



Republic v Chief Officer, Trade & Industrialization, Homa Bay County Government & 3 others; Jotich & 29 others (Exparte Applicants) (Judicial Review Miscellaneous Application E005 of 2022) [2024] KEHC 919 (KLR) (6 February 2024) (Ruling)

Neutral citation: [2024] KEHC 919 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E005 OF 2022**

KW KIARIE, J

FEBRUARY 6, 2024

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF OFFICER, TRADE & INDUSTRIALIZATION, HOMA BAY COUNTY GOVERNMENT & 3 OTHERS RESPONDENT

AND

JANE JOTICH & 29 OTHERS EXPARTE APPLICANT

RULING

1. The ex parte applicants moved the court by way of a Notice of Motion dated the 29th day of September 2023 under sections 1A, 1B, and 3A of the [Civil Procedure Act](#), order 51 of the [Civil Procedure Rules](#), and articles 48, 50, and 159 of the [Constitution of Kenya](#) . They are seeking the following orders:
 - a. That the honourable court be pleased to set aside and/or vary the orders made on the 25th day of July 2022, extending the time for compliance and allowing Counsel for the *ex parte* applicants to file their Notice of Motion and Final Submissions within a maximum of 7 days from the date hereof.
 - b. The costs of this application are the cause.
2. The application was premised on the following grounds:
 - a. Soon after leaving court on the 25th of July 2023, counsel for the respondents proposed an out-of-court settlement and counsel for the ex parte applicants received the proposal very well.



- b. That counsel for the respondents then did a formal communication by email requiring Ms Adoyo to submit a list of the bona fide ex parte applicants, who ad proof of ownership of the stalls and kiosks that had been demolished to pave the way for the construction of the modern market.
 - c. That Ms Adoyo prepared and served the letter dated August 2, 2022 and served it on the same day, then settled to work on the Notice of Motion and submissions.
 - d. On the following day, August 3, 2023, when Ms Adoyo came to the office in readiness to prepare the Notice of Motion and submissions, she was utterly shocked when the file on her desk just the previous evening could not be traced.
 - e. This is something Ms Adoyo could not openly share with her clients for fear of victimisation and being branded careless, and she decided to have her whole office searched, but the file was not found.
 - f. That the file had special documents that her clients had supplied and that could no longer be traced, wherefore Ms Adoyo could not proceed with the case.
 - g. That Ms Adoyo proceeded to formally report the mysterious loss of the file at Homabay Police Station *vide* OB No.3/3/08/22 and that the police promised to assist as much as possible.
 - h. That the whole issue led to firing the receptionist at Quinter Adoyo & Co. Advocates, who was the only person with unlimited access to Ms Adoyo's exclusive chambers for cleaning and arranging files.
 - i. It was only recently, about two months ago, that the file was dropped by an unknown person at the door to Madam Adoyo's chambers.
 - j. Seeing as the file was brought back intact and with all the documents, it is highly likely that the interest of the thief was to hide it until time lapses for compliance on the part of Ms Adoyo, only to return it one year later at a time the person must have been sure that the suit had been dismissed and the file closed.
 - k. It is in the interest of justice that the instant application be allowed.
3. The respondents opposed the application through Awele Jackson Advocates LLP on the following grounds:
 - a. That the applicants' indolence is inexcusable.
 - b. That the application lacks merits.
 - c. The application is an abuse of due process.
 4. On the 3rd day of July 2023, Ms Adoyo informed the court that the counsel for the respondents had approached them for an out-of-court settlement. She said the attempt did not bear any fruits. She also told the court that her file had gone missing in her office.
 5. The supporting affidavit depicts what transpired like fictional works. The file, it would appear, conveniently disappeared and then reappeared. The matter had been reported to the police, and the receptionist at the firm of Quinter Adoyo & Co. Advocates was fired courtesy of the missing file.
 6. It was argued by the respondents that the failure to file the substantive application within the timelines prescribed by the court rendered the court functus officio in this matter. The Supreme Court of Kenya



on the doctrine of functus officio stated in the case of *Raila Odinga & 2 others v Independent Electoral & Boundaries Commission & 3 others* [2013] eKLR as follows:

The *functus officio* doctrine is one of the mechanisms by which the law expresses the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter... The [principle] is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker.

In the instant case, I find that this court was not rendered functus officio by the failure to comply with timelines.

7. The events of this case have convinced me to grant the applicants' request as per prayer (a) above. The costs shall be in the cause.

DELIVERED AND SIGNED AT HOMA BAY THIS 6TH DAY OF FEBRUARY 2024.

KIARIE WAWERU KIARIE

JUDGE

