



Republic ex parte Dan Otieno Ouma Kisumu Bar Owners Association v County Government of Kisumu; County Assembly of Kisumu (Interested Party) (Judicial Review E003 of 2023) [2025] KEHC 5559 (KLR) (9 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5559 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW E003 OF 2023
MS SHARIFF, J
APRIL 9, 2025**

BETWEEN

REPUBLIC EX PARTE DAN OTIENO OUMA KISUMU BAR OWNERS ASSOCIATION RESPONDENT

AND

COUNTY GOVERNMENT OF KISUMU APPLICANT

AND

COUNTY ASSEMBLY OF KISUMU INTERESTED PARTY

RULING

1. Vide a Motion application dated 18th June 2024, the Applicant herein, County Government of Kisumu, pursuant to Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Order 10 Rule 11, Order 12 Rule 7, Order 45 and Order 51 Rule 15 of the Civil Procedure Rules and all other enabling provisions of law, is seeking the following orders:
 - a. That this Honourable Court be pleased to vacate and set aside the ex-parte proceedings and subsequent orders entered against the Applicant on 31st May 2024, and all other consequent orders thereto.
 - b. That this Honourable Court be pleased to reinstate the Judicial Review Application dated 3rd February 2023, for disposal on merit.
 - c. That the costs of this application and incidental expenses thereto be provided for.
2. The Motion is supported by grounds on the face thereof and the Affidavit of Cindy Laura Awour Otieno sworn on 18th June 202. The crux of the Motion is that the order issued by this Court on 31st



May 2024, was issued after the Applicant was condemned unheard by allowing the ex-parte Applicant/ Respondent's application.

3. The Applicant avers that their application dated 3rd February 2023, raises weighty legal and factual issues concerning public finance and management and public interest at large, thus the imminent risk of the Applicant/Respondent being denied an opportunity of performing its constitutional and statutory mandate is to the detriment of public interest on account of the said ruling.
4. The Applicant/Respondent further avers that the immediate and general long-term effect of the said Court orders is to further cripple the ability of the Applicant/Respondent to raise public funds and provide services.
5. The Respondent/Applicant filed no response to the motion application.
6. Vide Court directions issued on 16th July 2024, the parties were orders to canvass the motion application dated 18th June 2024, by way of written submissions. Both parties did not comply with the Court orders.
7. Having considered the pleadings and the applicable law, the issues to be resolved in the instant application are firstly whether this Court has jurisdiction to set aside orders in granting the prayers as sought of the application dated 3rd February 2023 made on the 31st May 2024.
8. Judicial review jurisdiction is sui generis, case law has posited that orders issued with finality in the exercise of the said jurisdiction namely mandamus, prohibition and certiorari are not amenable to recall, review and setting aside. See *Biren Amritlal Shah & another v Republic & 3 others* [2013] eKLR. Further, the reliefs such as recall, review and setting aside are only available under suits that fall under the *Civil Procedure Act* procedures with the exception of Judicial Review. That jurisdiction the Applicant had invoked to redress its grievances are not applicable to Judicial review that is a special jurisdiction which is neither civil nor criminal. See *Stella Richard & 13 Others v DPP & 2 Others; Daniel Kyalo Lua & Another (Interested Parties)* [2019] eKLR
9. Section 8(5) of the *Law Reform Act* does state that:

“ Any person aggrieved by an order made in the exercise of the civil jurisdiction of the High Court under this section may appeal therefrom to the Court of Appeal.”
10. However, in *Aga Khan Education Service Kenya v Republic & 3 others* civil Appeal No. 257 of 203, the Court cautioned that the exercise of the power of recall, review and setting aside of orders not issued in finality under the Judicial review jurisdiction is a very restricted jurisdiction and will only be exercised very sparingly and in very clear- cut cases.
11. In the case of *Methang'athia & 4 others v District Land Adjudication and Settlement Officer Meru North (Nyambene) District and 3 others* Nairobi Misc. Appl. 230 of 1993 [2000] KLR 500 it was held that “the High Court has no jurisdiction to stay, arrest, recall, review, set aside or quash a prerogative order which has already been made or granted in finality, as such an order is final and subject only to the right of appeal conferred by Section 8(5) of the *Law Reform Act*.”
12. From the foregoing, I find that the grant of the orders allowing the prayers of the application dated 3rd February 2023 issued on 31st May 2024 were final orders that dispensed with the application before the Court and as such this Court cannot set aside the same. The same can only be interfered with by the Court of Appeal in terms of Section 8(3) as read with Section 8(5) of the *Law Reform Act*.



13. In the result and save to the extent as hereinabove analyzed, the Applicant/Respondent's application dated 18th June 2024, lacks merit and is dismissed with no order as to costs.
14. It is so ordered.

DATED AND DELIVERED AT BUNGOMA THIS 9TH DAY OF APRIL 2025.

M.S.SHARIFF

JUDGE

