



**Republic v CECM Department of Lands, Housing, Physical Planning and Urban Development, Homa Bay County & 4 others; Ongol (Exparte Applicant) (Judicial Review E013 of 2024) [2024] KEHC 15595 (KLR) (3 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15595 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
JUDICIAL REVIEW E013 OF 2024  
KW KIARIE, J  
DECEMBER 3, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**CECM DEPARTMENT OF LANDS, HOUSING, PHYSICAL PLANNING AND URBAN DEVELOPMENT, HOMA BAY COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**JARED OUMA ..... 2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR HOUSING HOMA BAY COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**THE CHIEF OFFICER, HOMA BAY COUNTY DEPARTMENT OF LANDS HOUSING, PHYSICAL PLANNING AND URBAN DEVELOPMENT ..... 4<sup>TH</sup> RESPONDENT**

**HOMA BAY COUNTY GOVERNMENT ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**BONIFACE OTIENO ONGOL ..... EXPARTE APPLICANT**

**JUDGMENT**

1. Boniface Otieno Ongol, the ex parte applicant, moved the court through a Chamber Summons dated the 24<sup>th</sup> day of July 2024. It was brought under Order 53 Rules 1 of the Civil Procedure Rules for the following orders:
  - a. That the applicant be granted leave to apply for a Writ of certiorari to move into court and quash the respondent’s allocation of restaurant D1 within the Homabay market, made on the 10<sup>th</sup> day of July 2024.



- b. The cost of this application be provided for.
2. The application was premised on the following grounds:
- a. The ex parte applicant, Ms. Risper Awinja Wamakobe, was allocated Restaurant D1 by the County Government of Homabay, which had initially been issued to one Ms. Risper Awinja Wamakobe. [sic]
  - b. Thereafter, the ex parte applicant utilized it for Hotel Business until sometime in 2023, when he briefly stopped using it to tend to his sick father.
  - c. During the period when the stall was not in use by the applicant, Ms. Emelda Omoro and Ms. Dolphin Okatch entered the premises and began utilizing it without permission from him.
  - d. The ex-parte applicant attempted to have them vacate the premises several times but refused.
  - e. At one point, the two trespassers, Ms. Emelda Omoro and Ms. Dolphine Okatch, reported the ex parte application to the housing officers of the Homabay County government, who coerced him to give them three months to vacate.
  - f. The housing officer also told the ex parte applicant to accept payment of three months' rent, which he was to use to pay rent to the fifth respondent as they prepared to vacate.
  - g. After three months, the two failed to vacate the land and instead reported the ex parte applicant to the housing officers again. This continued until the applicant's wife was served with the revocation of the allotment letter.
  - h. That the said decision fails to take into account the fact that the ex parte applicant never sublet the premises to the strangers therein.
  - i. The respondents' decision attempts to frustrate the applicant as he is not behind with rent payment, as stated in the revocation letter dated the 10<sup>th</sup> day of July 2024.
  - j. That the decision to recall and revoke the allocation of restaurant No. D1 is arbitrary.
  - k. That the applicant has never transferred the business or the purpose the allocation was meant for and has been out of business for almost one year now.
  - l. That the applicant has not flaunted any laws and, as such, is entitled to fair practices by the respondents.
  - m. The applicant, therefore, prays for an order of certiorari, quashing the respondents' decision of 10th July 2024 to recall and revoke the allocation for restaurant D1.
  - n. This honourable court has the competent jurisdiction to grant the orders sought.
3. The respondents opposed the application because:
- a. There has never been a tenancy agreement with the exparte applicant.
  - b. Restaurant D1's allocation was revoked after it was discovered that Risper Awinja Wamakobe had illegally sublet it.
  - c. The application lacks merits.
4. In a letter dated July 10<sup>th</sup> 2024, that the ex parte applicant attached to his application, it is clear that Restaurant D1 was allotted to Risper Awinja Wamakobe. It emanated from the respondents. Risper



Awinja Wamakobe was informed of the decision to revoke the allotment after she had sublet the premises to other parties. The same was also in rent arrears. This is the decision the applicant is seeking the court's intervention.

5. Evidently, the ex parte applicant had not been allotted any premises and cannot purport to seek this court to aid him in revoking a decision to which he was not a party. This explains why he was incoherent when he stated:
  - a) The ex parte applicant, Ms. Risper Awinja Wamakobe, was allocated Restaurant D1 by the County Government of Homabay, which had initially been issued to one Ms. Risper Awinja Wamakobe. [sic]

In *Arun C Sharma v Ashana Raikundalia t/a A Raikundalia & Co Advocates, Nishit Raikundalia & Sapphire Trading & Marketing Ltd (Miscellaneous Civil Application 802 of 2010)* [2014] KEHC 2430 (KLR)

J.F. Gikonyo opined that “..... Thus, it will be perfect to label them as litigants who have come to court with unclean hands. And as it were, equity will not show any love to a person who has acted mala fides in seeking its hand. For those reasons, there is not any sufficient reason on which the Court may act in favour of the Applicants. Accordingly, I decline their request to vary the orders of 2nd July 2014.....

6. This court cannot come to the aid of the ex parte applicant.
7. Whether the revocation was in order or not, Risper Awinja Wamakobe, not the ex parte applicant, is the right person to raise the issue.
8. The application, therefore, fails with costs to the respondents.

**DELIVERED AND SIGNED AT HOMA BAY THIS 3<sup>RD</sup> DAY OF DECEMBER 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

