



Maina (Suing on Behalf of 127 others) v Nairobi City Council & 3 others (Environment & Land Case 365 of 2017) [2025] KEELC 423 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 423 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 365 OF 2017
AA OMOLLO, J
JANUARY 30, 2025**

BETWEEN

**JOSEPH SAYI MAINA PLAINTIFF
SUING ON BEHALF OF 127 OTHERS**

AND

NAIROBI CITY COUNCIL & 3 OTHERS & 3 OTHERS DEFENDANT

RULING

1. The Plaintiff/Applicant has brought the present motion dated 14th August, 2024 which is headed thus;
“In the High Court of Kenya at Nairobi Misc. Cause No. ...of 2024 (Application for leave to commence proceedings in the nature of Judicial Review)”
2. The application is stated to be brought under section 8 and 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules. The orders sought are as follows;
 1. That an order of Mandamus be issued compelling the County Government Nairobi, County Governor Nairobi, County Secretary Nairobi and County Finance Officer Nairobi to compel them to Honour the Decree and orders of the court issued and or given on the 23rd March, 2000.
 2. Further in the alternative damages arising from the matter herein and interest thereof.
 3. That the respondents be condemned to pay the costs of this application on the grounds stated in the statutory statement dated 5th July, 2024.
3. The application was filed in the current suit ELC 365 of 2017 however Judicial Review Proceedings are independent of a civil suit and even the nature of the orders sought ought to be brought in a separate file. The application is headed as one seeking leave to commence Judicial Review Proceedings against



the Respondents but no such leave has been sought. But no order for leave is included in the list of prayers. Without first obtaining leave to take out such proceedings, the application is premature and is irregularly brought.

4. Thus, the application is misfiled as an interlocutory application while it is a substantive motion that would result in a judgment decree being issued. The orders to be granted if the Applicant is successful amount to a decree capable of being executed on its own and not within the file which has already been concluded and a judgement rendered. It is unprocedural to have two decrees in one suit.
5. Consequently, the Applicant not having sought for leave of the court to commence judicial review proceedings, the motion seeking orders of mandamus is premature. The proper thing for the Applicant to do is to move the court vide a fresh suit under the [Law Reform Act](#) and Order 53 of the [Civil Procedure Act](#).
6. For now, I strike out the motion dated 14th August, 2024 with no order on costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JANUARY, 2025

A. OMOLLO

JUDGE

