



**Republic v County Government of Mombasa; Charpenel Enterprises Limited (Exparte Applicant)  
(Judicial Review Application E040 of 2023) [2024] KEHC 8312 (KLR) (27 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 8312 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
JUDICIAL REVIEW APPLICATION E040 OF 2023**

**OA SEWE, J  
JUNE 27, 2024**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF ARTICLES 2(2), 6(3), 10 AND  
209(5) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF SECTIONS 4, 7 AND 10 OF THE KENYA ROAD ACT NO. 2 OF 2007**

**AND**

**IN THE MATTER OF THE COUNTY OF MOMBASA FINANCE ACT, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY GOVERNMENT OF MOMBASA ..... RESPONDENT**

**AND**

**CHARPENEL ENTERPRISES LIMITED ..... EXPARTE APPLICANT**

**JUDGMENT**

1. Upon being granted leave on 20<sup>th</sup> November 2023 to file a substantive application for judicial review, the ex parte applicant, Charpenel Enterprises Limited (hereinafter, “the applicant”) filed the Notice of Motion dated 6<sup>th</sup> December 2023. The application is expressed to have been filed under Article 2(2),



6(3), 10 and 209(5) of the *Constitution of Kenya, 2010*, Sections 4, 7 and 10 of the Kenya Road Act No. 2 of 2007, Sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act*, Chapter 21 of the Laws of Kenya and Order 53 Rules 1(1), (2) and (4) of the Civil Procedure Rules, 2010. It seeks the following orders:

- (a) That the Court be pleased to issue an order of Certiorari directed to the County Government of Mombasa (the respondent), to remove to this Court and quash the decision of the respondent through its agents and/or employees of maliciously, unfairly and unlawfully levying cess upon the applicant's motor vehicle without any justifiable reason.
  - (b) That the Court be pleased to issue an order of Certiorari to operate as stay, stopping the respondent from levying cess upon the applicant's motor vehicle pending hearing and determination of the application. (spent)
  - (c) That the Court be pleased to issue an order of Mandamus compelling the respondent to make a written declaration to its officers, agents, and/or employees manning the Likoni Barrier to stop levying cess upon the applicant's motor vehicles transporting goods in transit.
  - (d) That the Court be pleased to issue an order of Prohibition prohibiting the respondent from charging and/or levying cess upon the applicant once the cess has been paid to the County Government of Kwale, and from any future Finance Acts enacted to the effect of charging cess and/or levying cess upon the applicant's goods on transit.
  - (e) That the Court be pleased to issue an order directing the respondent to refund all the monies paid and/or collected from the applicant as cess from the 25<sup>th</sup> January 2023.
  - (f) That the costs of the application be provided for.
2. The application was premised on the grounds that the applicant is a company dealing in the transportation of silica sand from mines in Kwale County to clients in Nairobi. It averred that its business has been greatly hampered by the wrongful imposition of cess by the respondent on every truck that passes through the County. It contended that the respondent's action is in violation of Article 209(5) of the Constitution which obligates the respondent to enact laws that do not prejudice national economic policies or national activities across county boundaries in connection with the mobility of goods, services, capital or labour.
  3. The applicant further averred that silica sand is transit goods and its motor vehicles use roads under the care and control of the Kenya National Highways Authority (KeNHA) and not the respondent. It was therefore the contention of the applicant that, unless the respondent is stopped by an order of this Court, it is likely to continue with the impugned action to the detriment of the applicant.
  4. The application was supported by the averments of Jackson R. Munene, the Operations Manager of the applicant as set out in his affidavit sworn on 6<sup>th</sup> December 2023. The applicant reiterated the grounds aforementioned and added that the actions of the respondent amount to double taxation. Mr. Munene further averred that the applicant's trucks traverse five counties in transit to Nairobi, namely, Kilifi County, Taita Taveta County, Makueni County, Machakos County and Kiambu County; and that it only uses roads under the designation of highways which are under KeNHA. The applicant averred that, in the circumstances the respondent has no basis for imposing cess on its lorries.
  5. At paragraph 10 of the Supporting Affidavit, the applicant disclosed that it has had a previous dispute of a similar nature with the respondent's predecessor, the Municipal Council of Mombasa, in which an order was made barring the Municipal Council of Mombasa from charging cess upon the applicant once payment has been made to the Kwale County. A copy of the order was annexed to the Supporting



Affidavit as Annexure “JRM 5”, The applicant further averred that the respondent complied with the order until January 2023 when they started charging cess in disregard of the order.

