Government...constituted a demand for payment and the fact that no response or payment was received by the Applicant from the Respondent for two months was sufficient reason for the Applicant to construe that the Respondent had neglected to perform his statutory duty to pay under Section 21(3) of the *Government Proceedings Act*. The Applicant was therefore entitled to move to court to seek an appropriate remedy.” (Available at pg.20, 21 of these submissions)

The Respondents case;

28. It is their case that the firm of Muthomi and Karanja was engaged to act for the Assembly in various court matters.
29. The firm of advocates submitted a fee note seeking payment of Kenya Shillings 57,595,600/= for work done on 17 matters.
30. They argue that the firm subsequently, proceeded to file multiple claims to demand for payments for services rendered which were eventually consolidated in Miscellaneous Civil Application No. E199 OF 2023 Muthomi Karanja Advocates vs Nairobi City County Assembly.
31. It is further their case that an account of the payments made to the complainant clarified the reduction in figures from Kenya Shillings 57,595,600/= to 24,376,062.70/= (excluding accrued interest) that was eventually adopted by the court at the conclusion of the matter Miscellaneous Civil Application No. E199 OF 2023 Muthomi Karanja Advocates vs Nairobi City County Assembly.
32. The Respondents argue that they have been paying legal fees alongside the payments Judicial Review Miscellaneous Civil Application No. 380 of 2014, Judicial Review Application No. 480 of 2016: Nairobi Civil Application No. 197 of 2017, Constitutional Petition Number 155 of 2017, ELRC Petition Number 92 of 2018, High Court of Kenya Misc. Civil App. Number 575 of 2016.
33. According to the Respondent, the Assembly has been progressively making payments to the firm of advocates for other matters it has handled.
34. They argue that on or about 08th October 2024 the Assembly initiated a payment of Kenya Shillings 1,355,704/= to be paid to the complainant, together with 13 other firms.
35. Payments were made on various dates between 22nd June 2016 and 5th July 2019, given this timeline, interest is owed to the Assembly for the overpayments from July at Court Rates.
36. The vote for legal fees for the Assembly currently stands at 14,304,388/=. These funds have already been committed to ongoing cases including one matter at hand specifically the decretal amount issued by Justice Mwita. Consequently, the vote cannot cover the amount being sought.



37. The current constraints notwithstanding, the Respondents are currently actively engaging with the Commission of Revenue Allocation to discuss a potential increase in the Assembly's budget ceiling. A key focus of these discussions is addressing the outstanding amount owed to the complainant.
38. On 12th March 2025, the Applicant lodged a complaint with the office of the controller of Budget, alleging that the 2nd Respondent had unlawfully refused to make the payments being claimed.
39. They argue that pursuant to Section 16 of the Controller of Budget Act 2016, the Office of the Controller of Budget exercised its jurisdiction by initiating an inquiry into the non-payment issues raised by the Applicant, It is therefore appropriate that the determination of this inquiry be concluded before this Honourable Court assumes jurisdiction over the matter

Analysis and determination:

The only issue for determination at this point is whether the Applicant is entitled to an order of leave to institute Judicial Review proceedings.

40. In *Meixner & Another v A.G* 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. The leave stage is used to identify and filter out, at an early stage, claims that may be trivial or without merit.
41. Order 53 Rule 1 of the Civil Procedure Rules 2010, provides that an Applicant must seek leave to institute judicial review proceedings. The Section stipulates that, Applications for mandamus, prohibition and certiorari must be made only with leave.
42. In Rule (2) it provides that an Application for an order of mandamus, prohibition or certiorari shall not be made unless leave therefore has been granted in accordance with this rule.
43. The importance of obtaining leave in a Judicial Review Application was eloquently elucidated in Republic v County Council of Kwale & Another Ex-parte Kondo & 57 others as follows: -

“is 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 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..”(Emphasis added)

44. In *Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others*, Mombasa HCMCA No. 384 of 1996 it was held 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".

45. This court is satisfied that the Applicant has made out a prima facie case that warrants the grant of the of leave initiate judicial review proceedings.
46. From a cursory look at the case, this court is satisfied that the Applicant's case is not frivolous. It is one that calls for the inter parties hearing of the merits of the case.
47. The court is satisfied that the Applicant has made out a prima facie case that merits the grant of the orders sought and I so hold.

Disposition

48. The Application has merit.

Order;

1. The Application is allowed.
2. The Applicant shall file its substantive suit within 14 days.
3. The suit shall be filed in a separate file.
4. The Respondent shall thereafter file its responses within 14 days of service.
5. The Applicant shall there after file submissions within ten days
6. The Respondents will upon being served by the Applicant with the submissions file their submission within ten days.
7. This file is marked as closed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MARCH 2026.

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J. CHIGITI (SC)

JUDGE

