



**Wildlion Investment Limited v Tax Appeals Tribunal & another; CFC
Stabic Bank Limited & another (Interested Parties) (Judicial Review
E006 of 2022) [2025] KEHC 4237 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
JUDICIAL REVIEW E006 OF 2022
DKN MAGARE, J
MARCH 26, 2025**

BETWEEN

WILDLION INVESTMENT LIMITED EXPARTE APPLICANT

AND

TAX APPEALS TRIBUNAL 1ST RESPONDENT

COMMISSINER OF DOMESTIC TAXES 2ND RESPONDENT

AND

CFC STABIC BANK LIMITED INTERESTED PARTY

CFC STANBIC CENTRE INTERESTED PARTY

JUDGMENT

1. This is a Judgment from the Notice of Motion Application dated 8.6.2022 and filed by the Applicant on 9.6.2022. The Application sought the following reliefs:
 - i. An Order of certiorari removing to this Court for the purpose of being quashed the Decision of the 1st Respondent dated 25.3.2022 refusing to grant the Applicant orders for extension of time to file a notice of appeal and memorandum of appeal.
 - ii. Costs
2. The Application is based on the grounds on its face and the verifying affidavit of John Gichuki as follows:
 - i. The auditor of the 2nd Respondent did not communicate the decision to the notice of objection filed by the Applicant.



- ii. The Confirmation Assessment Notice was issued on 4.12.2018, but the Applicant learnt of it only when KRA Officers went to his premises in 2022.
 - iii. The Applicant's director, who had custody of the documentation, was unwell for a prolonged period.
 - iv. The Applicant approached the Tribunal at the earliest juncture.
 - v. Refusal to grant extension breached the Applicant's natural justice and was malicious and irrational.
3. By its Replying Affidavit dated and sworn by one Martha Chebosis Matebo on 10.11.2022, it was deposed as follows:
- i. Under Section 53 of the [Tax Procedures Act](#) 2015 and Section 32 of the [Tax Appeals Tribunal Act](#) 2013, an appeal ought to have been filed within 30 days.
 - ii. This court does not have jurisdiction to deal with this matter as the same should be considered through the appellate process.
 - iii. Section 9 of the [Fair Administrative Action Act](#) 2015 provides that thos court shall not review an administrative action unless the mechanisms including internal mechanisms for appeal or review and all other remedies available are exhausted.
 - iv. Applicant has not demonstrated that the Tribunal acted ultra vires
 - v. The delay was inordinate and unjustified

Submissions

- 4. The Appellant filed submissions dated 18.10.2023. it was submitted that this court had jurisdiction to deal with the matter. Reliance was placed on Owners of Motor Vessel Lilian S v Caltex Oil (Kenya) Limited (1989) eKLR.
- 5. It was submitted for the Applicant that a judicial review order of certiorari should be issued. They cited inter alia Republic v Principal Kadhi Mombasa ex parte Alibhai Adamali Dar & 2 Others (2022) eKLR.
- 6. The Applicant also submitted that the decision of the Tribunal herein was tainted with illegality, irrational, and unprocedural and should be subject to Judicial Review.
- 7. The 2nd Respondent filed submissions dated 21.11.2023. It was submitted that the court had no jurisdiction.
- 8. The 2nd Respondent submitted that the Applicant ought to have appealed instead of reviewing the decision of the Tribunal through the Judicial Review process. They cited Section 32 of the [Tax Appeals Tribunal Act](#) and Section 53 of the [Tax Procedures Act](#). It was also submitted that Section 9 (2) of the [Fair Administrative Action Act](#) 2015 provides that this court shall not review an administrative action unless the mechanisms, including internal mechanisms for appeal or review and all other remedies available, are exhausted, which the Applicant failed. Reliance was placed inter alia on William Odhiambo Ramogi & 3 Others v Attorney General & 4 others (2020) eKLR, to submit that the doctrine of exhaustion applied.



9. The 2nd Respondent submitted that the Applicant failed to demonstrate that the ruling was tainted with illegality, irrationality, or procedural impropriety. They cited *Republic v Inspector General of Police & Another ex parte Patrick Macharia Nderitu* (2015) eKLR.

Analysis

10. The Applicant sought a judicial review order of certiorari. The second Respondent opposed the Application because this court lacked the requisite jurisdiction and the Applicant had not demonstrated illegality, irrationality, or procedural impropriety in the tribunal's decision.
11. The issue is whether this court has the requisite jurisdiction to issue the judicial review order of certiorari and, if so, whether the Application is merited
12. Before venturing into the merits of the Judicial Review Application, jurisdiction is everything, and the court has to determine whether it has the requisite jurisdiction in the first instance. The court is bound to take jurisdiction where it has and down its tools where it does not have jurisdiction. Nyarangi JA, as then he was, immortalized these words in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR as follows: -

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

13. Jurisdiction flows from *the constitution* or statute. In the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, the supreme court stated as doth: -

“This Court dealt with the question of jurisdiction extensively in, *In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011*. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction



upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

14. The court must therefore assume jurisdiction where it has and eschew usurping jurisdiction where none exists. Without jurisdiction, the court cannot make a single step. In *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR*, Justice Nyarangi JA, as he then was stated as doth;

“With that I return to the issue of jurisdiction and to the words of Section 20 (2) (m) of the 1981 Act. I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority: “By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics.”

