



Republic v County Government of Homa Bay & 3 others; Ober (Ex parte Applicant) (Judicial Review Application E011 of 2025) [2026] KEELRC 1152 (KLR) (29 April 2026) (Ruling)

Neutral citation: [2026] KEELRC 1152 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E011 OF 2025**

NZIOKI WA MAKAU, J

APRIL 29, 2026

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
ORDERS OF PROHIBITION, CERTIORARI & MANDAMUS**

AND

**IN THE MATTER OF ARTICLES 22, 23, 30, 41, 43, 48, 159 OF THE CONSTITUTION
AND IN THE MATTER OF SECTION 98 OF THE CIVIL PROCEDURE
ACT, ORDER 22 RULE 26 OF THE CIVIL PROCEDURE RULES**

AND

IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT

AND

IN THE MATTER OF SECTION 7 & 8 OF THE FAIR ADMINISTRATIVE ACTIONS ACT

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF HOMA BAY 1ST RESPONDENT

HOMA BAY COUNTY SECRETARY PROF. BENARD

MUOK 2ND RESPONDENT

HOMA BAY COUNTY EXECUTIVE MEMBERFOR FINANCE ALPHONCE

WERA 3RD RESPONDENT

HOMA BAY COUNTY HUMANRESOURCE DIRECTOR IRENE

ADIKA 4TH RESPONDENT

AND



RULING

1. Pursuant to leave granted on 4th March 2026, the Ex parte Applicant filed the Notice of Motion dated 16th March 2026 seeking an order of mandamus to compel the County Executive Officer for Finance, Homa Bay, to pay the sum of Kshs. 8,401,754/-, being the decretal amount, together with Kshs. 202,095/- in costs as awarded in Kisumu ELRC Cause No. 39 of 2013. He also seeks the costs of this application.
2. The application is premised on the grounds set out on its face and is supported by the statement of facts, verifying affidavit, and statutory statement filed therewith. The Ex parte Applicant avers that judgment in Kisumu ELRC Cause No. 39 of 2013 was delivered on 4th October 2018, awarding him Kshs. 8,401,754/- together with costs of Kshs. 202,095/-, both sums attracting interest at the rate of 14% per annum. He further avers that, as a result of the lapse of over eight years, the total amount due has since risen to Kshs. 21,048,849/-.
3. The Respondents did not file any response to the application. However, on 28th April 2026, counsel for the Respondents indicated that they had raised a Preliminary Objection. Counsel for the Ex-parte Applicant stated that the said Preliminary Objection had not been served upon them. The Court likewise confirmed that no such objection was on record and consequently reserved the application for Ruling on 29th April 2026.

Ex-Parte Applicant's Submissions

4. In support of the application, the Ex parte Applicant submits that the judgment delivered on 4th October 2018 unequivocally awarded him Kshs. 8,401,754/-. He further states that his bill of costs was taxed at Kshs. 202,095/- on 17th January 2023. Additionally, he avers that despite service of the certificate of costs against the Government dated 4th July 2025, the Respondents have failed, neglected, and/or refused to settle the decretal sum.
5. In light of the foregoing, the Ex parte Applicant urges the Court to allow the application, inclusive of accrued interest, so as to enable him enjoy the fruits of his judgment.

Disposition

6. The Ex Parte Applicant is the successful party in Kisumu ELRC Cause No. 39 of 2013. In the case, judgment was delivered on 4th October 2018 where the Ex Parte Applicant was awarded Kshs. 8,401,754/- together with costs. The matter was eventually taxed in the amount of Kshs. 202,095/-.
7. Under Order 53, an Ex Parte Applicant has to seek leave in a chamber summons application. Once leave is granted, the Ex Parte Applicant is required to file a notice of motion within 21 days of the grant of leave. The two files are distinct. The Ex Parte Applicant has taken a fatal misstep. Instead of filing the substantive motion in a separate motion has filed the same within the application for leave. This is an error that must be corrected by dismissing the Judicial Review in its entirety. There will be no order as to costs the Respondents having failed to file a response to the substantive motion. The Ex Parte Applicant has other recourse for the recovery of the decretal sum and taxed costs plus accrued interest on the decretal sum (if any).

It is so ordered.



DATED AND DELIVERED AT KISUMU THIS 29TH DAY OF APRIL 2026

NZIOKI WA MAKAU, MCIARB.

JUDGE

