



**Rovers v Attorney General & 3 others (Judicial Review Application 2 of 2022)
[2024] KEHC 270 (KLR) (Judicial Review) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 270 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION 2 OF 2022
JM CHIGITI, J
JANUARY 25, 2024**

BETWEEN

BUNDU ROVERS APPLICANT

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

THE NATIONAL POLICE SERVICE 2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTION 3RD RESPONDENT

NATIONAL TRANSPORT AND SAFETY AUTHORITY 4TH RESPONDENT

RULING

1. It is not in dispute that The Chamber Summons application dated 4th November, 2022 seeking leave was filed without a statement attached to it.
2. The 1st and 2nd Respondent raised a notice of preliminary objection dated 31.3.23 challenging the legality or merits of the application on the ground that The suit offends the mandatory provisions of order 53 rule 1 (2) of the *Civil Procedure Rules 2010*, Laws of Kenya.
3. On its part the 3rd Respondent filed grounds of opposition which have no bearing on the preliminary objection.
4. It is the Applicant’s contention that a mere defect in in form should not necessarily preclude them from accessing justice.



5. Reliance is placed in the case of *Anchor Limited v Sports Kenya* the court while searching for a fitting definition of procedural technicalities stated:

“One workable and pragmatic definition of a technicality has been bequeathed to us by the Learned Honourable Justice Richard Mwangi, in *Kenya Ports Authority v Kenya Power & Lighting Co. Limited* (2012) eKLR and another one supplied by the Learned Hon. Justice C.W Githua in *James Muriithi Ngotbo & 4 others v Judicial Service Commission* (2012) eKLR: both decisions substantively say that procedural technicality is a lapse in form that does not go to the root of the suit.....”

6. This matter should be heard and determined on the merits of the case and not quashed due to a mere oversight on the Applicant’s part. It is the Applicant’s view that costs of this Preliminary Objection be the cause.

Analysis and determination:

7. The only Issue for determination is whether the suit offends the mandatory provisions of order 53 rule 1 (2) of the *Civil Procedure Rules 2010*, Laws of Kenya.

8. In the celebrated case of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Limited* (1969) EA. 696 in which Sir Charles Newbold P observed as follows: -

“..... The first matter related to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion confuse issues. This improper practice should stop.”

9. The applicant admits that it did not comply with order 53 of The *Civil Procedure Rules*.

10. In the case of *James Mangeli Musoo v Ezeotec Limited* [2014] eKLR it was held that:

“A technicality, to me is a provision of law or procedure that inhibits or limits the direction of pleadings, proceedings and even decisions on court matters. Undue regard to technicalities therefore means that the court should deal and direct itself without undue consideration of any laws, rules and procedures that are technical and or procedural in nature. It does not, from the onset or in any way, oust technicalities. It only emphasizes a situation where undue regard to these should not be had. This is more so where undue regard to technicalities would inhibit a just hearing, determination or conclusion of the issues in dispute.”

11. I have noted that the matter is at the leave stage. The substantive suit has not been filed. It is my view that the omission on the part of the applicant can be cured through article 159(d) states: -

“In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

- (d) justice shall be administered without undue regard to procedural technicalities”.



Order:

1. The notice of preliminary objection is hereby dismissed with costs to the *ex parte* applicant.
2. The applicant is granted seven days to file and serve its statutory statement within 7 days.
3. The respondents have 7 days leave to file and serve further responses if any.
4. The matter will be mentioned to report compliance on 26th February, 2024.

DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 25TH DAY OF JANUARY 2024

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J. CHIGITI (SC)

JUDGE