15. The Applicant came to this court seeking to judicial review the decision of the 1st Respondent declining to extend time to file an appeal to the 1st Respondent put of time. The principles for Judicial Review reliefs were set out in a land mark case of Republic Vs *Kenya National Examination Council Ex parte Gatbenji and others Civil Appeal No.266 of 1996*, where the Court of Appeal stated inter alia:

‘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.’

16. The discretion to extend time is unfettered; there is no limit to the number of factors the Court would consider so long as they are relevant. On the discretion to extend time, Waki, JA (as he then was) in *Seventh Day Adventist Church East Africa Ltd. & Another vs. M/S Masosa Construction Company Civil Application No. Nai. 349 of 2005* held that:

“As the discretion to extend time is unfettered, there is no limit to the number of factors the Court would consider so long as they are relevant; the period of delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the Respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with the time limits, the resources of the parties, whether the matter raises issues of public importance are all relevant but not exhaustive factors...In



an application for extension of time, each case must be decided on its own peculiar facts and circumstances and it is neither feasible nor reasonable to lay down a rigid yardstick for measuring periods of delay as explanations for such delays are as many and varied as the cases themselves...The ruling striking out the appeal is not only necessary for exhibiting to the application for extension of time but also for consultations between the applicant's counsel and their clients and the fact that the ruling was returned to Nairobi for corrections is a reasonable explanation for the delay... Where the Respondent has already recovered all the decretal sum and costs attendant to the litigation, the right of appeal being a strong right which is rivalled only to the right to enjoy the fruits of judgement, no prejudice would be caused to the respondent who has enjoyed his rights in full if an opportunity is given to the applicants to enjoy theirs too, even if it is on a matter of principle.”

17. An exercise of discretion to extend time is an exercise of a point of law. It involves the application of judicial discretion, which discretion, though unfettered, must be exercised in accordance with the law. In *Peter Gichuki King'ara Vs Iebc & 2 Others*, Nyeri Civil Appeal No. 31 Of 2013 (Court Of Appeal) (Visram, Koome & Odek, JJA) Of 13.02.2014, the Court of Appeal held as follows: -

“it was held that it is trite law that the exercise of judicial discretion is a point of law and that the trial court in denying a prayer of scrutiny is exercising judicial discretion. The Court concluded that it would not be feasible for the Court of Appeal to order for a recount and scrutiny as this would involve matters of fact that were within the jurisdiction of the trial court. The court further held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence – with the caveat that the appeal court did not see the witness demeanour – is an issue of law.”

18. On exhausting internal or other available dispute resolution mechanisms before approaching this court, whereas it is true, as submitted by the 2nd Respondent herein, that where dispute resolution mechanism exists outside Courts, the same should be exhausted before the jurisdiction of the Courts is invoked and this requirement is also to promote the application of Article 159 of *the constitution*, the said doctrine is not absolute. In *Geoffrey Muthiga Kabiru & 2 others v Samuel Munga Henry & 1756 others* [2015] eKLR, the Court of Appeal stated that:

It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. The ex parte Applicants argue that this accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.

19. There exist exceptions to the doctrine of exhaustion. In *R vs Independent Electoral and Boundaries Commission (I E B C) & Others ex parte The National Super Alliance Kenya (NASA)* (supra), after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court described the first exception thus:

What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests



involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the Shikara Limited Case (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in *the Constitution* or law and permit the suit to proceed before it. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. See also *Moffat Kamau and 9 Others v Aelous (K) Ltd and 9 Others.*)

20. Therefore, this court will in exceptional circumstances consider, and determine whether the exhaustion requirement would not serve the values enshrined in *the Constitution* or law and allow the suit to proceed before it. This places the burden upon this Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.
21. Moreover, the jurisdiction of this Court to consider disputes on administrative action as a right also emanates where parties may lack adequate audience before a forum created by a statute, or the quality of audience before the forum is in doubt, must not be ousted from the seat of this Court. Therefore, statutory provisions ousting the Court’s jurisdiction are not cast in stone and must be construed restrictively on a case-to-case basis. This was extensively elaborated by Mativo J in *Night Rose Cosmetics [1972] Ltd v Nairobi County Government & 2 others [2018] eKLR* as doth:

In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere “bootstraps” or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court.

