



**Okeno & Sons Building Contractors v Principal Secretary, Ministry  
of Agriculture, Livestock & Fisheries & another (Judicial Review  
E010 of 2022) [2023] KEHC 2319 (KLR) (21 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2319 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
JUDICIAL REVIEW E010 OF 2022  
KW KIARIE, J  
MARCH 21, 2023**

**BETWEEN**

**OKENO & SONS BUILDING CONTRACTORS ..... APPLICANT**

**AND**

**THE PRINCIPAL SECRETARY, MINISTRY OF AGRICULTURE, LIVESTOCK  
& FISHERIES ..... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. On the June 21, 1989, the ministry of Fisheries Development and the ex parte applicant entered into an agreement for the construction of Fish Reception and selling Centre. Apparently the construction was completed but the issue of payment has been outstanding since then.
2. The disputed amount of Kshs. 40 million was awarded by an arbitrator and the applicant claims that it has not been paid. The applicant therefore moved the court by way of Chamber Summons dated October 24, 2022 under section 3A of the *Civil Procedure Act*, Order 53 Rules 1 (1) & (2) of the *Civil Procedure Rules*. The applicant is seeking the following orders:
  - a. That this application be certified as urgent and service thereof be dispensed with in the first instance.
  - b. That leave be granted to the applicant to apply for the following Judicial Review orders:
    - i. An order of judicial review in the nature of mandamus compelling the respondents to forthwith satisfy the decretal amount of Kshs.40,825,028.03 together with costs and interest thereof as per the judgment delivered and adopted on the 24/6/2022 by the court in Homa Bay HCC MISC.E008 of 2022.



ii. Costs of this application be borne by the respondents.

3. The application was premised on the following grounds:

- a. The applicant obtained an award made by Mr. Phillip K. Murgor on the November 14, 2014 against the Respondents for Ksh.39, 688,914.00 thereof.
- b. That the applicant there after made an application to the High court vide Homa Bay HCCC Misc Appl. No. E008 of 2022 for the recognition and adoption of the same as judgment of the court.
- c. That on the 24/6/2022 the honorable court recognized and adopted the same as a judgment/ decree of the court.
- d. That upon adoption and recognition of the same, the honorable court issued a certificate of order against the government on the 13/7/2022.
- e. That the applicant thereafter caused the said certificate order to be served and served against the respondents on the 14/7/2022.
- f. That the applicant on the 11/10/2022 taxed its bill of costs and the honorable Deputy Registrar issued a certificate of costs thereof on the 11/10/2022 and the same served on the respondents.
- g. That without any justifiable course the respondents have denied/refused to pay the applicant the kshs.40, 825,028.03 as decreed by this court.
- h. That effort to have the respondents pay the applicant the said amount has been turned down and /or refused by the respondents herein.
- i. That essentially the applicant herein has been denied the right to enjoy the fruits of the judgment given in its favour.
- j. That unjust exercise of power by the respondents has subject the applicant to anguish, loss and damages.
- k. That in the event the orders sought herein are not granted the applicant stands to suffer irreparably as it is not able to meet its obligation to the various employees, clients suppliers and many others they are dealing with.

4. The respondent in response stated:

- a) That the claim was fully settled;
- b) That the matter is under investigations; and
- c) In the alternative gave a structure of how the same was going to be settled.

5. The respondents cannot be allowed to oscillate between admission of indebtedness and payments having been made. If payments have been done, there is nothing as easy as to prove the payments by documents. I find that the reason they have offered a payment structure is because they know payments have not been done.

6. I am therefore satisfied that the applicant merits the orders sought in prayer (b) with costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 21<sup>ST</sup> DAY OF MARCH, 2023**



**KIARIE WAWERU KIARIE**  
**JUDGE**

