



REPUBLIC OF KENYA



KENYA LAW
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**Muindi & 3 others (Suing as officials of Village D Self Help Group) v
Machakos County Government & 2 others (Judicial Review Application
E002 of 2023) [2024] KEELC 1547 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1547 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
JUDICIAL REVIEW APPLICATION E002 OF 2023**

A NYUKURI, J

MARCH 13, 2024

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW ORDERS OF MANDAMUS**

AND

**IN THE MATTER OF ARTICLES 20, 21, 23, 40, 43, 47,
48 AND 50 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF ARTICLES 25 AND THE UNIVERSAL
DECLARATION OF HUMAN RIGHTS (UDHR) ARTICLE
11 OF THE INTERNATIONAL CONVENANT ON THE ECONOMIC, SOCIAL
AND CULTURAL RIGHTS (ICESCR) ARTICLE 17 OF THE INTERNATIONAL
COVENANT ON POLITICAL AND CIVIL RIGHTS (ICPCR) AND ARTICLE 18 OF
THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS AS APPLIED
IN KENYA UNDER ARTICLE 2(5) AND (6) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF CONSTITUTION OF KENYA (PROTECTION
OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE
PROCEDURE RULES 2013, RULES 3, 4 AND 5 OF THE CONSTITUTION**

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE
LAW REFORMS ACT CAP 26 LAWS OF KENYA**

AND

**IN THE MATTER OF SECTIONS 7 AND 8 OF THE FAIR
ADMINISTRATIVE ARTICLES AND ACT AND 2015**

AND



**IN THE MATTER OF THE CONSTITUTION AND RIGHTS OF OWNERSHIP
TO PROPERTY AS ENshrINED IN THE CONSTITUTION OF KENYA**

BETWEEN

RICHARD NZIOKA MUINDI 1ST APPLICANT
DANIEL MWIKYA 2ND APPLICANT
KIMATU MUTUKU 3RD APPLICANT
MARY MUSYIMI 4TH APPLICANT
SUING AS OFFICIALS OF VILLAGE D SELF HELP GROUP

AND

MACHAKOS COUNTY GOVERNMENT 1ST RESPONDENT
MACHAKOS COUNTY COMMISSIONER 2ND RESPONDENT
INSPECTOR GENERAL OF POLICE KENYA 3RD RESPONDENT

RULING

Introduction

1. Vide a chamber summons application dated 18th September 2023, the applicants herein sought the leave of court to apply for the following orders;
 - a. That an order of certiorari to quash the decision of the respondents made on 13th September, 2023 to interfere, demolish homes, impound equipment and evict the applicants from the land parcel 12610/5.
 - b. That an order of prohibition do issue restraining the respondents from further interfering, arresting, impounding of equipment and/or evicting the applicants from the land parcel 1260/5.
 - c. That leave so granted does operate as stay of any further interference, impounding of equipment and/or eviction of the applicants from LR No.12610/5
 - d. That any other and/or further relief that this honorable court may deem fit and just to grant.
 - e. That costs of this application be provided for.
2. The application was based on grounds on its the face, verifying affidavit sworn on 18th September 2023 by one Richard Nzioka Muindi, one of the applicant’s officials and the applicant’s statutory statement dated 18th September 2023. The applicant’s case is that Village D Self Help Group was formerly known as Village D Ngelani Self Help Group who possessed and occupied land known as LR 12610/5 for more than 40 years, which is their ancestral land. That in 2017, the applicant was faced with eviction from one Aldus Limited but on moving to court vide Civil Suit No. 35 of 2017, stay orders were issued in favour of the applicants. Further that in 2022, some unknown persons to the applicants moved into the suit property and started carrying out acts of wastage and putting their lives in extreme danger



causing them to move the court again vide ELC Case No. E023 of 2022 and obtained status quo orders which are still in force todate.

