



**Siganga & Co Advocates v Secretary, Homa Bay County Assembly  
Service Board & 2 others (Judicial Review Application 10 of 2019)  
[2022] KEELRC 12982 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12982 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
JUDICIAL REVIEW APPLICATION 10 OF 2019  
S RADIDO, J  
OCTOBER 26, 2022**

**BETWEEN**

**SIGANGA & CO ADVOCATES ..... APPLICANT**

**AND**

**SECRETARY, HOMA BAY COUNTY ASSEMBLY SERVICE  
BOARD ..... 1<sup>ST</sup> RESPONDENT  
COUNTY SECRETARY, COUNTY GOVERNMENT OF HOMA  
BAY ..... 2<sup>ND</sup> RESPONDENT  
COUNTY EXECUTIVE COMMITTEE MEMBER FINANCE, COUNTY  
GOVERNMENT OF HOMA BAY ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. On February 16, 2020 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 2<sup>nd</sup> instalment.
    - (b) Kenya shillings three hundred thousand only (300,000/-) on or before April 21, 2022, for the 3<sup>rd</sup> instalment.
    - (c) Kenya shillings three hundred thousand only (300,000/-) on or before May 21, 2022, for the 4<sup>th</sup> instalment.
    - (d) Kenya shillings three hundred thousand only (300,000/-) on or before June 21, 2022, for the 5<sup>th</sup> instalment.
    - (e) Kenya shillings three hundred thousand only (300,000/-) on or before July 21, 2022, for the 6<sup>th</sup> instalment.
    - (f) Kenya shillings three hundred thousand only (300,000/-) on or before August 21, 2022, for the 7<sup>th</sup> instalment.
    - (g) Kenya shillings three hundred thousand only (300,000/-) on or before September 21, 2022, for the 8<sup>th</sup> instalment.
    - (h) Kenya shillings three hundred thousand only (300,000/-) on or before October 21, 2022, for the 9<sup>th</sup> instalment.
    - (i) Kenya shillings three hundred thousand only (300,000/-) on or before November 21, 2022, for the 10<sup>th</sup> 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 with the terms of the consent, and on May 12, 2022, the applicant filed a motion seeking orders:
- (1) ...
  - (2) The Secretary, Homa Bay County Assembly Service Board, as the accounting officer of the judgment debtor, appear in court to show cause why the said secretary should not be committed to civil jail for failing to comply with the consent order filed in court on February 16, 2022.
  - (3) The Secretary, Homa Bay County Assembly Service Board, as the accounting officer of the judgment debtor, be compelled to remit to the firm of Siganga & Co Advocate the sum of Kshs 4,035,561.05.
  - (4) That should the sum of Kshs 4,035,561.05 not be remitted to the firm of Siganga & Co Advocates, the secretary, Homa Bay County Assembly Service Board, be committed to civil jail for being in contempt of court.



- (5) That this order be made applicable to Kisumu Judicial Review Applications Nos 11, 12, and 13 of 2019.
- (6) Costs of this application be provided payable by the judgment debtor.
3. The respondents filed a replying affidavit sworn by The Clerk of the County Assembly and grounds of opposition to the motion on May 25, 2022, contending that the application was incompetent and an abuse of the court process because it had been brought against the wrong party.
4. In the replying affidavit, the clerk deponed that the respondents had been willing to comply with the consent, but delays in receiving funds from the National Treasury had frustrated efforts to settle the outstanding amounts.
5. Pursuant to directions issued on June 27, 2022, the applicant filed his submissions on July 20, 2022, and the respondents' submissions were not on record by the agreed timelines.
6. The court has considered the motion, affidavits, grounds of opposition, and submissions.
7. The parties voluntarily entered a consent which was filed in court. At the time of entering the consent, the respondents were peculiarly aware of their financial status, otherwise, they would not have made the time-bound commitments.
8. It can also not be disputed that the Clerk of the County Assembly, by virtue of the office, serves as Secretary of the County Assembly Service Board, hence the accounting officer.
9. In that respect, the secretary is the proper person to interdict when there is a failure to comply with the type of consent reached by the parties herein.
10. The court is satisfied that the applicant has made out a case for the grant of an appropriate order in terms:
  - (i) An order is hereby issued directing the Clerk of the County Assembly as the Secretary, Homa Bay County Assembly Service Board and the accounting officer of the judgment debtor to appear in court on November 21, 2022 to show cause why he/she should not be committed to civil jail for failing to comply with the consent order filed in court on February 16, 2022.
11. This order to apply in the related filed mentioned in paragraph 2(5) above.
12. Applicant to have costs of the application.

**DELIVERED VIRTUALLY FROM VOI, DATED AND SIGNED ON THIS 26<sup>TH</sup> DAY OF OCTOBER 2022.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For applicant Mr Siganga instructed by Siganga & Co Advocates

For respondents Ms Wendy Opar, Advocate, county Assembly of Homa Bay

Court Assistant Chrispo Aura