6. In response to the application, the respondent filed a Replying Affidavit sworn by its director in charge of revenue, Mr. Affan Mohamed. The respondent conceded that under Article 209(5) of the Constitution, motor vehicles on transit ought not to pay cess or offloading charges. It however averred that the applicant is out to mislead the Court by stating that all its lorries transport goods in transit to Nairobi and are therefore not offloading within the County of Mombasa. The respondent further deposed, by way of example, that the applicant routinely offloads its goods at Changamwe within Mombasa County where it has a yard. It annexed a copy of the applicant’s Single Business Permit (Annexure JRM-2) in proof of this assertion.
7. It was the contention of the respondent that it is empowered by Article 209 of the Constitution to impose charges for the purpose of raising revenue; and therefore that it is within its mandate, through the County Assembly of Mombasa, to enact such legislation as would be necessary for this purpose. It further averred that for the period in question, there was in place the Mombasa County Finance Act, 2023 which provided for the imposition of cess for offloading goods within the County. A copy of the legislation was annexed to the Replying Affidavit as Annexure AM-1.
8. The respondent further disclosed some of the services that these collections are applied by the respondent directly or indirectly to provide street lighting, rehabilitation and repair of County roads and for traffic marshalling. It further stated that it is the own source revenue such as cess that enables it to meet its development needs and provide services to the residents of Mombasa efficiently. It deposed that the applicant has not attached any official receipts issued by the respondents for payment of cess and/or offloading fees, save for MPESA statements which do not indicate the purpose for which the payments were made. Thus, the respondent asked for the dismissal of the application with costs.
9. The application was urged by way of written submissions, pursuant to the directions given herein on 7<sup>th</sup> February 2024. To that end, the applicant filed written submissions dated 18<sup>th</sup> March 2024 and proposed the following issues for determination:
  - (a) Whether the respondent has the locus to institute laws pursuant to Article 209 of *the Constitution* to levy taxes upon the National Government infrastructure without providing amenity?
  - (b) Whether the action of the respondent to levy cess upon the applicant is in violation of Article 209(5) of *the Constitution*.
10. Accordingly, the applicant submitted that the respondent’s act of levying cess on goods in transit is an act in bad faith and therefore a violation of Article 209(5) of the Constitution which places a duty upon the respondent to make laws that facilitate and/or promote economic activity across the country. It further submitted that the act of the respondent has placed a heavy burden on the applicant’s business operations, which in its view is tantamount to economic sabotage.
11. The applicant further submitted that the respondent lacks the locus standi to levy cess upon goods in transit, as such goods are transported via the national highways managed by the National Government and the KeNHA. Reliance was placed on the decision of the Supreme Court in *Base Titanium Limited v County Government of Mombasa & another* (Petition 22 of 2018) [2021] KESC 33 (KLR) (16 July 2021) (Judgment) for the proposition that, for a County to levy charges, it must do so in exchange for an amenity. The applicant consequently prayed that its application be allowed and the orders sought therein granted.



12. The respondent similarly filed written submissions dated 16<sup>th</sup> April 2024. It proposed the following issues for determination by the Court:
  - (a) Whether the application is time-barred;
  - (b) Whether the applicant is liable to pay cess and/or offloading fees; and,
  - (c) Whether the claim for refund should be granted.
13. The respondent submitted that the order of Certiorari being sought by the applicant is not available for the reason that the application was filed way out of time for purposes of Order 53 Rule 2 of the Civil Procedure Rules. The respondent submitted that, since the Mombasa County Finance Act, 2023 was enacted into law on 16<sup>th</sup> January 2023, this suit ought to have been filed within 6 months of that date; yet the applicant did not take any action until 6<sup>th</sup> December 2023. The respondent relied on *Wilson Osolo v John Odhiambo Ochola & another* [1995] eKLR and *Republic v Mwangi S. Kimenyi, Ex Parte Kenya Institute for Public Public Policy and Research Analysis (KIPPR)* [2013] eKLR.
14. On whether the applicant is liable to pay cess and/or offloading charges, the respondent explained why cess is imposed and what services the monies are expended on. The respondent submitted that the burden of proof was on the applicant to demonstrate that the goods in question are indeed transit goods for which no offloading charges are due; which burden was not discharged by the applicant. In the premises, the respondent urged for the dismissal of the suit.
15. Needless to say that judicial review is essentially concerned, not with the merit of an impugned decision, but the process leading up to the decision. Hence, in *Municipal Council of Mombasa v Republic & Umoja Consultants Limited* [2002] eKLR the Court of Appeal held that:

The court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power, i.e. the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision - maker take into account relevant matters or did he take into account irrelevant matters? These are the kind of questions a court hearing a matter by way of judicial review is concerned with, and such court is not entitled to act as a court of appeal over the decider; acting as an appeal court over the decider would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision – and that, as we have said, is not the province of judicial review.”

