



Republic & another (Suing As The Administrators Of The Estate Of Lucky Dalmas Otieno-Deceased) v County Government of Homa Bay & another; Adhola (Exparte Applicant) (uing as the administrators of the estate of Lucky Dalmas Otieno-decease) (Judicial Review E006 of 2023) [2024] KEHC 5096 (KLR) (14 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5096 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW E006 OF 2023**

**KW KIARIE, J
MAY 14, 2024**

BETWEEN

**REPUBLIC 1ST APPLICANT
CELINE AKINYI ADHOLA 2ND APPLICANT
SUING AS THE ADMINISTRATORS OF THE ESTATE OF LUCKY DALMAS
OTIENO-DECEASED**

AND

**COUNTY GOVERNMENT OF HOMA BAY 1ST RESPONDENT
CHEIF OF FINANCE COUNTY GOVERNMENT OF HOMA
BAY 2ND RESPONDENT**

AND

**CELINE AKINYI ADHOLA EXPARTE APPLICANT
UING AS THE ADMINISTRATORS OF THE ESTATE OF LUCKY DALMAS
OTIENO-DECEASE**

RULING

1. The ex parte applicants moved the court through a Notice of Motion dated the 14th day of August 2023 under Order 53 Rule 3 (1) of the *Civil Procedure Rules*, 2010. The applicants are seeking the following orders:
 - a. The honourable court be pleased to issue an order of Mandamus directed at the Chief Finance officer of the County Government of Homabay compelling him to pay the decretal amount



together with costs and interest arising in Homabay Chief Magistrate's court Civil Suit No.58 of 2017 as at 1st May 2023 amounting to kshs.1.289,401.40/- or thereabout plus costs of the instant judicial review being kshs.102,250/- totaling kshs.1,391,651.40/- within a reasonable time to be specified from the date of issue of the order.

- b. The cost of the application be awarded to the ex parte applicants.
2. The application is premised on the following grounds:
 - a. Judgment was delivered in civil suit No. 58 of 2017 on 22nd September 2021 in favour of the ex parte applicants and against the respondents for the sum of kshs.805,060/- cost of the suit together with interest.
 - b. Decree certificates of costs and certificate of order of judgment and costs against the government have been served upon the respondent pursuant to section 21(5) of the *Government Proceedings Act*.
 - c. No appeal has been preferred by the respondents on the said decree and there is no pending application or stay of execution of the same.
 - d. The 2nd respondent has failed to perform his duties as the accounting officer and head of the executive committee by refusing or failing to pay the decretal sum as per the judgment and decree of the court above referred without giving reason for so doing.
 - e. Despite the issuance of notice to show cause to the respondents why execution shall not proceed against them and their undertaking to pay the same, they have declined to show any cause at all, and the said sum still remains unpaid to date.
 - f. Failure to comply with the court's decree above amounts to an abuse of the court process.
 - g. The respondents intend to continue delaying the course of justice unless compelled to pay the ex-parte applicants the decretal sum.
 - h. Leave to commence judicial proceedings has been duly granted to the ex-parte applicants.
 3. The respondent opposed the application on the following grounds:
 - a. That this application is an abuse of the due process of the court.
 - b. That this application is premature.
 4. This application duplicates the one in JR E005 of 2023. Therefore, this matter is stayed to await the outcome in the other case.

DELIVERED AND SIGNED AT HOMA BAY THIS 14TH DAY OF MAY 2024.

KIARIE WAWERU KIARIE

JUDGE.

