



**Republic v Homa Bay County Assembly Service Board & 2 others; Japat
General Services (Exparte Applicant) (Judicial Review Miscellaneous
Application E011 of 2022) [2024] KEHC 3642 (KLR) (15 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3642 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E011 OF 2022**

KW KIARIE, J

APRIL 15, 2024

BETWEEN

REPUBLIC APPLICANT

AND

HOMA BAY COUNTY ASSEMBLY SERVICE BOARD 1ST RESPONDENT

HOMA BAY COUNTY ASSEMBLY 2ND RESPONDENT

THE CLERK, COUNTY ASSEMBLY OF HOMA BAY 3RD RESPONDENT

AND

JAPAT GENERAL SERVICES EXPARTE APPLICANT

RULING

1. Japat General Services, the ex parte applicant, moved the court by way of a Notice of Motion dated the 11th day of December 2023 under Section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 (b) of the Civil Procedure Rules, for the following orders:
 - a. That this matter be certified as urgent and the same be heard ex-parte in the first instance.
 - b. This honourable court be pleased to review and/or set aside its ruling and the orders issued on 21st November 2023 and make a final determination on the application dated 7 February 2023.
 - c. That costs of this application be provided for.
2. The application was premised on the following grounds:
 - a. That the honourable court delivered a ruling on 21st November 2023 by staying the application dated 7th February 2023 on the grounds that there is a pending application before



the Chief Magistrate's court to set aside the proceedings for trial court on the issue of non-service.

- b. That at the time of making the said ruling, this honourable court was not aware that the said application had already been dismissed and the applicant could not obtain the said order since the file was held in the trial magistrate chambers.
 - c. The applicant has now got the evidence that the said application was dismissed, and the same is very crucial, and it could have made the court rule otherwise.
 - d. That by not producing the said evidence, the honourable court delivered a ruling against the applicant in favour of the respondent on the basis that there is still a pending applicant to set aside proceedings in the lower court for lack of service.
 - e. That the said ruling goes contrary to the provisions of Article 159(2)(d) of *the Constitution* which enjoins the court to administer substantive justice without undue regard to technicalities.
 - f. The application herein has been brought in good faith and without undue delay, and it is only unjust and expedient that it be allowed.
3. The respondents were served with the application, and an affidavit of service was filed on 22nd January 2024, but they did not file any opposition or submissions.
 4. In the ruling of the 21st day of November 2023, I stated:

As the issue of non-service of the suit in the trial court was not addressed, and there is a pending application in the trial court, it would not be wise to address the orders that the ex parte applicant has requested conclusively. If the application is decided in her favour, the ex parte applicant can move the court.
 5. The applicant has submitted a copy of the dismissal order for the respondent's application due to lack of action. As there are no more pending issues in the trial court, the order of mandamus is issued against the respondents based on the prayers in the Notice of Motion of November 14, 2022, along with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 15TH DAY OF APRIL 2024

KIARIE WAWERU KIARIE

JUDGE

High Court at Homa Bay Judicial Review Misc. Appl. No. E011 of 2022 2