16. Flowing from the foregoing summary, the issues for determination are:
  - (a) Whether the application is time-barred;
  - (b) Whether the respondent is justified in charging the applicant cess and/or offloading fees; and,
  - (c) What relief, if any, ought to issue in this case.

**A. On whether the suit is time-barred:**

17. Prior to the promulgation of *the Constitution* of Kenya, 2010, judicial review applications were exclusively governed by Sections 8 and 9 of the *Law Reform Act*, Chapter 26 of the Laws of Kenya. In terms of procedure, the applicable provisions are set out in Order 53 of the Civil Procedure Rules. However, since the remedy of judicial review has now been anchored in *the Constitution* under Articles 22, 23 and 47, leave is no longer a requirement. I am fortified in this stance by the decision of a 5-



judge bench of the Court of Appeal in Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 others [2017] eKLR in which it was held:

In our considered view presently, judicial review in Kenya has Constitutional underpinning in articles 22 and 23 as read with article 47 of the Constitution and as operationalized through the provisions of the *Fair Administrative Action Act*. The common law judicial review is now embodied and ensconced into constitutional and statutory judicial review. Order 53 of the *Civil Procedure Act* and rules is a procedure for applying for remedies under the common law and the *Law Reform Act*. These common law remedies are now part of the constitutional remedies that the High Court can grant under article 23(3)(c) and (f) of the Constitution. The fusion of common law judicial review remedies into the constitutional and statutory review remedies imply that Kenya has one and not two mutually exclusive systems for judicial review. A party is at liberty to choose the common law order 53 or constitutional and statutory review procedure. It is not fatal to adopt either or both...We hold that Kenya has one and not two mutually exclusive systems for judicial review. The common law and statutory judicial review are complementary and mutually non-exclusive judicial review approaches."

18. Hence, it is optional for a party to seek leave or not before approaching the Court with a substantive application. It is my view considered view however that where a party opts to approach the Court under Order 53, then such a party should be ready to comply with and be subjected to the strictures of the provisions set out therein. For instance, Rule 1 of Order 53 states:

- (1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.
- (2) An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.
- (3) The judge may, in granting leave, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.
- (4) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise:

Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.

19. Since one of the prayers herein was for an order of Certiorari, it was imperative for the application for leave to be brought within 6 months of the decision complained of. The court record shows that an application was made for leave which was handled ex parte by Hon. Ong'ino, J. on 20<sup>th</sup> November 2023.

20. It is therefore not open for the respondent to revisit the issue of leave without first seeking the setting aside of the leave order dated 20<sup>th</sup> November 2023; and even then, it is not as a matter of course that



such an application would be allowed. In *Aga Khan Education Service Kenya v Republic Ex Parte Ali Seif & 3 Others* PARA 2004. eKLR, it was pointed out that:

...Of course in England the position is now different and leave or permission is granted inter partes but in Kenya, the leave stage is still ex parte. We would, however, caution practitioners that even though leave granted ex parte can be set aside on an application, that is a very limited jurisdiction and will obviously be exercised very sparingly and on very clear-cut cases, unless it be contended that judges of the superior court grant leave as a matter of course. We do not think that is correct. Unless the case is an obvious one, such as where an order of certiorari is being sought and it is clear to the court that the decision sought to be quashed was made more than six months prior to the applicant coming to court, and there is, therefore, no prospects at all of success, we would ourselves discourage practitioners from routinely following the grant of leave with applications to set leave aside. Fortunately such applications are rare and like the judges in the United Kingdom, we would also point out that the mere fact that an applicant may in the end have great difficulties in proving his case is no basis for setting aside leave already granted.”

21. More importantly, although the respondent was of the stance that the period of 6 months ought to be reckoned from the 26<sup>th</sup> January 2023 when the Mombasa County Finance Act was passed, a look at the prayers set out in the Notice of Motion, shows that no mention was made by the applicant of the Finance Act 2023. The Court must therefore look at the nature of the applicant’s claim and the evidence in support. They are in respect of specific acts in which the employees of the respondent demanded for cess in the months of September to December 2023.
22. Looked at from that standpoint the application was brought within time. In any case, in addition to Certiorari, the applicant prayed for Prohibition and Mandamus.

**B. On whether the respondent is justified in charging the applicant cess and/or offloading fees:**

23. Article 210 of the Constitution is explicit that:

No tax or licensing fee may be imposed, waived or varied except as provided by legislation.”