22. It is in this respect that in *Kenya Human Rights Commission vs. Non-Governmental Organizations Co-Ordination Board [2016] eKLR*, the court held that the Court:

... effectively has a duty to look both into the merits and legality of the decision made due to the requirement of “reasonable” action under Article 47, and also the process and procedure adopted due to the requirement of following all precepts of natural justice under both Articles 47 and 50(1) of *the Constitution*.

23. The Applicant approached this court to reevaluate the basis upon which the 1st Respondent declined to extend time for filing an Appeal. This goes to the jurisdiction of this court as an appellate court and not as a court sitting on judicial review. The Applicant approached the court by an appeal masked as of judicial review. Under Sections 9 (2) and (3) of the *Fair Administrative Action Act* it is provided doth:

...

- (2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.
- (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that



applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).

24. There is however an exemption under sub-section 4 that provides that:
- (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.
25. In this case, it is contended that there was illegality, irrationality, and procedural impropriety in that the Applicant was denied a fair hearing in violation of the law. Section 4 (3) and (5) of the *Fair Administrative Action Act* sets the following as the tenets of a fair hearing:
- (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision:
- a. Prior and adequate notice of the nature and reasons for the proposed administrative action;
 - b. An opportunity to be heard and to make representations in that regard;
 - c. Notice of the right to a review or internal appeal against an administrative decision, where applicable;
 - d. A statement of reasons pursuant to Section 6;
 - e. Notice of the right to legal representation where applicable.
 - f. Notice of the right to cross-examine or where applicable;
 - g. Information, materials and evidence to be relied on in making the decision or taking the administrative action;
- (4) The administrator shall accord the person against whom administrative action is taken an opportunity to:
- a. Attend proceedings, in person or in the company of an expert of this choice;
 - b. Be heard;
 - c. Cross-examine persons who give adverse evidence against him; and
 - d. Request for an adjournment of the proceedings, where necessary to ensure a fair hearing.
- (5) Nothing in this Section shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi –judicial proceedings.
26. The Application herein is not premised on the procedural aspect of the Ruling of the 1st Respondent. It was alleged that there was a breach of natural justice, but this court cannot find a scintilla of information pointing to this allegation. It is not the Applicant’s case that the parameters of a fair hearing as espoused under the above Sections of the Fair Administrative Action were not adhered to as to warranty interference by way of judicial review.



27. The Applicant failed to demonstrate the peculiar aspect of administrative law in how the 1st Respondent dealt with the dispute. It remains clear that the only available process was the appellate channel under the law and not judicial review. Section 32 of the [Tax Appeals Tribunal Act](#) provides:

A party to proceedings before the Tribunal may, within thirty days after being notified of the decision or within such further period as the High Court may allow, appeal to the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party.

28. Section 53 of the [Tax Procedures Act](#) provides for when a party aggrieved with the Decision of the 1st Respondent may appeal to this Court. It states:

A party to proceedings before the Tribunal who is dissatisfied with the decision of the Tribunal in relation to an appealable decision may, within thirty days of being notified of the decision or within such further time as the High Court may allow, appeal the decision to the High Court in accordance with the provisions of the Tax Appeals Tribunal.

29. Further, Rule 4 of the Tax Appeals Tribunal (Appeals to the High Court) Rules, 2015 provide:

The Court may extend time specified in Rule 3 if the Court is satisfied that, owing to absence from Kenya, sickness, or other reasonable cause, the appellant was unable to file the memorandum of appeal within that period and that there has been no unreasonable delay on the part of the appellant.

30. The above statutory provisions provide the adequate and proper channel through which the Applicant ought to have filed his dispute to this court. The Application is thus unmerited and this court lacks jurisdiction to entertain it. It is a falsified appeal filed as judicial review.

31. The Application dated 8.6.2022 is consequently unmerited and is dismissed.

32. The determination of costs payable to the successful party is a judiciously exercised discretion of the Court, accommodating the special circumstances of the case while being guided by ends of justice. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of *Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others*, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -

“(18) It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.



33. The Court of Appeal in the case of Farah Awad Gullet v CMC Motors Group Limited [2018] KECA 158 (KLR) had this to say:

“It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

34. Given the relationship between the parties, I direct that each party shall bear their own costs.

Determination

12. The upshot of the foregoing is as follows:

- i. The Application dated 8.6.2022 lacks merit and is dismissed.
- ii. Costs of Ksh 55,000/= to each of the Respondents payable within 30 days in default, execution do issue.
- iii. The file is closed.

DELIVERED, DATED AND AT NYERI ON THIS 26TH DAY OF MARCH, 2025. JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of: -

Mr Karanja Maina for the Applicant

Mr. Nyaringala for the 2nd Respondent.

No appearance for the 1st Respondent

No appearance for the interested party.

Court Assistant - Michael

