



**Republic v County Assembly Service Board of Homa Bay & another; Kochieng (Exparte Applicant) (Judicial Review E005 of 2023) [2024] KEHC 1619 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1619 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
JUDICIAL REVIEW E005 OF 2023  
KW KIARIE, J  
FEBRUARY 22, 2024**

**BETWEEN**

**REPUBLIC ..... EXPARTE APPLICANT**

**AND**

**THE COUNTY ASSEMBLY SERVICE BOARD OF HOMA BAY ..... 1<sup>ST</sup> RESPONDENT**

**THE CLERK, COUNTY ASSEMBLY OF HOMA BAY ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JOHN LENNOX KOCHIENG ..... EXPARTE APPLICANT**

**RULING**

1. The respondents moved the court through a Notice of Motion dated the 1<sup>st</sup> day of December 2023. The application is brought under sections 1A, 1B, 3B, and 75 of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules, Articles 50 and 159 (2) (d) & (e) of the Constitution of Kenya. The applicant is seeking the following orders:
  - a. This matter be certified as urgent and orders be granted ex parte. [Spent]
  - b. That the applicants be granted leave to appeal against the ruling delivered on 21<sup>st</sup> November 2023.
  - c. That the notice of appeal annexed herein and a letter bespeaking proceedings be deemed duly filed and served upon payment of requisite fees.
  - d. This court would be pleased to grant a stay of proceedings in this matter pending the hearing and the determination of the applicant’s application and intended appeal.
  - e. The cost of the application be provided for.



2. The application is premised on the following grounds:
  - a. That this honorable court delivered a ruling on 21<sup>st</sup> November, 20223 dismissing the applicant's preliminary objection with costs.
  - b. That the applicants herein are desirous of filing an appeal against the orders issued on 22<sup>nd</sup> November, 2023.
  - c. That if the application dated 14<sup>th</sup> August 2023 is heard and determined, there is likely to be a contradiction of the orders issued.
  - d. That appeal of such nature cannot be lodged without seeking leave to appeal.
  - e. That the applicants will suffer substantial loss if the orders granted in this application are not granted since the application is seeking to execute an erroneous kshs.78,000,000/- and or affect the liberty of the applicant.
  - f. That the respondent will not suffer any prejudice if the orders herein are issued.
  - g. That on the date the ruling was issued, the same was done slightly earlier than 9.00 a.m. before we were admitted, and as such, we were unable to seek leave orally.
  - h. That this application has been made without unreasonable delay.
  - i. In the interest of justice, orders sought herein are granted.
3. The application was opposed on the following grounds:
  - a. There was no draft of a memorandum of appeal attached.
  - b. There was no copy of the ruling to be appealed against.
  - c. There were no reasons given in the supporting affidavit.
4. I have read both the grounds of the application, the opposition, and the rival submissions. Any party to a matter before the court is entitled to appeal if unsatisfied.
5. I, however, have an issue of dishonesty by the respondents' advocate. He cannot claim that the court delivered the ruling before 9 a.m., whereas he knows that this court starts sitting at 9 a.m. This is verifiable by checking the system. He was late to court and would want to blame the court for his lateness. This kind of behaviour is deprecated. I will, however, rest the issue at that.
6. Order 43 Rule 1 (3) provides:

An application for leave to appeal under section 75 of the *Act* shall in the first instance be made to the court making the order sought to be appealed from, either orally at the time when the order is made, or within fourteen days from the date of such order.
7. The application was made within the requisite time, and there is no requirement for a draft memorandum or an attachment of the impugned order.
8. I will grant the leave to appeal within thirty days.
9. Costs will abide by the outcome of the appeal.

**DELIVERED AND SIGNED AT HOMA BAY THIS 22<sup>ND</sup> DAY OF FEBRUARY 2024**

**KIARIE WAWERU KIARIE**



**JUDGE**

