



**Republic v County Secretary, Homa Bay County Government & 4 others;
Joas Components Company Limited (Exparte Applicant) (Judicial Review
E003 of 2023) [2024] KEHC 15625 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15625 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW E003 OF 2023
KW KIARIE, J
DECEMBER 4, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**COUNTY SECRETARY, HOMA BAY COUNTY GOVERNMENT 1ST
RESPONDENT**

PUBLIC SERVICE BOARD, HOMA BAY COUNTY 2ND RESPONDENT

**INTERNAL AUDITOR, HOMA BAY COUNTY GOVERNMENT 3RD
RESPONDENT**

DEPARTMENT OF TRANSPORT & INFRASTRUCTURE ... 4TH RESPONDENT

HOMA BAY COUNTY GOVERNMENT 5TH RESPONDENT

AND

JOAS COMPONENTS COMPANY LIMITED EXPARTE APPLICANT

RULING

1. The applicant came to court through a Notice of Motion dated the 22nd day of August 2024 under section 5 of the *Judicature Act*, sections 1A, 1B & 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules*. The applicant seeks to have the respondents cited for contempt of court.
2. The application is premised on the following grounds:
 - a. On 22/2/2024, this honourable court entered judgment in favour of the Ex-parte applicant against the respondents and ordered payment of the decretal sum of kshs.8,730,912.00, costs of kshs.368,777 and interest.



- b. The ex-parte applicant's advocate duly served the respondents with the said judgment and correspondence letter detailing the account for payment in favour of the ex-parte applicant. Still, the respondents have since declined to make payments.
 - c. Despite several reminders by the Ex-parte applicant's advocates, the respondents have not communicated or attempted to pay.
 - d. The said acts make the proceedings between the applicant and the respondents regarding the interim order an academic exercise, an abuse of the court, and a waste of legal time.
3. The respondents opposed the application on the following grounds:
- a. They were not served with the order requiring them to make payments.
 - b. That the respondents are experiencing financial constraints due to delayed disbursement from the National Government.
 - c. That there is a procedure which includes factoring the monies into the budget.
4. The respondents claim they were not notified of the judgment in favour of the applicant dated February 22, 2024. However, this defence is weak. The applicant provided documents indicating that the respondents were notified of the judgment multiple times, including several reminders. Additionally, the applicant has accused the respondents of failing to respond to these letters.
5. For a party to be cited for contempt of the court, it must be demonstrated that there is wilful disobedience of the court's order. In *East African Engineering Consultants vs Municipal Council of Kisumu & Another* [2007] eKLR, Nyamu J stated:
- There is only one way of enforcing orders where they are disobeyed, i.e., through contempt proceedings. The applicant should, therefore, have enforced the mandamus order using this method.
- There is only one rider—an officer can only be committed where the public body he serves has funds, where he deliberately refuses to pay, or where a statute has earmarked funds for payment. An officer does not incur personal liability.
6. The applicant has not demonstrated wilful refusal by the respondents to pay him. On the contrary, the respondents have cited that the failure of the National Government to disburse funds to County Governments has contributed greatly to the non-payment. It is common knowledge that County Governments have not received funds allocated by the National Government for a while.
 7. The respondents, however, have a duty to explain to their service providers their predicament, which led to their failure to pay debts owed to the merchants.
 8. The applicant has not made a case to cite the respondents for contempt of court. The application is dismissed. Each party is to bear its own costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 4TH DAY OF DECEMBER 2024

KIARIE WAWERU KIARIE

JUDGE