24. It suffices therefore to reiterate the viewpoint taken by Hon. Lenaola, J. (as he then was) in *Cereal Growers Association & Another v County Government of Narok & 10 Others* [2014] eKLR that:

Undoubtedly, Article 209(4) of *the Constitution* therefore confers County Governments with legislative discretionary powers to impose charges for services rendered. In my view therefore and reading the provisions of Article 209(3) and 209(4) of *the Constitution*, the County Government may impose an entertainment tax as it is constitutionally provided for but then any other tax or charge that may be imposed by the County Government must be provided for under an existing Act of parliament. I say so because in my view a charge is a form of tax. Black’s Law Dictionary, 8<sup>th</sup> Edition defines the term ‘tax’ as follows;

A monetary charge imposed by the government on persons, entities, transactions or property to yield revenue”

Article 210(1) has then made it clear that no tax can be imposed or waived unless it is provided for by legislation.

25. Article 209 of the Constitution is explicit that:

- (1) Only the national government may impose—



- (a) income tax;
  - (b) value-added tax;
  - (c) customs duties and other duties on import and export goods; and
  - (d) excise tax.
- (2) An Act of Parliament may authorise the national government to impose any other tax or duty, except a tax specified in clause (3) (a) or (b).
- (3) A county may impose—
- (a) property rates;
  - (b) entertainment taxes; and
  - (c) any other tax that it is authorised to impose by an Act of Parliament.
- (4) The national and county governments may impose charges for the services they provide.
- (5) The taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.
26. The Mombasa County Finance Act was therefore enacted pursuant to Articles 201 and 209(3) and (4) of the Constitution and is therefore sufficient justification for the imposts.
27. On whether the action of the respondent to levy cess upon the applicant is in violation of Article 209(5) of the Constitution, that provision is explicit that:
- (5) The taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.”
28. Indeed, in *Base Titanium v County Government of Mombasa & Another* (supra) which the applicant relied on to buttress its case, the Supreme Court made this aspect clear thus at paragraphs 25 and 29:
- Under the provisions of article 209, a county is empowered to raise revenue and levy taxes, rates, or other charges. Additionally, under sub article (4), the 1st respondent is authorized to impose charges for services provided...Consequently, we agree with the High Court and the Court of Appeal, only to the extent that County Governments have the mandate to charge levies for services rendered.”
29. Nevertheless, the Supreme Court underscored the aspect of Sub Article (4) that such charges can only be imposed for services rendered by the respondent. Thus, the Supreme Court held:
- So then, what is the meaning of the word ‘services’ for purposes of application within the meaning of article 209(4) of *the Constitution*? The word ‘service’ as provided in the Oxford Dictionary of English 3rd Edition 2015 is “a system that provides something that the public needs, organized by the government or a private company”. This may include for County transport which entails County roads; street lighting; traffic and parking; public roads transport; and ferries and harbors, excluding the regulation of international and national shipping and matters related thereto comprise some of the functions and powers of County Governments under Schedule four part 2, section 5.



26. Taking that definition into account, a plain reading of that article reveals that the intention of article 209(4) of *the Constitution*, is to confer County Governments the discretionary powers to impose charges for services, more specifically, that they can charge or impose a payment in exchange of a public need or amenity.
27. To our minds, the insertion of the words ‘for services’ in article 209(4), are a qualification to the charge of the services. Whereas a County can levy charges, it must do so in exchange for an amenity. Put differently, a County does not have the authority to charge a cess, levy or tax where they do not offer anything in return.
28. Undoubtedly, Constitution permits County Governments to impose charges for the realization of its powers under the Fourth schedule. But that power does not go unchecked, in the spirit of harmonious interpretation of *the Constitution*, in enacting the law, County Governments must heed the provisions of article 209 (5) and ensure that the charges invoked will not be detrimental to national economic policies, economic activities across boundaries or the national mobility of goods, services, capital or labor.
30. The Base Titanium was filed in respect of Mombasa County Finance Act of 2014. Since then several such Acts have been passed by the respondent’s County Assembly. I accordingly agree with the submission by counsel for the petitioner that for the respondent to continue charging cess, it must demonstrate not only that the impost is provided for in its Finance Act but also that there is a reciprocal amenity or amenities for which the levy is imposed.
31. In the Schedule to the Mombasa County Finance Act 2023, there was provision for charging cess for silica sand under Cess Charges Category 35 Item 518 of Kshs. 2,300/=; which is what the petitioner was charged at the Likoni Ferry. The question to pose then, is what service was the charge in respect of. The contention of the petitioner was that the it was using a national highway. It explained that this is a national road. Hence, it falls under the mandate of the National Government; and therefore the respondent had no business levying cess for its use.
32. Indeed, in the Base Titanium, the Supreme Court was explicit in this regard at paragraphs 39 and 40 of its Judgment that:
- It is not in dispute that to access the Port, the appellant must use the Likoni-Ukunda Road which the Kenyan road system identifies as an A14 road. Going by the background and network system explained in detail above, that road, A14 falls directly into the category of a national road. That category falls directly under the mandate of KeNHA and the National government which is in charge of its development, rehabilitation, management and maintenance. In this matter, we note that the County Government has not clarified how the charge meets the categories it sets out in Item 90 of the Mombasa County Finance, 2014. They have not stated if they provide street lighting, parking or maintenance of the road accessed by the petitioners. While the superior courts were in agreement with them that the charge was a ‘road service’ charge, we are of a contrary opinion, as the 1st respondent did not illustrate how such road services are provided.
40. Further, having established that it is not a county road, it is then improper for County Government of Mombasa to levy a charge for road service for the same road that vests in the National Government.
33. In the instant matter though, the respondent contended that the applicant is out to mislead the Court by stating that all its lorries transport goods in transit to Nairobi and are therefore not offloading within



