



**Republic v County Government of Bungoma; Wasike & 9 others (Applicant);  
 Chief Officer, Ministry of Lands & Housing, Bungoma County (Interested  
 Party) (Environment and Land Judicial Review Miscellaneous Application  
 E001 of 2024) [2024] KEELC 7556 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7556 (KLR)

**REPUBLIC OF KENYA  
 IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
 ENVIRONMENT AND LAND JUDICIAL REVIEW  
 MISCELLANEOUS APPLICATION E001 OF 2024**

**EC CHERONO, J**

**OCTOBER 31, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY GOVERNMENT OF BUNGOMA ..... RESPONDENT**

**AND**

**CHARLES BARASA WASIKE ..... APPLICANT**

**CONCESITA KHAYUMBI WASIKE ..... APPLICANT**

**ISAAC SIMIYU MUREFU ..... APPLICANT**

**CHRISTOPHER WANYONYI ..... APPLICANT**

**JACKTON SHICHENJULI MAKOKHA ..... APPLICANT**

**PATRICK WESONGA MUREFU ..... APPLICANT**

**CALISTUS KUNDU WESONGA ..... APPLICANT**

**FLORENCE NABWOBA TENDEWA ..... APPLICANT**

**PIUS SIMIYU MULIRO ..... APPLICANT**

**VINCENT WANGILA TENDEMWA ..... APPLICANT**

**AND**

**THE CHIEF OFFICER, MINISTRY OF LANDS & HOUSING, BUNGOMA  
 COUNTY ..... INTERESTED PARTY**



## RULING

1. Before this court is an *ex-parte* chamber summons application brought under certificate of urgency dated May 25, 2024. The application is brought under the [Civil Procedure Act](#) and the [Rules](#) made thereunder seeking the following orders;
  - a. That *ex-parte* applicants be granted leave to apply for judicial review orders of *mandamus* to issue against the Chief Officer, Ministry of Lands and Housing Bungoma County to direct him to satisfy the costs of Kshs. 593,648.3 plus accrued interest issued in High Court at Bungoma Petition No. 5 of 2013
  - b. Costs.
2. The application is supported by grounds on the face of application, the accompanying statutory statement and the verifying affidavit by one Charles Barasa Wasike. It is the *ex-parte* applicants case that they filed a Petition No. 5 of 2013 against the respondent and other parties and judgment was entered on the 28/06/2022 in their favour. They stated that in the said judgment, the court awarded them costs which were taxed *vide* a Ruling delivered on the 21/02/2023 which was served upon the interested party herein.
3. The *ex-parte* applicants further stated that the interested party who is the Chief Accounting Officer in the Ministry of Lands & Housing in the County Government of Bungoma is under a duty to settle the said costs on behalf of the respondent. It was further stated that despite service of the certificate of costs and Ruling, the interested party has declined to settle the same hence the present application. Copies of the alleged judgment, decree and certificate of taxation were attached to the verifying affidavit and marked CW 1(a &b and CW 2(a, b & c) respectively.
4. When the said *ex-parte* application was placed before me for directions sitting as the duty court on 22/03/2024, I directed that the application be served upon the respondents and the interested party within 7 days from the date of service thereof. I directed that the said application be canvassed by way of written submissions. I also directed the respondent and the interested party to file and serve their responses and written submissions within 14 days upon service. I further granted leave to the *ex-parte* applicants to file a supplementary affidavit and supplementary submissions, if need arise, within 7 days upon service thereof.
5. I have considered the materials on record, the application, annexures thereto and the submissions by counsel for the *ex-parte* applicants. The issue for determination in my view is whether the application for leave to institute judicial proceedings is merited.
6. It is a requirement of the law under order 53 rule 1 of the [Civil Procedure Rules](#) 2010, that an applicant seeking to institute orders of certiorari and *mandamus* must first seek leave to institute judicial review proceedings.
7. Leave in my view is to give power to the judge to either summarily allow or reject any applications for judicial review which are frivolous, vexatious or hopeless and 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. This issue for leave was discussed in the case of; [Republic v County Council of Kwale & another ex-parte Kondo & 57 others](#); Mombasa HCMCA No. 384 of 1996. In the same case, the learned judge observed that leave may only be granted if on the material available and without going into the matter in detail, the court is of the view that there is an arguable case for granting the relief claimed by



the applicant. The litmus test is whether there is a case fit for further investigation at a full hearing of the substantive application for judicial review.

8. An application for leave to commence judicial review proceeding is an exercise of judicial discretion but as always, must be exercised judiciously. It is imperative to note that in an application for leave, the court is not required to delve deeply into the arguments of the parties but should make a cursory perusal of the evidence before it and make the decision whether the applicant has made out a *prima facie* case to warrant the matter proceed to hearing the substantive claim by the applicant.
9. In the case of *Republic v National Transport & Safety Authority & 10 others* (2014) eKLR, the court held that in judicial review, the threshold for obtaining leave to commence such proceedings is low and does not require evidence of a strong case but an applicant needs to show that he has an arguable case.
10. In the present application, the *ex-parte* applicant has stated that they sued the respondents in the High Court Petition No. 5 of 2013 and judgment was delivered in their favour on 28/6/2022. Copies of the impugned judgment, decree and certificate of costs were attached to the verifying affidavit.
11. Having carefully perused the application, the verifying affidavit annexures thereto as well as the submissions by the *ex-parte* applicant, I find that a *prima facie* case has indeed been established to warrant the grant of the leave sought.
12. The upshot of my finding is that the *ex-parte* chamber summons application dated February 6, 2024 is merited and the same is hereby allowed as follows;
  1. Leave to file judicial review proceedings is hereby granted.
  2. The Applicants shall file and serve the substantive motion within 21 days of today's date
  3. The Respondent/Interested party to file and serve their responses to the application within 14 days upon service.
  4. The applicants are granted leave to file and serve a supplementary affidavit within 7 days from the date of service thereof.
  5. Mention on 21/11/2024 to confirm compliance and further orders.

**READ, DELIVERED AND SIGNED AT BUNGOMA THIS 31<sup>ST</sup> DAY OF OCTOBER, 2024.**

**HON. E. C. CHERONO**

**ELC JUDGE**

In the presence of;

Mr Okaka h/b for Mr. Bwonchiri for the ex-parte applicant.

Respondent/Advocate-absent.

Bett C/A.

