



Republic v Clerk, Homa Bay County Assembly & another; Ayoo (Exparte) (Judicial Review E006 of 2022) [2022] KEELRC 13142 (KLR) (9 November 2022) (Judgment)

Neutral citation: [2022] KEELRC 13142 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW E006 OF 2022**

**S RADIDO, J
NOVEMBER 9, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

CLERK, HOMA BAY COUNTY ASSEMBLY 1ST RESPONDENT

HOMA BAY COUNTY ASSEMBLY 2ND RESPONDENT

AND

HON ELIZABETH AYOO EXPARTE

JUDGMENT

1. The court granted Hon Elizabeth Ayoo (*ex-parte* applicant) leave to commence judicial review proceedings against the clerk, County Assembly of Homa Bay (the clerk) and the County Assembly of Homa Bay (the assembly) on April 4, 2022.
2. The leave was to operate as a stay.
3. The *ex-parte* applicant filed the substantive motion on April 6, 2022, and the registry fixed it for directions on June 16, 2022.
4. However, the motion was only placed before the court on June 20, 2022. Since the respondents were absent, the court directed the *ex-parte* applicant to serve them with a mention notice ahead of the giving of further directions on June 28, 2022.
5. On June 28, 2022, the court directed the respondents to file and serve responses to the motion and further gave directions on the filing and exchanging submissions within set timelines.
6. According to an affidavit of service filed in court on July 4, 2022 (court stamped July 6, 2022), the respondents were served through email on June 28, 2022.



7. The clerk of the County Assembly did not file any response by the agreed timeline of July 29, 2022.
8. However, she filed submissions on September 16, 2022 (the *ex-parte* applicant did not file submissions).
9. The County Assembly did not file any documents.
10. Nevertheless, the court has considered the motion, statement of facts, accompanying affidavit and submissions.
11. The *ex-parte* applicant's case was that the resolution by the County Assembly of Homa on March 29, 2022 to remove her from the office of the speaker was unlawful because she had not been afforded a chance to defend herself as contemplated by section 11 of the [County Governments Act](#) and Standing Order No 14(6).
12. The primary assertion by the clerk in her submissions was that since the tenure of the *ex-parte* applicant as the speaker had lapsed, the proceedings had been overtaken by events, and it would be a mere pyrrhic victory to grant the orders sought.
13. The clerk caused a gazette notice to be published on March 30, 2022, notifying the public of the degazettement of the *ex-parte* applicant as a speaker upon a resolution of the 2nd respondent on March 29, 2022.
14. The *ex-parte* applicant asserted that the notice contemplated by section 11 of the [County Governments Act](#) and Standing Order No 14(6) of the County Assembly Standing Orders were not served upon her, nor was she afforded an opportunity to be heard before the plenary of the County Assembly.
15. The assertions by the *ex-parte* applicant remained uncontroverted, and the court will therefore find in her favour.

Conclusion and Orders

16. Since the removal of a speaker of a County Assembly has implications for the validity of holding future public office and further considering that the *ex-parte* applicant's term has since lapsed the court orders:
 - i. An order of judicial review by way of *certiorari* is hereby issued to remove into the Employment and Labour Relations Court at Kisumu the resolution by the Homa Bay County Assembly, the 2nd respondent herein made on March 29, 2022, removing the *ex-parte* applicant as the speaker of the 2nd respondent and the said resolution is hereby quashed.
17. No order on costs as the *ex-parte* applicant did not file submissions.

DELIVERED VIRTUALLY FROM MALINDI, DATED, AND SIGNED ON THIS 9TH DAY OF NOVEMBER, 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For *ex-parte* applicant Owiti, Otieno & Ragot Advocates

For Respondents C. Obiero & Associates Advocates

Court Assistant Chrispo Aura

