



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

JUDICIAL REVIEW APPLICATION NO. 8 OF 2020

IN THE MATTER OF AN APPLICATION BY LILLIAN PURITY NYAJOWI, JANET ALUOCH OYUGI, CAROLINE ADHIAMBO MBAI, WYCLIFFE AMBA ODERO, OCHIENG BOB EVANS AND ROSELYDAH AUMA ONYWERA FOR LEAVE TO APPLY FOR ORDERS OF JUDICIAL REVIEW IN THE NATURE OF MANDAMUS

AND

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT

AND

IN THE MATTER OF THE OFFICE OF THE GOVERNOR, HOMA BAY COUNTY GOVERNMENT

AND

IN THE MATTER OF THE SECRETARY, HOMA BAY COUNTY PUBLIC SERVICE BOARD

AND

IN THE MATTER OF THE EMPLOYMENT ACT

RULING

1. Before the Court is a Chamber Summons dated 8 July 2020 by the applicants seeking orders that:

1. Leave be granted to the applicants to apply for an order of judicial review in the nature of mandamus against the County Government of Homa Bay to compel the County Government to pay the applicants their arrears salary for services rendered from the date of appointment on 14th December 2018 to 9th January 2019, the date of their employment was halted as ordered by the Court Ruling of 17th October 2019.
2. An order of judicial review in the nature of mandamus against the County Government of Homa Bay County to compel the County Government to show cause why the County Government has refused and/or has failed to comply with the order given on 17th October 2019.
3. An order of judicial review in the nature of mandamus to the County Secretary/Chief Executive Officer, Homa Bay County Government, to show cause why he should not be committed to civil jail for refusing and/or failing to comply with the order made on the 17th October 2019.

2. When the Summons was placed before the Court on 14 December 2020, it directed that service be effected ahead of *an inter-partes* hearing on 19 January 2021.

3. On 19 January 2021, the County Government was not represented. On record was an affidavit of service deposing that the County Government had declined to accept the service of hard copies of the Summons because of COVID19 and directed that service be effected electronically.

4. The process server deposed that he effected service through email address homabaycountysecretary@gmail.com.

5. The Court indicated that it would deliver a Ruling today.

6. The applicants had commenced legal action being Kisumu Cause No. 36 of 2019, *Lilian Purity Nyajowi & 5 Ors v the County Secretary/Chief Executive Officer, Homa Bay County & 2 Ors* alleging breach of contract.
7. Filed together with the Cause was an application dated 5 April 2019, seeking certain interim orders, including access to offices and payment of arrears of salaries and allowances.
8. The Motion was canvased, and in a Ruling delivered on 17 October 2019, the Court ordered that the applicants be paid arrears of salaries from date of appointment to 9 January 2019, when their respective contracts were halted, and that the Cause be set down for hearing on the merits.
9. The Court then directed that the Cause be heard on 20 January 2020, but on the date of the hearing, the Respondents sought an adjournment because they had filed an application seeking a stay of the proceedings.
10. The Court adjourned the hearing to 28 September 2020, but due to COVID19, the Court did not sit. The Deputy Registrar rescheduled the hearing of the Cause to 18 January 2021.
11. The parties did not turn up for the hearing on 18 January 2021, and the Court dismissed the Cause.
12. In the meantime, the applicants had filed the Summons, the subject of this Ruling.
13. The Court has considered the Summons, affidavits and record and come to the view that leave should not be granted for the reasons explained herein.
14. First, the applicants should have moved for contempt of court in Cause No. 36 of 2019, as the suit was still alive when they filed the instant Summons.
15. Two, there is no evidence on record that the Court order of 17 October 2019 was served on the persons it is alleged failed to comply.
16. Three, the Summons has not expressly stated who the Respondent(s) is.
17. In an application for judicial review, the accounting officer or the authorised officer responsible for compliance with a court order should be cited and/or named by the office or by name.
18. Last, the process served did not indicate from whom or where he got the **gmail email** address, he purportedly used to serve the Summons or exhibit proof of the service.
19. For the above reasons, the Summons dated 8 July 2020 is dismissed. No order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN NAIROBI ON THIS 14TH DAY OF APRIL 2021.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For applicants Bruce Odeny & Co. Advocates

Court Assistant Chrispo Aura