



REPUBLIC OF KENYA



KENYA LAW
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Kamakia v KE743 Nkondi Child Development Centre (CDC) & another (Judicial Review E003 of 2025) [2025] KEELRC 2374 (KLR) (14 August 2025) (Ruling)

Neutral citation: [2025] KEELRC 2374 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
JUDICIAL REVIEW E003 OF 2025
ON MAKAU, J
AUGUST 14, 2025

BETWEEN

NAOMI MUTHONI KAMAKIA CLAIMANT

AND

KE743 NKONDI CHILD DEVELOPMENT CENTRE (CDC) . 1ST RESPONDENT

REV JONATHAN KAUNDUBU 2ND RESPONDENT

RULING

1. This ruling relates to the Notice of Preliminary Objection dated 20th May 2025 by which the respondents objected to the suit and the interlocutory motion on the following grounds: -
 - a. No leave was granted to apply for Judicial Review proceedings.
 - b. The respondent is not a public body subject to Judicial Review.
 - c. The prayers sought are not available in an application for Judicial Review.
 - d. The prayers in the Notice of motion sharply differ from those in the petition for Review.
 - e. The application has not been brought in the name of the Republic.
2. The objection was disposed of by written submissions. It was submitted for the respondent that bringing the Judicial review application without leave renders it a proper case for striking out with cost. For emphasis, reliance was placed on Republic v Retirement Benefits Authority Ex-parte Alex Anyona Momanyi & 6 others (2021) eKLR and Republic v Ondege (Secretary General, Union of Kenya Civil Servants) & 3 Others (Ex-parte) (2023) KEELRC 2132 (KLR).
3. It was further submitted that the respondent is not a public entity but a church which cannot be subject to judicial review. Besides, private dealings including law of contract and labour laws are not subject to judicial review. For emphasis, reliance was placed on Republic v Ministry of Lands,



Settlement & Urban Planning County Government of Mombasa & 3 Others Ex-parte Mohammed Al-Hadi (2009) eKLR.

4. It was argued that the orders sought in the suit including injunction are not available in judicial review. Reliance was placed on Cortec Mining Kenya Limited v Attorney General & 8 Others (2015) eKLR.
5. Finally, it was submitted that the orders sought in the motion contradicts with those sought in the suit. It was also submitted that the Judicial review is not brought in the name of the Republic.
6. The Applicant, on the other hand, submitted that the court has jurisdiction to determine the suit. It further submitted that the objection raises legal technicalities and the court was reminded of Article 159 (2) (d) of *the Constitution*.
7. It was further submitted that the objection does not pass muster as it raised points of fact. The court was urged to find that the applicant is entitled to the reliefs sought in the suit. Therefore, she prayed for the objection by the respondents to be dismissed with costs.

Issues for determination

8. Having considered the pleadings, the objection and the submissions, the issues for determination are: -
 - a. Whether the objection passes muster.
 - b. Whether the objection has merits

Threshold of a preliminary objection

9. The threshold for a preliminary objection was stated in Mukisa Biscuits Manufacturing Co.Ltd v West End Distributors Ltd (1969) EA 696 where the court held:-

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implications out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or plea of limitation or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertain or if what is sought is the exercise of judicial discretion.”

10. The Preliminary objection herein raises both issues of law and form. The issue of grant of leave, and applicability of judicial review process on private entities and dealings are legal issues. The contradictions between the pleading and the interlocutory motion and the failure to sue in the name of the Republic are in my view issues of form.
11. Whereas, the issues of form may not meet the said threshold of a preliminary objection, the other two issues of law meet the threshold since if successful, they can bring the suit to an abrupt death without the need to take evidence. Consequently, on the basis of the two issues of law, I hold that the preliminary objection passes muster.

Merits of the Preliminary objection

12. The Applicant is not represented by counsel and as such the court sympathizes with her situation. The pleadings before the court is a mongrel of Constitutional petition, Judicial Review Application and normal claim, but wearing the identity of Judicial review application.



13. The respondent was offended by the procedure adopted by the petitioner to sue it. To begin with it objects to the Judicial Review proceedings because they were filed without leave of the court. secondly, it objects to the suit because it is not a public entity and the dealings involved are governed by private law.
14. The Applicant did not specifically respond to the foregoing points. However, my view is that the law has really evolved since the 2010 Constitution was promulgated incorporating labour rights and right to fair administrative action in the Bill of Rights. In the circumstances, it is now possible to subject private entities and their dealings in work place to judicial review as known under the Law Reform Act and Order 53 of the Civil Procedure Rules, or under the Constitution under Article 22 and 258. Article 22 and 258 entitles every person to petition the court alleging that a right in the bill of rights has been violated or is threatened with violation, or that the Constitution has been violated or is threatened with violation.
15. The ELRC Procedure Rules, 2024 provides clear procedures that litigants can approach the court, whether by Judicial Review or under the Constitution. Rule 10 of ELRC Procedure Rules 2024 provides that: -
- “ 10 Any person who wishes to institute a petition shall do so in accordance with
- (1) the Constitution of Kenya (Protection of Rights and Fundamental Freedoms and Enforcement of the Constitution) Practice and Procedure Rules.
- (2) Any person who wishes to institute Judicial review proceedings shall do so in accordance with sections 8 and 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules.
- (3) Notwithstanding anything contained in this rule, a person may seek the enforcement of any constitutional right and freedom or any constitutional provision in a statement of claim or other suit filed before the Court.”
16. The above provision is very clear that a person wishing to enforce the Constitution has to file a petition under Mutunga Rules or file claim. However, for judicial review, the litigant must file application under Order 53 of the Civil Procedure Rules. Rules of Procedure are important in civil litigation and they must be adhered to whenever a litigant approaches the court to originate proceedings. As is clear from the record the Applicant did not comply with both ELRC Procedure Rules 2024 and the Mutunga Rules
17. Having said that, I must with sympathy uphold the objection by the respondent and strike out the suit herein with costs. However, the applicant is at liberty to file proper pleadings afresh.

DATED, SIGNED AND DELIVERED AT NYERI THIS 14TH DAY OF AUGUST, 2025.

ONESMUS N MAKAU

JUDGE

Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

