



Republic v County Secretary, County Government of Homa Bay & 2 others; Biomax Africa Limited (Exparte Applicant) (Judicial Review E008 of 2023) [2024] KEHC 7364 (KLR) (19 June 2024) (Judgment)

Neutral citation: [2024] KEHC 7364 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW E008 OF 2023
KW KIARIE, J
JUNE 19, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY SECRETARY, COUNTY GOVERNMENT OF HOMA BAY 1ST RESPONDENT

THE CHIEF OFFICER FINANCE, COUNTY GOVERNMENT OF HOMA BAY 2ND RESPONDENT

THE COUNTY ATTORNEY, COUNTY GOVERNMENT OF HOMA BAY 3RD RESPONDENT

AND

BIOMAX AFRICA LIMITED EXPARTE APPLICANT

JUDGMENT

1. Biomax Africa Limited, the ex parte applicant, moved the court by way of a Chamber summons dated the 19th day of October 2023 under Order 53 Rule 1 (2) of the Civil Procedure Rules for the following orders:
 - a. That leave be granted to the ex parte applicant to apply for an order of Judicial Review like an order for mandamus against the County Government of Homa Bay to compel the County Secretary County Government of Homa Bay, the County Attorney Homa Bay County and the Chief Officer of Finance Homa Bay County, to proceed and pay out the decretal sum of kshs.19,571,449.00, being the judgment award of kshs.10,814,000/-, kshs.1,564,005.00 being



costs awarded in the High Court, plus interest at court rates of 14% from 22nd August 2022 until payment in full.

- b. That leave be granted to the applicant to apply for an order of judicial review, like an order of Mandamus, to compel the County Secretary of the County Government of Homa Bay, the County Attorney of Homa Bay County and the Chief Officer of Finance Homa Bay County, to proceed and payout kshs.601,150.00 being costs awarded in the magistrate's court in Mombasa PMCC No.59 of 2018, whose judgment was delivered on 5th May 2021.
 - c. That the applicant is at liberty to apply to this court for all necessary and/or consequential orders that this honourable court may deem fit and to grant in the circumstances.
 - d. That the costs of this application be provided for.
2. The application was premised on the following ground: since 20 July 2014 and 22 June 2022, when judgments were entered for the applicant against the 1st Respondent in Mombasa PMCC No.50 of 2018 and HCC Appeal No. E036 of 2021 for the sum of kshs.19,571,449.00, and despite several reminders, the 2nd respondent had completely failed to furnish the 1st respondent with funds to settle the decretal sum herein.
 3. On April 9, 2024, the ruling on the preliminary objection was delivered, and Mr. Okello, the advocate for the appellant, requested a fourteen-day extension to submit their response. The same was granted. Both parties were instructed to file and exchange submissions before May 22, 2024. The respondents did not file any grounds of opposition to the application or submissions, which I find concerning.
 4. When the matter came up for confirmation of compliance, Mr. Rigga held Mr. Akello's brief and blamed miscommunication for their submissions not being filed. This was unconvincing.
 5. In their supporting affidavit, the ex parte applicant attached a copy of certificate of order of judgment and costs against the County Government of Homa Bay. The application is, therefore, allowed for KShs. 10 814,000 as per the judgment of this court dated the 21st day of June 2022, and the costs as assessed.
 6. This application is therefore allowed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 19TH DAY OF JUNE 2024

KIARIE WAWERU KIARIE

JUDGE

