



Republic v Homa Bay County Government County Chief Finance Office in Charge of Finance and Economic Planning & another; Obongo (Exparte Applicant) (Environment and Land Judicial Review Case E002 of 2023) [2023] KEELC 20384 (KLR) (3 October 2023) (Judgment)

Neutral citation: [2023] KEELC 20384 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E002 OF 2023
GMA ONGONDO, J
OCTOBER 3, 2023
(FORMERLY HOMA BAY HC JUDICIAL REVIEW NO. 47 OF
2018)
IN THE MATTER OF APPLICATION FOR ORDERS OF MANDAMUS
IN THE MATTER OF APPLICATION FOR ORDERS OF MANDAMUS IN
EXECUTION OF DECREE

BETWEEN

REPUBLIC APPLICANT

AND

HOMA BAY COUNTY GOVERNMENT COUNTY CHIEF FINANCE OFFICE IN CHARGE OF FINANCE AND ECONOMIC PLANNING 1ST RESPONDENT
COUNTY SECRETARY 2ND RESPONDENT

AND

THOMAS OBONGO OBONGO EXPARTE APPLICANT

JUDGMENT

1. On March 23, 2023 the applicant, Thomas Obongo Obongo through Okemwa Elijah and Company Advocates filed an application by way of a notice of motion of even date under, *inter alia*, Order 53 Rules 1, 2, 3 and 4 of the [Civil Procedure Rules 2010](#) (The Rules herein), seeking the orders infra;
 - a. That the Honourable court be pleased to issue an order of *Mandamus* compelling the Respondent/Homabay county Government.



- i. To settle or honour the Decree of certificate of order for costs dated on the 11th day of May, 2022 issued against her.
 - b. The Respondent do bear the costs of the instant application.
 2. The application is anchored on grounds 1 to 8 stated on the face of the same, the applicant's verifying affidavit and statement of facts herein. Briefly, the applicant laments that he instructed HomaBay Chief Magistrate's court Environment and Land case Number 47 of 2018 and obtained judgement in his favour in the sum of Kshs 262,750/- with costs and interest thereon until full payment. That thereafter, he obtained a decree dated March 8, 2022 and a certificate of order against the Government dated May 11, 2022 which were duly served on the respondents who have refused to honour the said decree or order inspite of demand notice issued against them. Thus, it provoked this application.
 3. The respondents through Aluoch Odera and Nyauke and Company Advocates, opposed the application by grounds of opposition (I think erroneously shown as grounds of application) dated April 24, 2023 duly filed on May 30, 2023 pursuant to Order 51 Rule 14 of the Rules. The grounds are that;
 - a. The application is bad in law as it offends the provisions of Order 53 of the Civil Procedure Rules.
 - b. The application lacks merit, is scandalous and is an abuse of the court process.
 4. On June 5, 2023, the court directed that the application be heard by written submissions as provided for under Order 51 Rule 16 of the Rules and Practice Direction number 32 of the Environment and Land Court Directions, 2014.
 5. By the submissions dated June 26, 2023, learned counsel for the applicant stated a brief background of the case and identified four issues for determination including whether the applicant obtained leave to file the instant application and whether he is entitled to the fruits of his judgment which must not be thwarted. Counsel analyzed the issues in the affirmative in light of the decree which the respondent has refused to settle. Reference was made to, *inter alia*, Order 53 Rule1 (supra), the case of Republic-vs-Town Clerk of Webuye County Council and another HCCC No. 448 of 2006 and Republic-vs-Kenya National Examinations Council-Ex parte Gathengi and 8 others Civil Appeal No. 234 of 1996 where the court cited with approval Halsbury's Laws of England 4th Edition Vol. P.111 paragraph 89, to buttress the submissions.
 6. In the submissions dated June 7, 2023, learned counsel for the respondent referred to the application and the response thereto. Counsel submitted that the applicant failed to seek leave of the court as required under Order 53 Rule 1 (supra) and that the position was emphasized in the case of the County Government of Embu Ex parte Peterson Kamau Muto t/a Embu Medical and Dental Clinic and 6 others (2022) KLR. That therefore, the application is bad in law and it should be dismissed with costs to the respondents.
 7. I have duly considered the entire application, the grounds of opposition and the rival submissions. So, the following issues emerge for determination;
 - a. Did the applicant obtain leave of the court to lodge the instant application?
 - b. Subject to the outcome in issue (a) hereinabove, is there merit in the orders sought in the application?



8. The respondent contends that the application was filed without leave of the court. Indeed, the court is aware of Order 53 Rule 1 of the Rules. As discerned in the proceedings of March 23, 2023 herein, the applicant sought leave on March 23, 2023 to lodge this application.
9. It is noted that on March 23, 2023, this court granted leave to the Ex-parte applicant, to apply for an order of mandamus further to his application by way of chamber summons dated March 22, 2023. Thus, the applicant generated the instant application.
10. The applicant asserted that he is entitled to the fruits of his judgment. That he was compelled by the actions of the respondent to mount this application which is meritorious.
11. It must be noted that a party has a vested right to the judgment which ought to be effectual; see *Shahmad-vs-Shamji Bros and another* (1957) EA 38.
12. This court is mandated under section 13 (7) (b) of the *Environment and Land Court Act*, 2015 (2011) to grant prerogative orders. These include the order of mandamus sought in the application.
13. The extensive character of an order of mandamus is well noted in the Halsbury's Laws of England (supra). Also, the term "Mandamus" is defined in Black's Law Dictionary 10th Edition at page 1105 as follows;

"A writ issued by a court to compel performance of a particular act by a lower court or a government officer or body usually to correct a prior action or failure to act. Also termed writ of mandamus."
14. In this application, a decree is in place further to judgment rendered on March 24, 2021 and certificate of costs dated May 11, 2022 duly served. There is no appeal filed therefrom.
15. To this end, I find that the applicant deserves the orders sought in the application which target at speedy realization of the fruits of judgment rendered by the magistrate's court in the spirit of Article 159 (2) (b) of the *Constitution of Kenya, 2010* which provides;

"Justice shall not be delayed."
16. A fortiori, the present application is merited. The same is hereby allowed in terms of order of mandamus and costs sought therein and as set out at paragraph 1 (a) and (b) hereinabove.
17. It is so ordered.

DATED AND DELIVERED AT HOMABAY THIS 3RD DAY OF OCTOBER 2023.

G.M.A ONG'ONDO

JUDGE

Present.

Mr. E. Okemwa learned counsel for the applicant.

