



**Republic v The Chief Officer Ministry of Water, Homa Bay County Government
& another; Neeta Permanent Builders Co. Ltd (Exparte Applicant) (Judicial
Review E004 of 2023) [2024] KEHC 5300 (KLR) (21 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5300 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW E004 OF 2023**

KW KIARIE, J

MAY 21, 2024

BETWEEN

REPUBLIC APPLICANT

AND

**THE CHIEF OFFICER MINISTRY OF WATER, HOMA BAY COUNTY
GOVERNMENT 1ST RESPONDENT**

HOMA BAY COUNTY GOVERNMENT 2ND RESPONDENT

AND

NEETA PERMANENT BUILDERS CO. LTD EXPARTE APPLICANT

JUDGMENT

1. Neeta Permanent Builders Company Limited, the ex parte applicant, moved the court by way of an amended Notice of Motion dated the 6th day of April 2023 under sections 1A, 1B and 3A of the Civil Procedure Act, sections 9, 10 and 11 of the Fair Administrative Act and Article 47 of the Constitution of Kenya, for the following orders:
 - a. That this honourable court be pleased to issue an order of *Mandamus* against the respondents compelling them to release to the ex parte applicant a sum of ksh.1,865,053/- or thereabout being the decretal sum together with costs amounting to kshs.293,155/- and interest in Homa Bay Chief Magistrate’s court Civil Case No. E015 of 2020, which is the sum of money withheld by the respondents.
 - b. That the cost of this application be provided for.
2. The application was premised on the following grounds:



- a. The applicant, Neeta Permanent Builders Company Limited, filed a suit, namely Homabay Chief Magistrate's court Civil Case No. E15 of 2020 against the respondents for inter alia for a liquidated sum of kshs.1,865,053/- as a claim against services rendered by the applicant as the tendered contracted by the 1st respondents for rehabilitation/desilting of Ranen Pan at West Karachuonyo Ward, contract No. HB/CTY/W/033/2014 – 2015.
- b. Thereafter, the court (Hon. T. Olando) entered judgment on 17th February 2021 against the respondents under the following heads:
 - i. Payment of the outstanding sum of kshs.1,865,053.00.
 - ii. Interest in (a) above at the rate of 14% p.a. from the default date.
 - iii. Costs of the suit.
 - iv. Such further or other relief as this honourable court may deem fit and just.
- c. Upon the court entering judgment in the terms stated above, the applicant subsequently extracted a decree dated 17th February 2021 in the sum of kshs.1,865,053/- (exclusive of costs) as at the aforementioned dated. The said decree reads:
 - i. Payment of the outstanding sum of kshs.1,865,053.00.
 - ii. Interest in (a) above the rate of 14% from the default date.
 - iii. Costs of the suit.
 - iv. Sum further or other relief this honourable court may deem fit and just.
- d. It is noteworthy that the respondents did not challenge the said judgements or the subsequent decree stated above within the statutory timelines spelt out under the Civil Procedure Act, 2010 provisions and that the said decree is and remains valid and enforceable against the respondents.
- e. Upon lapse of the duration within which the respondents could challenge the said judgment and subsequent decrees, the applicant served the respondents with the said decree and thereafter engage the respondents vide correspondences and physical visits to its offices with a view of having the decretal sum settled as per the terms of the said decree.
- f. Despite written demands, oral representation and reminders, the respondents have failed and/or refused to settle the applicant's decretal amount in the sum of kshs.1,865,053.00 exclusive of costs as at 17th February 2021 to date.
- g. The applicant filed a party-to-party Bill of costs on 18 February 2021, assessed on 1 March 2021. On 4 March 2021, a certificate of costs was issued to the applicant in the sum of ksh.293,155/-.
- h. The applicant, therefore, prays for leave from this honourable court to issue an order of mandamus compelling the respondents to settle the decretal amount sought therein together with costs of kshs.293,155/- and interest.
 - i. Section 21(4) of the Government Proceedings Act, Chapter 40 Laws of Kenya prohibits any person and/or body from executing and/or attaching any government property in satisfaction of any money and/or costs. The applicable procedure is to compel the respondents by issuance of an order of Mandamus.



- j. This honourable court has the competent jurisdiction to grant the orders sought.
3. The respondents opposed the application through the clerk of the County Assembly, who stated:
- a. That the applicant did not attach any proof of the judgment in their favour.
- b. That the application breaches Order 53 of the Civil Procedure Rules.
4. Contrary to the contention by the respondents that the applicant did not exhibit anything to show that they had a judgment in their favour, there is evidence to the contrary. The exhibit marked JO-1 is a certificate of the order of judgment and costs against the government. The beneficiary is the applicant against the respondents herein. It concerns Homa Bay Chief Magistrate's Court Civil Case No. 15 of 2020.
5. Exhibit JO-2 is a copy of the decree, whereas exhibit JO-3 is a certificate of costs in the above-referred-to case.
6. Though it has been argued that Order 53 of the *Civil Procedure Rules* was breached, this has not been demonstrated. On the 27th day of September 2023, the applicant, having realized their error, sought leave, which was granted. I agree with Odunga J (as he then was) when he observed in the case of *Republic v Permanent Secretary Office of The President Ministry of Internal Security & another Ex-Parte Nassir Mwandibi* [2014], eKLR Odunga J (as he then was) held:

The said elaborate procedure is further meant to give adequate notice to the Government to make arrangements to satisfy the decree. The procedure, in my view, is not meant to relieve the Government from meeting its statutory obligations to satisfy decrees and orders of the Court.

7. From the preceding, therefore, I grant orders for prayers a and b.

Delivered and signed at Homa Bay this 21st day of May 2024

KIARIE WAWERU KIARIE

JUDGE

