



**Republic v Municipal Council of Busia & another; County Government of Busia  
(Interested Party); Julius Orina Manwari t/a Manwari & Company Advocates (Exparte)  
(Miscellaneous Application 15 of 2011) [2024] KEHC 9022 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9022 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MISCELLANEOUS APPLICATION 15 OF 2011  
WM MUSYOKA, J  
JULY 26, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**MUNICIPAL COUNCIL OF BUSIA ..... 1<sup>ST</sup> RESPONDENT**

**THE CLERK, MUNICIPAL COUNCIL OF BUSIA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**COUNTY GOVERNMENT OF BUSIA ..... INTERESTED PARTY**

**AND**

**JULIUS ORINA MANWARI T/A MANWARI & COMPANY  
ADVOCATES ..... EXPARTE**

**RULING**

1. On 15<sup>th</sup> March 2024, I delivered a ruling on 2 applications, one dated 3<sup>rd</sup> November 2023, and the other 16<sup>th</sup> November 2023. That dated 16<sup>th</sup> November 2023 sought review of orders made earlier by the court, and I dismissed it. That, dated 3<sup>rd</sup> November 2023, sought citation of Topister Wanyama for contempt of court. I found that she was not the accounting officer responsible for settlement of the decree passed herein, and I directed that the said application be served on the accounting officer responsible. As the duty of designating accounting officers fell on Topister Wanyama, I directed that she should furnish the court and the *ex parte* applicant with the name of the accounting officer that she had designated, as responsible for finance in the Interested Party.
2. The matter was mentioned on 23<sup>rd</sup> April 2024, for compliance with the directions above. I was informed that there was compliance, for the *ex parte* applicant had been furnished with information



on who the relevant accounting officer was, although that information was not shared with the court, in terms of disclosure of the name of the individual officer, and the ministry or department that he was in charge of, contrary to the order made in the ruling of 15<sup>th</sup> March 2024. I have seen a copy of the letter dated 25<sup>th</sup> April 2024, which was allegedly served on the accounting officer and the County Attorney. It was addressed to the accounting officer, with copies to the County Attorney and the County Executive Committee Member responsible. The letter forwarded copies of: a ruling delivered on 30<sup>th</sup> July 2013, an order extracted from a ruling delivered on 30<sup>th</sup> July 2013, an order issued on 23<sup>rd</sup> February 2018, and a ruling delivered on 15<sup>th</sup> March 2024. The letter communicates the amount due and outstanding, and notifies the accounting officer that execution proceedings would be mounted, should the amount indicated be not be paid.

3. On 23<sup>rd</sup> May 2024, I was informed that the mandamus order had been served on the said accounting officer, and that an affidavit of service had been filed. I have seen an affidavit of service on record, sworn on 9<sup>th</sup> May 2024, by a court process server by the name Joseph Orata Kweyu. He avers that he served a letter, dated 25<sup>th</sup> April 2024, from the *ex parte* applicant, on the accounting officer, Department of Finance, ICT and Economic Planning of the Interested Party. It was served on a secretary at that department, who embossed a stamp, and it was also served on the County Attorney, through a secretary at that office.
4. Was service of the letter adequate? The law on service is about service of court processes, specifically court orders and decrees, and not letters forwarding the court processes. The affidavit of service placed on record is about how the court process server served a letter, and not the order made of 30<sup>th</sup> July 2013, which I had directed should be served on the accounting officer, going by the terms of my ruling of 15<sup>th</sup> March 2024. Parties should strive to comply with court orders as made, instead of translating them to their own terms. As it is, I have no way of telling, from the affidavit of service, whether or not the order of 30<sup>th</sup> July 2013 was served, as that affidavit talks only of service of a letter, yet a letter is not the court process envisaged in the law relating to service of court processes. A letter from an Advocate representing a party or from the party itself, cannot be a court process, to be served by a court process server. Court process servers serve court process, being court filings, notices relating to court processes, rulings and judgments, and orders and decrees extracted from such rulings and judgments. What was served was the letter, and what has been returned as served is the letter bearing date-stamps on acknowledgement of receipt. I have not seen a copy of the order of 30<sup>th</sup> July 2013, bearing an acknowledgement of receipt date-stamp from the office of the accounting officer, indicating that that office received that order. My order of 15<sup>th</sup> March 2024 was specific: serve the order of 30<sup>th</sup> July 2013 on the accounting officer. I do not have an affidavit averring and demonstrating that that order was indeed served in accordance with the letter. What I have is a letter purporting that the order was forwarded to the accounting officer. Personal service of an order and forwarding an order by letter are not the same thing. See Order 5, generally, of the [Civil Procedure Rules](#). I did not order that the accounting officer be furnished with or given a copy of the order, nor that the order be availed to him, rather I directed service of that order on that officer. What service entails, and what ought to be served, is detailed in Order 5 of the [Civil Procedure Rules](#).
5. These proceedings would require, ultimately, that I consider condemning someone to jail or to pay a fine, and before that can be done, due process must be followed. Due process requires that the order be personally served on the accounting officer. I have no evidence that the order sought to be complied with was served, for what was served was a letter. Even then, the service was on a secretary, and not personally on the accounting officer. No explanation has been given as to why service was not effected on the accounting officer himself or herself, yet that is the person who will have to stand condemned, not his or her secretary. Moreover, I have no way of telling, from the affidavit of service, whether the



order of 30<sup>th</sup> July 2013 was in fact attached to the letter that was allegedly served. I should emphasise that these are quasi-criminal proceedings, and there ought to be stricter compliance with the legal processes, before constitutional liberties and freedoms are interfered.

6. I am not satisfied that there has been compliance with the orders that I made, or the directions that I gave, in the ruling of 15<sup>th</sup> March 2024, with respect to service of the order of 30<sup>th</sup> July 2013, on the accounting officer. Let the *ex parte* applicant comply fully with that order before the matter moves to the next stage. For avoidance of doubt, this is what the order or the direction required:

“That before I can consider the application, dated 3<sup>rd</sup> November 2023, the order, of 30<sup>th</sup> July 2013, shall be served on the accounting officer responsible for settlement of the debts of the category of what is owed to the *ex parte* applicant.”

7. The matter shall be mentioned on 20<sup>th</sup> September 2024, for compliance and further directions.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS**

**26<sup>TH</sup> DAY OF JULY 2024**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Mogi, instructed by Manwari & Company, Advocates for the *ex parte* applicant.

Ms. Otsieno, instructed by the Office of the County Attorney, Advocates for the Interested Party.

