



Republic v The County Assembly Service Board Homa Bay & another; K’Ochieng (Exparte Applicant) (Judicial Review E005 of 2023) [2024] KEHC 5097 (KLR) (15 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5097 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW E005 OF 2023**

**KW KIARIE, J
MAY 15, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY ASSEMBLY SERVICE BOARD HOMA BAY ... 1ST RESPONDENT

THE CLERK, HOMA BAY COUNTY ASSEMBLY 2ND RESPONDENT

AND

JOHN LENNOX K’OCHIENG EXPARTE APPLICANT

RULING

1. Mr. Clifford Otieno Obiero, the advocate for the respondents, moved the court through a Notice of Motion dated the 13th day of March 2024. The applicant is seeking the following orders:
 - a. That this matter be certified as urgent. [spent]
 - b. That pending hearing and determination of this matter, there be a stay of proceedings until this application is heard and concluded and further direction is given.
 - c. That this court, and particularly Hon. Justice Waweru Kiarie, recuse himself from this matter and give direction before another judge of relevant/equivalent jurisdiction.
 - d. That the costs to abide the cause of the main suit.
2. The application is premised on the following grounds:
 - a. As a daily duty of pursuing the cause of justice and accomplishing my oath at admission, I have been privileged to appear before many judges, including but not limited to those of the Court of Appeals, and have conducted several cases of public interest.



- b. I have appeared before Hon. Justice W. Kiarie in several matters but have construed pure bias, a hostile culture and an irrational decision.
- c. This rests with Civil Appeal No.103 of 2023, which he recently dismissed for lack of service when the affidavit of service was well on record and actually the first document in his file. He had earlier, on January 18th, placed the file aside to confirm service when he flagged off the hearing through submission based on his satisfaction that service was effected; this could not be explained in any legal language except bias.
- d. In Civil Suit No.3 of 2019, John Lennox v County Assembly of Homabay, where about 78 million people are involved, the Hon. Judge declined to allow the applicant's application because service was done through e-mail. When counsel placed the same application again and served physically, a document well received by the opposite counsel, on June 16th 2023, he permitted the applicant to come on record and allowed counsel to argue other orders in the application by way of submissions, only to finally dismiss it on the grounds of service, which for clarity was spent. The applicants proceeded to file for review, which was also dismissed.
- e. In Judicial Review No.E006 of 2023, the firm of G.S. Okoth, acting for the applicant John Lennox, made a chamber summons seeking for leave to institute a judicial review; the court directed that the matter be served for a hearing at the hearing the applicant herein raised a preliminary objection and grounds of opposition on grounds inter alia, that the applicant did not comply to Order 29 of the Civil Procedure Rules and Section 21 of Government Proceedings Act by first extracting and serving certificate of order against government; the court dismissed both with cost stating that it was prematurely filed and that he is duty bound to clear such application in the chambers. We are still shocked why we were served with a hearing notice of the summons if our comment was not meant to be heard.
- f. In JR 5 of 2023, the Honorable Court granted the applicant leave to appeal in the chambers but without vacating his orders; proceeded to fix the same for hearing, encumbering the applicant's right of appeal; the registry can no longer act on the notice to appeal or request for proceedings, all of which seem to be long overdue due to the ongoing mock process read by the applicant to deny or mark time on his right to due process and appeal.
- g. In Election Petition Appeal No. E001 and E003 of 2022, Bondo Vickins v Peter Okeyo Ongili & IEBC, the same judge, stayed Election petition Appeal No.E003 stating that it was copy-cut similar to Election Petition Appeal No.E001 and dismissed Election Petition Appeal No.E001 on the grounds of an incomplete record of appeal. For clarity, there was no decree of the lower court. A shock would unfold when he refused to formally admit a record of appeal in Election Petition Appeal No. E003 determined it without admitting a record of appeal and allowed the appeal, which was copy-cut, similar to Election Petition Appeal No. E001, as he had earlier determined in his ruling.
- h. That having been vexed by the conduct of the judge, which the applicant construes to well fit within Article 168(B) and (D), the applicant has prepared a petition complaint to the Judicial Service Commission, which is likely to be filed and served before this court renders its decision in this matter. I am sceptical and convinced that justice may certainly not come out of this process as justice must not only be effected but be seen and be felt to be affected.
 - i. We are sceptical that justice will not be administered in this matter and have also drafted a petition to the Judicial Service Commission, which is likely to be filed before the



decision in this matter is rendered. We believe that the cause of justice may not be rendered amid the process.

3. The ex parte applicant opted not to file any response, perhaps because a similar application was based on the same grounds. This was Miscellaneous Civil Case NO. E085 of 2023. This is what I stated in paragraphs 4 to 7:
 4. The defendant/applicant has raised an issue of bias and a thinly veiled allegation of incompetence on my part based on my previous decisions. The allegations of bias must be proved before a presiding officer can recuse themselves. However, I cannot be both the accused and judge in the same issue. On such a serious allegation, the proper forum is another court that can properly address its mind regarding the application.
 5. I will decline to issue the orders sought and direct the applicant to file his application to the relevant court to determine the alleged bias on my part. My reasons for declining are straightforward. Should I determine the application in favour of the applicant, the respondent will feel that my decision was driven by fear. If I decline, any decision I may render will appear influenced by fear or vengeance.
 6. The applicant is granted fourteen days to file his application in the relevant court, failing which the respondent will be at liberty to prosecute his case.
 7. Costs will be in the cause.
4. I will adopt the same orders since the instant application is similar. The applicant is granted fourteen days from the date of this ruling to file his application in the relevant court, failing which the respondent will be at liberty to prosecute his case.
5. Costs will abide by the outcome of this case.

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

KIARIE WAWERU KIARIE

JUDGE

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