



Kochieng v County Assembly Service Board of Homa Bay & another (Judicial Review E006 of 2023) [2023] KEHC 21513 (KLR) (31 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21513 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW E006 OF 2023**

**KW KIARIE, J
JULY 31, 2023**

BETWEEN

JOHN LENNOX KOCHIENG APPLICANT

AND

THE COUNTY ASSEMBLY SERVICE BOARD OF HOMA BAY 1ST RESPONDENT

CLERK, HOMA BAY COUNTY ASSEMBLY 2ND RESPONDENT

RULING

1. The 1st respondent raised a preliminary objection under section 21 of the *Government Proceedings Act* & order 29 rules 2, 3 & 4 of the *Civil Procedure Act*. It is premised on the following points:
 - a. That this proceedings offends order 29, 2, 3 and 4 of *Civil Procedure Rules 2010* and Section 21 of *Government Proceedings Act* for it has by passed extraction of certificate of order against government and its service thereof; this application therefore is incorrigibly defective and only due for striking out/dismissal in *lemine litis*.
 - b. The 1st respondent having been procedurally dragged in this suit shall move court to award costs.
2. The preliminary objection was opposed on the following grounds:
 - a. The application does not comply with order 51 rule 10 of the *Civil Procedure Rules* as the same does not mention the rule under which the same is raised.
 - b. The Notice to show cause arose out of order of the court and not out of the application of the decree holder.



- c. The provision of Section 21(5) of The *Government Proceedings Act* was to take effect if the decree holder was not satisfied with the show cause of the judgment –debtor, but the J.D refused or failed to show cause by serving the court by an order irregularly obtained from a duty Judge restraining the Deputy Registrar from complying with the court order made on the 9th March, 2023.
3. The preliminary objection is premature. The first step in a judicial review of this nature is for the court to weigh whether the leave being sought to file for an order of mandamus is merited. The court at this stage does not hear the parties. If the court on the face of the application is satisfied, it grants the leave. Once the leave is granted, parties involved will be at liberty to argue their case.
4. The preliminary objection is therefore dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 31ST DAY OF JULY, 2023

KIARIE WAWERU KIARIE

JUDGE

