



**Republic v Muithali & another; Kaida (Interested Party) (Environment and Land
Judicial Review Case 29 of 2022) [2024] KEELC 43 (KLR) (15 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 43 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 29 OF 2022
MAO ODENY, J
JANUARY 15, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

PETER MUIHALI 1ST RESPONDENT

THE CHIEF MAGISTRATE 2ND RESPONDENT

AND

LUCY KAIDA INTERESTED PARTY

RULING

1. This ruling is in respect of a Notice of Motion dated 25th October 2022 by the Applicant seeking the following orders:
 - (a) That the Honourable court be pleased to issue judicial review orders of certiorari to remove into the High Court the proceedings, decisions and all orders by the respondent made in Malindi CM Misc No. E37 of 2022 between the interested party and the Ex-parte applicant herein and quash the same.
 - (b) That the Honourable court be pleased to issue judicial review orders of prohibition to remove into the High court the proceedings, decisions and all orders by the respondent made in Malindi CM Misc No. 37 of 2022 between the interested party and the Ex-parte applicant herein and prohibit the respondent from taking any further proceedings.
 - (c) That the costs to the application be provided for.



2. The application is based on the grounds set out on the face of the application and Supporting Affidavit of Peter Muthali who deponed that he was the Plaintiff in Malindi CMCC No 24 of 2020 and Appeal No E001 OF 2021, which is still pending determination.
3. He further deponed that The Interested Party filed Malindi CMCC MISC No E001 of 2022 seeking breaking and eviction orders, which were granted, by the court. The Applicant stated that the court lacked jurisdiction to hear and determine the application as per Section 7 of the Civil Procedure Act and urged the court to allow the application as prayed.
4. The application was opposed by the Interested Party vide an affidavit sworn by Lydia Kaida dated 11th January 2023. The application was canvassed by way of written submissions where counsel for the Applicant gave a brief history of the case as deponed by the Applicant in his affidavit.

Interested Party's Submissions

5. Counsel for the Interested Party gave a background to the case and submitted that the Ex – parte Applicant had occupied the suit premises for a period of time without paying rent and later filed Malindi ELC No. 44 of 2016 which was dismissed by the court.
6. Ms Tonia Mwanja further submitted that the Applicant later filed another case being ELC No 24 of 2020, which was also dismissed. That upon dismissal the Applicant filed ELC Appeal No E001 of 2021, which is still pending, and at the same time filed Mombasa BPRT case No. E059 of 2021, which was also dismissed with costs for being *res judicata*.
7. Counsel relied on the case of Municipal Council of Mombasa v Republic & another [2002] eKLR on Judicial Review and urged the court to dismiss the application with costs.

Analysis And Determination

8. The issue for determination is whether the Applicant has met the threshold for grant of judicial review orders.
9. The principles for Judicial Review were set out in the case of Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR where the Court of Appeal held:

“that an order of certiorari can only quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction or where the rules of natural justice are not adhered to or any other reasonable cause. It is trite law that the remedy of Judicial Review is not concerned with the merits of the case but the decision-making process. In order for an applicant to succeed in an application for Judicial Review, he must satisfy the court that a public officer has acted unprocedurally, that his decision was unreasonable and that the impugned decision was illegal.”
10. In the case of Municipal Council of Mombasa Vs Republic & Umoja Consultants Ltd (2002) eKLR, (*Supra*) the Court of Appeal held that: -

“Judicial review is concerned with the decision making process, not with the merits of the decision itself; the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters...The court should not act as a Court



of Appeal over the decider which would involve going into the merits of the decision itself- such as whether there was or there was not sufficient evidence to support the decision.”

11. Having laid down the principles for grant of orders of judicial review, the Applicant was under a duty to establish that the decision maker being the Magistrate either lacked jurisdiction or the decision was made illegally or in excess of such jurisdiction. The Applicant fell short of this and dwelt on the outcome of the decision.
12. The Applicant had a right of appeal, which he exercised, and the said appeal is still pending determination. Litigants should not abuse court processes by filing numerous suits in different fora to expect different outcomes. There has to be an end to litigation at one point. That is why the doctrine of res judicata is in place.
13. I will not belabor on this application, as it does not meet the threshold for grant of judicial review orders. The Applicant admitted as much to the cases that he has filed and a pending appeal. The Applicant has also admitted that the execution has been partially completed as the Applicant was evicted from the suit premises.
14. The upshot is that the application lacks merit and is therefore dismissed with costs to the Interested Party.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 15TH DAY OF JANUARY 2024.

M.A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

