



**Republic v The County Executive Member in Charge of Finance, Homa Bay County & another; William Nyakwada t/a Naksons Kenya Limited (Exparte Applicant) (Judicial Review E007 of 2023) [2024] KEHC 11721 (KLR) (1 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 11721 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
JUDICIAL REVIEW E007 OF 2023  
KW KIARIE, J  
OCTOBER 1, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY EXECUTIVE MEMBER IN CHARGE OF FINANCE, HOMA BAY COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY SECRETARY COUNTY GOVERNMENT OF HOMA BAY ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**DR. WILLIAM NYAKWADA T/A NAKSONS KENYA LIMITED ..... EXPARTE APPLICANT**

**JUDGMENT**

1. On the 4<sup>th</sup> day of October 2022, the ex parte applicant in Homa Bay obtained a judgment in his favour for Kshs. 1,666, 640/=, costs and interest until payment in full, against Homa Bay County Chief Officer-Roads, Transport & Public Works, CEC Member- Roads, Transport & Public Works & the County Government of Homa Bay.
2. The applicant has contended that there is no pending appeal and that the decretal sum has not been paid. He is seeking orders to compel the respondents to make payments regarding the judgment.
3. The respondents in response opposed the application on the following grounds:
  - a. That the application dated 3<sup>rd</sup> November 2023 offends the provisions of Section 21 of the [Government Proceedings Act](#) and Order 29 of the Civil Procedure Rules.



- b. The application dated 3<sup>rd</sup> November 2023 contravenes the provisions of Section 2, as read together with Section 148 of the [Public Finance Management Act](#), for misjoinder of parties.
  - c. That the application is incompetent and fatal in law for the dearth of a Certificate of Order against the Government as required under Order 29 Rule 3 and violation of numerous statutory laws.
  - d. That the orders sought in the substantive Judicial Review Application are against parties not joined to the suit and, therefore, violate the principles of fair hearing.
  - e. That the impugned default trial magistrate judgment is subject to review at the trial court and, therefore, the instant Judicial Review Application ought to be dismissed with costs.
  - f. That the amounts claimed in the suit are not justified and cannot be supported, and the application dated 3<sup>rd</sup> November 2023 ought to be dismissed with costs.
4. Other than the averment by the respondent that the judgment in the Homa Bay Civil suit E039 of 2022 is pending review, there was no demonstration by attachment of any document. This ground of opposition is therefore dismissed.
  5. In the ruling I rendered in this matter on the 11<sup>th</sup> day of April 2024, I fully addressed the issue of misjoinder and do not need to repeat it.
  6. The respondents have contended that the applicant’s application is incompetent because it does not attach the Certificate of Order against the Government. The applicant, on his part, has submitted that this omission is curable. My attention was drawn to the case of Patrick Mukono Kisilu t/a Mutomo Kandae General Agencies v County Government of Kitui [2021] eKLR. In this case, Judge R.K Limo said:

21. Aside from the above findings, it is now settled that any provision of law that hinders the right to access justice under Article 48 is bad law, and to that extent, Section 13A of the [Government Proceedings Act](#) is unconstitutional. In the case of Kenya Bus Service Ltd & Anor. versus Minister for Transport & 2 Others [2012], the court held as follows:-

“The provisions for demanding [prior notice before suing the Government is justified on the basis that the government is a large organization with extensive activities and fluid staff, and it is necessary for it to be given the opportunity to investigate claims laid against it and decide whether to settle or contest liability taking into account the public expense. While the objectives are laudable, the effect of mandatory notice provisions cause hardship to ordinary claimants. I am, of course, aware that pre-litigation protocols, for example, Order 3 Rule 2 of the Civil Procedure Rules, require that notice be given before action is commenced. Still, the penalty Rules, require that notice be given before action is commenced. Still, the penalty for non-compliance is not to lose the right to agitate the cause of action but to be denied costs incurred in causing the matter to proceed to action.

Viewed against the prism of [the Constitution](#), it also becomes evident that Section 13A of the GP provides no independent to access to justice. Where the state is at the front, left, and centre of the citizen’s life, the law should not impose hurdles on the accountability of the Government through the Courts. An analysis of the various reports from the Commonwealth, which I have cited, clearly demonstrates that the requirement for notice, particularly where it is strictly enforced as a mandatory requirement, diminishes the ability of the citizen to seek relief against the government. It is my finding, therefore, that Section



13A of the *Government Proceedings Act* as a mandatory requirement violates the provisions of Article 48.”

7. I fully concur. The failure to attach the certificate as required under Section 13A of the *Government Proceedings Act* cannot be the basis for defeating the applicant’s application.
8. The respondents are to settle the decree in Homa Bay Civil Suit E039 of 2022 with costs within 60 days of this judgment. The respondents will pay the costs of this application.

**DELIVERED AND SIGNED AT HOMA BAY THIS 1ST DAY OF OCTOBER 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