the County of Mombasa. The respondent further deposed, by way of example, that the applicant routinely offloads its goods at Changamwe within Mombasa County where it has a yard. It annexed a copy of the applicant's Single Business Permit (Annexure JRM-2) in proof of this assertion.

34. The applicant did not refute this evidence. Similarly, it did not adduce evidence to refute the assertion that it has a yard in Changamwe. It did not state what that yard is for; or deny the allegations of off-loading. The licence, on the face of it shows that the petitioner deals with supplies and construction, solely conducted at the Mombasa address. More importantly, the applicant failed to demonstrate that in each of the charges complained of the goods in were in fact in transit and were delivered in Nairobi.
35. It is a cardinal principle that the burden of proof is on he who alleges. In *Wamwere & 5 others v Attorney General (Petition 26, 34 & 35 of 2019* (Consolidated)) [2023] KESC 3 (KLR) (Constitutional and Human Rights) (27 January 2023) (Judgment) the Supreme Court held:

66. The two superior courts below were of the unanimous view that a petitioner bears the burden to prove his/her claim of alleged threat or violation of rights and freedoms to the requisite standard of proof, which is on a balance of probabilities. We affirm this juridical standpoint bearing in mind that such claims are by nature civil causes. See *Deynes Muriithi & 4 others v Law Society of Kenya & another*, SC Application No 12 of 2015; [2016] eKLR.

67. In this case, the onus of proof was on the 1<sup>st</sup> appellant to adduce sufficient evidence to demonstrate that firstly, she owned or erected or lived in the alleged properties; and secondly, that state agents interfered or deprived her of the subject properties. This, as was aptly appreciated by the superior courts, is the import of section 107 of the *Evidence Act* on the burden of proof. The provision stipulates:

107.

1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

In addition, section 109 of the *Evidence Act* elaborates on the onus of proof by stipulating that:

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

36] The Supreme Court further held:

69. It is also imperative to take note of the fact that even in situations where a respondent does not file or tender evidence to counter the petitioner's case, the petitioner still bears the burden of establishing his/her allegations on a balance of probabilities. As to whether such standard is met will depend on whether a court based on the evidence is satisfied that it is more probable that the allegation(s) in issue occurred. See *Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others*, SC Petition No 12 of 2019; [2020] eKLR.



37. Likewise, in Leonard Otieno v Airtel Kenya Limited [2018. eKLR it was emphasized that:

It is a fundamental principle of law that a litigant bears the burden (or onus) of proof in respect of the proposition he asserts to prove his claim. Decisions on violation of constitutional rights should not and must not be in a factual vacuum. To attempt to do so would trivialize *the Constitution* an inevitable result in ill-considered opinions. The presentation of clear evidence in support of violation of constitutional rights is not a mere technicality; rather, it is essential to a proper consideration of constitutional issues. Decisions on violation of constitutional rights cannot be based upon unsupported hypotheses.”

38. In the absence of proof that cess was paid to the Kwale County Government and that the goods were not offloaded within the County of Mombasa, I am satisfied that sufficient justification was made by the respondent for the imposition of the Kshs. 2,300 cess on the petitioner during the period in question. It is also significant that the Mpesa statements are in respect of a totally different period from the period stated in the weighbridge/delivery notes.

39. It is for the foregoing reasons that I find no merit in the Notice of Motion dated 6<sup>th</sup> December 2023. The same is hereby dismissed with no order as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 27<sup>TH</sup> DAY OF JUNE  
2024**

**OLGA SEWE**

**JUDGE**

