



**Republic v Permanent Secretary, Ministry of Defence & 3 others; Odiero (Exparte) (Judicial Review Application 16 of 2019) [2023] KEHC 165 (KLR) (24 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 165 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
JUDICIAL REVIEW APPLICATION 16 OF 2019  
RE ABURILI, J  
JANUARY 24, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**PERMANENT SECRETARY, MINISTRY OF DEFENCE ..... 1<sup>ST</sup> RESPONDENT**

**PERMANENT SECRETARY, MINISTRY OF FOREIGN AFFAIRS AND  
INTERNATIONAL TRADE ..... 2<sup>ND</sup> RESPONDENT**

**PERMANENT SECRETARY, MINISTRY OF INTERIOR & COORDINATION  
OF NATIONAL GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**HEZBORN OMBWAYO ODIERO ..... EXPARTE**

**RULING**

1. This judicial review application for orders of *mandamus* was first initiated *vide* an amended chamber summons dated October 11, 2019 seeking leave of court to apply. The application for leave to apply was dated August 6, 2019 and filed in court on August 7, 2019 and amended on October 11, 2019. The leave sought was granted on November 19, 2019 by consent of both parties. The applicant was granted leave to apply for judicial review orders of *mandamus*, which application was to be filed and served within 21 days of the consent order and costs were to be in the main cause.
2. From the court record, the substantive notice of motion which is dated November 20, 2019 was filed in court on November 21, 2019, which was within the timeliness granted by Hon F A Ochieng J (as he then was).



3. From the proceedings, that application for judicial review has never been heard and it appears that there was an attempt to resolve the matter amicably, which effort never bore any fruits.
4. The matter has therefore been mentioned on each occasion that it has come up without any resolution. While that is happening, *vide* a notice of motion dated March 4, 2021, the *ex parte* applicant, through the Law firm of Agina & Associates filed an application under certificate of urgency, seeking for stay of these proceedings or that these proceedings be withdrawn with no orders as to costs on account that he had filed an appeal *vide* Kisumu Court of Appeal CA 28/2016 Hezbon Ombwayo Odera v Attorney General & Others following his dissatisfaction with the decision of EN Maina J in Petition No 9/2012, which appeal was still pending hearing and determination before the Court of Appeal.
5. Further, that the firm of Owiti Otieno & Ragot Advocates ceased to represent him hence the application for judicial review was filed without instructions from the would be *ex parte* applicant.
6. I have perused decree in Kisumu HC Petition No 9 of 2012 wherein the court entered judgment against the respondents in favour of the *ex parte* applicant/petitioner herein in the sum of Kshs 5,000,000/= being compensation for unlawful illegal and criminal action of the Police, Prison warders and military forces. The decree is dated January 28, 2016 and issued on April 6, 2016.
7. I observe that the petition was prosecuted by the firm of Owiti, Otieno & Ragot Advocates who also obtained decree and certificate of order against the government.
8. In these judicial review proceedings, the *ex parte* applicant did not swear the verifying affidavit. It was sworn by his advocate on record, Mr Jude Ragot.
9. As to whether or not the *ex parte* applicant instructed the said advocates to file these proceedings is not for this court to determine in these proceedings. It however appears that there is the issue of legal representation between the firm of Agina & Associates and Owiti, Otieno and Ragot Advocates pending.
10. That notwithstanding, this matter has been pending for too long without any resolution on hand and the parties appear to have gone to slumber. Further, it has too many mentions without any outcome and it is not clear what directions were to be made on December 14, 2022 since there is still the issue of representation between the two law firms.
11. Even the application by the *ex parte* applicant through Ms Agina & Associates has not been prosecuted and neither has the application for judicial review orders, since 2019.
12. I therefore make the following orders:
  1. That both the judicial review application for *mandamus* and the application by the *ex parte* applicant shall be mentioned for the very last time before this court for directions.
  2. That the two law firms of Ms Owiti, Otieno & Ragot Advocates and Ms Agina & Associates to sort out the issue of representation and ensure they send their representatives to court on the mention day without fail.
  3. That the *ex parte* applicant shall also attend court.
  4. The court shall give directions on the disposal of the two applications if the *ex parte* applicant's counsel shall not have agreed on the issue of legal representation.
  5. Mention on March 17, 2023. The firm of Owiti, Otieno & Ragot advocates to serve the firm of Agina & Associates and the *ex parte* applicant to appear in court on that date.



13. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 24TH DAY OF JANUARY, 2023**

**R E ABURILI**

**JUDGE**

