



**Siganga & Co Advocates v Secretary, Homa Bay County Assembly Service Board & 2 others
(Judicial Review Application 10 of 2019) [2023] KEELRC 253 (KLR) (1 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 253 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW APPLICATION 10 OF 2019**

S RADIDO, J

FEBRUARY 1, 2023

BETWEEN

SIGANGA & CO ADVOCATES APPLICANT

AND

**SECRETARY, HOMA BAY COUNTY ASSEMBLY SERVICE
BOARD 1ST RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF HOMA
BAY 2ND RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER FINANCE, COUNTY
GOVERNMENT OF HOMA BAY 3RD RESPONDENT**

RULING

1. On February 16, 2022, Siganga & Co Advocates and Ms Wendy Opar, Advocate for the Respondents, entered a consent in the following terms:
 - (1) The parties have agreed that the outstanding legal fees owed to the applicant are as listed:
 - (a) Total amount Kshs 3,631,525.50
 - (b) Amount paid as of January 25, 2022 Kshs 736,468.95
 - (c) Outstanding balance Kshs 2,895,056.10
 - (2) The parties to the suit have assented to a payment plan to settle the legal fees in contention commencing from the February 21, 2022.
 - (3) The part payments will be made in eleven (11) instalments subsequently until payment in full.



- (4) The first instalment to be made on the February 21, 2022 will be Kenya Shillings Three Hundred Thousand Shillings only (300,000/-).
 - (5) The ensuing payments will be of Kenya shillings three Hundred Thousand (300,000/-) only as follows:
 - (a) Kenya Shillings Three Hundred thousand only (300,000-) on or before March 21, 2022, for the 2nd instalment.
 - (b) Kenya Shillings Three Hundred thousand only (300,000-) on or before April 21, 2022, for the 3rd instalment.
 - (c) Kenya Shillings Three Hundred thousand only (300,000-) on or before May 21, 2022, for the 4th instalment.
 - (d) Kenya Shillings Three Hundred thousand only (300,000-) on or before June 21, 2022, for the 5th instalment.
 - (e) Kenya Shillings Three Hundred thousand only (300,000/-) on or before July 21, 2022, for the 6th instalment.
 - (f) Kenya Shillings Three Hundred thousand only (300,000/-) on or before August 21, 2022, for the 7th instalment.
 - (g) Kenya Shillings Three Hundred thousand only (300,000/-) on or before September 21, 2022, for the 8th instalment.
 - (h) Kenya Shillings Three Hundred thousand only (300,000/-) on or before October 21, 2022, for the 9th instalment.
 - (i) Kenya Shillings Three Hundred thousand only (300,000/-) on or before November 21, 2022, for the 10th instalment.
 - (j) the eleventh instalment is the interest of Kenya Shillings Four Hundred Thousand (400,000/-) only.
 - (6) In default of any of the instalment payments, the applicant be at liberty to enforce the order.
2. The Respondents did not abide by the terms of the consent, and on May 12, 2022, the applicant/ advocate filed a contempt application.
 3. The Court determined the Motion through a Ruling delivered on October 26, 2022.
 4. In the Ruling, the Court found the Clerk of the County Assembly in contempt and directed her to appear in Court for mitigation and sentencing.
 5. On November 23, 2022, the Respondents filed a Motion seeking, among others, orders reviewing, discharging or setting aside warrants of arrest issued against the Clerk.
 6. The Court directed the Respondents to serve the Motion, and the applicant/advocate filed a replying affidavit in opposition on December 5, 2022.
 7. The Respondents filed their submissions on December 19, 2022, and the applicant/advocate on January 13, 2023.
 8. The Court has considered the Motion, affidavits, and submissions.



9. In the consent filed in Court on February 16, 2022, the parties agreed that the outstanding balance was Kshs 2,895,056/10.
10. The terms of payment of the balance were set out in the consent.
11. In the replying affidavit, the applicant/advocate admitted to receiving Kshs 300,000/- on February 22, 2022, Kshs 293,450/- on 28 June 2022, Kshs 786,206/90 on 11 November 2022, and Kshs 1,763,557/- on November 25, 2022.
12. These payments made after January 25, 2022 total Kshs 3,143,213/- (the consent balance was Kshs 2,895,056/10, and the inconsistency has been explained as comprising withholding tax).
13. The applicant/advocate deposed in the replying affidavit that the alleged balance of Kshs 1,191,747/15 comprised interest for 34 months from July 2019 to May 2022.
14. The Court has keenly perused the consent filed by the parties on February 16, 2022. The consent did not make a provision for payment of interest save for the Kshs 400,000/- in default. The balances were in absolute sums and were not floating balances dependent on interest payment.
15. The Court is, therefore, satisfied that the Respondents (including the Clerk as Accounting Officer) had satisfied the terms of the consent order, the subject of contempt application as of November 25, 2022.
16. For clarity, the order issued on October 26, 2022 is vacated/discharged as the Respondents have purged the contempt.
17. This order to apply in the related files being, Kisumu Judicial Review No 11 of 2019, Kisumu Judicial Review No. 12 of 2019 and Kisumu Judicial Review No 13 of 2019.
18. Each party to bear own costs.

DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 1ST DAY OF FEBRUARY 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For applicant Mr Siganga instructed by Siganga & Co. Advocates

For Respondents Mr Okongo instructed by Okongo Wandago & Co Advocates

Court Assistant Chrispo Aura

