



**Republic v County Secretary, Homa Bay County Government & 4 others;
Joas Components Company Limited (Exparte Applicant) (Judicial Review
E003 of 2023) [2024] KEHC 1599 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1599 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW E003 OF 2023
KW KIARIE, J
FEBRUARY 22, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**COUNTY SECRETARY, HOMA BAY COUNTY GOVERNMENT 1ST
RESPONDENT**

PUBLIC SERVICE BOARD, HOMA BAY COUNTY 2ND RESPONDENT

**INTERNAL AUDITOR, HOMA BAY COUNTY GOVERNMENT 3RD
RESPONDENT**

DEPARTMENT OF TRANSPORT & INFRASTRUCTURE ... 4TH RESPONDENT

HOMA BAY COUNTY GOVERNMENT 5TH RESPONDENT

AND

JOAS COMPONENTS COMPANY LIMITED EXPARTE APPLICANT

JUDGMENT

1. Joas Components Company Limited, the ex parte applicant, moved the court by way of a Notice of Motion dated the 28th day of September 2023 under Order 53 Rules 3 of the Civil Procedure Rules for the following orders:
 - a. That the honourable court be pleased to issue an order of mandamus against the respondent compelling them to release to the ex parte applicant a sum of kshs.8,730,912/- or thereabout being the decretal sum together with costs amount to kshs.368,777/- plus interest in Homabay



Chief Magistrates Court Civil Case NO. E44 of 2021, which sum of money is being withheld by the respondent.

- b. That the cost of this application is provided for.
2. The application was premised on the following grounds:
- a. The applicant, Joas Components Co. LTD, filed a suit, namely Homa Bay Chief Magistrate's Court Civil No. E44 of 2021 against the respondents for, among other things, a liquidated sum of kshs.8,730,912/- as a claim against services rendered by the applicant as the tendered contracted by the respondents for procurement maintenance of the following roads:
 - i) Riat-Ondati-Ototo Road. Tender NO. HB/CTY/T&I/153/2014-2015.
 - ii. Morou-Kanyabie Road in South Kabuoch Ward. Tender NO. HB/CTY/T&I/012/2015-2016.
 - iii. Kaloko, Ukula Beach Access Road in Kaksingri West Ward. Tender No. HBC/T&I/012/2015-1016.
 - iv. Ndiru-Onjiko Road in Kagan ward. Tender No. HB/CTYT&I/084/2015-2016.
 - b. Thereafter, the court (Hon. R.B.N. Maloba) entered judgment on 8th September 2022 against the respondents under the following heads:
 - i. Judgment in the sum of kss.8,730,912.00.
 - ii. Interest in (a) above at 14% per annum from the filing date.
 - iii. Costs of the suit
 - iv. Such further or other relief as this honourable court may deem fit and just.
 - c. Upon the court entering judgment in the terms stated above, the applicant subsequently extracted a decree dated 22nd September 2022 in the sum of ksh.8,730,912.00 (exclusive of cots) as of the aforementioned date. The said decree reads:
 - i. Judgment in the sum of Kshs. 8,730,912.00.
 - ii. Interest in (a) above at the rate of 14% p.a. from the date of filing.
 - iii. Costs of the suit.
 - iv. Such further or other relief as this honourable court may deem fit and just.
 - d. It is noteworthy that the respondents did not challenge the judgment or the subsequent decrees stated above within the statutory timelines spelt out under the provisions of the [Civil Procedure Act, 2010](#) and that the decree is and remains valid and, therefore, enforced against the respondents.
 - e. Upon lapse of the duration within which the respondents could challenge the said judgment and subsequent decree, the applicant served the respondents with the said decree and, after that, engaged the respondents vide correspondences and physical visits to its offices with a view of having the decretal sum settled as per the terms of the said decree.



- f. Despite written demands, oral representation and reminders, the respondents have failed and/or refused to settle the applicant's decretal amount in the sum of kshs.8,730,912.00 exclusive of costs as at 22nd September, 2022 to date.
 - g. The applicant filed a party-to-party bill of costs on 20th September 2022 and assessed on 13th October 2022, and a certificate of costs was issued to the applicant dated 24th October 2022 in the sum of kshs.368,777/-.
 - h. Under section 21(4) of the *Government Proceedings Act*, Chapter 40, Laws of Kenya, it prohibits any person and/or body from executing and/or attaching any property of the government in satisfaction of any money and/or costs. The applicable procedure is to compel the respondents by issuance of an order of Mandamus.
 - i. This honourable court has the competent jurisdiction to grant the orders sought in this proceeding.
3. The respondents did not file any grounds of opposition to the application or submissions.
 4. In their supporting affidavit, the ex parte applicant attached a copy of certificate of order of judgment and costs against the County Government of Homa Bay. This was for a decretal sum of kshs.8,730,912.00 and kshs.368,777/-costs. This is what the company is claiming: that the respondents have failed to pay despite numerous demands.
 5. I accordingly grant the orders sought in prayers a and b with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 22ND DAY OF FEBRUARY 2024

KIARIE WAWERU KIARIE

JUDGE