3. They stated that on 13th September 2023 the respondents descended on the village and threatened to evict them, without producing any court orders for such eviction. He deposed that the Respondents have not given reasons for evicting them. Further that the actions are against the principles of legitimate expectation and natural justice and that the court ought to intervene and question the said decision by the Respondents. They attached authority to swear; certificate of registration of Village D Self Help Group; order in Miscellaneous 35 of 2017 and ELC E23 of 2022 and photographs.
4. The application is opposed. The 2nd and 3rd Respondents filed grounds of opposition dated 12th October 2023. They argued that the application was incompetent, frivolous, scandalous full of falsehoods and outside the purview of Judicial Review as the allegations revolve around breach of a court order that was issued by a different court.
5. It was stated that the summons does not meet the threshold for granting of leave stated in *R v. County Council of Kwale & Another Ex-parte Kondo & 57 Others*, Mombasa HCMA No. 384 of 1996.
6. They further stated that the summons was a non-starter and that it sought to paralyze and curtail the 2nd and 3rd Respondents from carrying out their mandate since the applicants had not demonstrated how the respondents had acted irregularly, unfairly, unreasonably and irrationally in performing their duties. They concluded by stating that the summons had violated Sections 60 and 65 of the *Evidence Act* Cap 80 Laws of Kenya with regards to the photographs and that the Applicants had not demonstrated an arguable case, citing the case of *R v. District Land Adjudication and Settlement Officer Maara Sub-County & 3 Others Ex Parte Applicant: N'Nnyiri Ragwa: Njeru Kirika (Interested Party)* [2021] eKLR.

Analysis and Determination

7. The court has carefully considered the summons and the grounds of opposition. The only issue that arise for consideration is whether the applicant has met the threshold for grant of leave to institute judicial review application.
8. Order 53 Rule 1 of the *Civil Procedure Act* makes it mandatory to obtain leave before filing an application for judicial review, and provides as follows;
 1. Application for mandamus, prohibition and certiorari to be made only with leave [Order 53 rule 1]
 - (1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.
 2. An application for such leave shall be made exparte to a judge in chambers, and shall be accompanied by-
 - a. A statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought; and
 - b. Affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the respondent, over the same subject matter and that the cause of action relates to the applicants named in the application.



9. Grant of leave to seek judicial review remedies is not a matter of course. For the court to grant leave, the applicant must demonstrate a prima facie case which warrants further investigation at the inter parties hearing of the substantive motion.
10. In the case of *Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others*, Mombasa HCMCA No. 384 of 1996, the court held that leave is meant to eliminate at an early stage any applications that may be vexatious, frivolous or hopeless; so as to prevent waste of court's time by busy bodies presenting trivial and misguided complains; to ensure the applicant is only allowed to proceed to the substantive hearing where he or she has established a prima facie case fit for further consideration and to remove the uncertainty regarding which public officers can safely proceed with administrative action while the matter is pending judicial review.
11. In the instant matter, the ex parte applicant refer to a joint decision made on 13th September 2023 by the County Government of Machakos, Machakos County Commissioner and the Inspector General of Police to demolish homes, impound equipment and evict applicants from LR No. 12610/5. There was however no search certificate in respect of LR No. 12610/5 attached to the application. Therefore the court cannot tell whether that title exists and if it does, in whose name the same is registered. This court cannot issue orders blindly and without the applicant proving basic facts on allegations made.
12. In addition, the applicants allege that there are status quo orders issued in ELC Case No. E023 of 2022 and that the respondents actions violate those orders. My view in that regard is that if any person is in violation of a court order, then the law in Section 5 of the *Judicature Act* allows a party to cite a contemnor for contempt. I do not think that contempt proceedings can properly be conducted in a judicial review proceeding, outside the proceedings where the order alleged to have been violated was issued.
13. In my view, if the applicant thinks that the status quo order issued in ELC Case No. E023 of 2022 was violated, then the right procedure would be to cite the respondents herein in that case and not file a judicial review application.
14. In the premises, it is quite clear to me that this application is an abuse of the court process and I am not satisfied that the ex parte applicant has demonstrated a prima facie case to warrant an escalation of these proceedings to the hearing of a substantive motion.
15. The upshot is that I find and hold that the chamber summons dated 18th September 2023 has no merit and the same is hereby dismissed. As the application ought to be heard ex parte, I make no order as to costs.
16. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 13TH DAY OF MARCH, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of:-

No appearance for the applicants

No appearance for the respondents

Abdisalam – Court Assistant

