



**Republic v OCS Magunga Police Station; Omondi (Exparte) (Environment and Land Judicial Review Miscellaneous Application E004 of 2022) [2022] KEELC 14795 (KLR) (15 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14795 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT AND LAND JUDICIAL REVIEW  
MISCELLANEOUS APPLICATION E004 OF 2022**

**GMA ONGONDO, J**

**NOVEMBER 15, 2022**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**OCS MAGUNGA POLICE STATION ..... RESPONDENT**

**AND**

**CHRISTOPHER ROBERT OMONDI ..... EXPARTE**

**JUDGMENT**

1. On October 3, 2022, leave of the court was granted to the applicant, Christopher Robert Omondi represented by M/S Aluoch Odera and Nyauke Advocates, to originate the present application.
2. By a notice of motion dated October 18, 2022 and filed herein on October 25, 2022 pursuant to order 53 of the Civil Procedure Rules, 2010, the applicant has sought the orders infra;
  - a. The honorable court be pleased to grant orders of mandamus to compel the respondent to comply with the court orders dated September 29, 2021 and March 17, 2022.
  - b. Costs of the application be borne by the respondent.
3. The application is premised on the applicant’s supporting affidavit of ten (10) paragraphs sworn on even date and grounds 1 to 5 stated on the face of the same. Briefly, the applicant laments, inter alia, that he sought for eviction orders in Homa-Bay Chief Magistrate Court case number 16 of 2003 wherefore the said orders were granted on the September 29, 2021 whereby the respondent was directed to mobilize security and to ensure the eviction orders were implemented. That the respondent declined



the orders upon service. That the action of the respondent was an abuse of the judicial authority. That thus, in the interest of justice, the orders sought herein are granted.

4. The respondents was duly served as disclosed in the affidavit of service sworn on November 11, 2022 by Odera Aluoch, learned counsel for the applicant.
5. So, the respondent was accorded an opportunity to be heard as enshrined in articles 48 and 50(1) of the Constitution of Kenya, 2010; see also *Halsbury's laws of England 5<sup>th</sup> Edition 2010 volume 6, at paragraph 639*.
6. Be that as it may, the respondent failed to respond to this application.
7. In the foregone, has the applicant established his case to warrant the grant of orders sought in the application?
8. Clearly, the application is undefended in view of the observation at paragraphs 5 and 6 hereinabove.
9. This court is not unaware of the burden of proof in cases such as the instant application; see *Kinyanjui Njogu versus Daniel Kimari Maingi (2000) eKLR*.
10. The court has the mandate to grant the prayers in the application as stipulated under article 23(3) (f) of the Constitution of Kenya, 2010 and section 13 (3) of the Environment and Land Act, (2015) (2011). The court has the discretion thereof.
11. It is therefore, the finding of this court that the application is firm and cogent. It is meritorious as the applicant has proved to the requisite standard that he is entitled to the prayers in the application.
12. Wherefore, I proceed to allow the application dated October 18, 2020 in terms of prayer for mandamus sought therein.
13. No orders as to costs.

**DELIVERED, DATED AND SIGNED AT HOMA-BAY THIS 15<sup>TH</sup> DAY OF NOVEMBER 2022.**

**GMA ONG'ONDO**

**JUDGE**

**Present**

1. Mr Odera Aluoch, learned counsel for the applicant.
2. Angela - Court Assistant.

