



Republic v Homa Bay County Assembly Service Board & 2 others; Otieno, Ragot & Company Advocates (Exparte Applicant) (Miscellaneous Civil Application E009 of 2023) [2024] KEHC 1589 (KLR) (22 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1589 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
MISCELLANEOUS CIVIL APPLICATION E009 OF 2023
KW KIARIE, J
FEBRUARY 22, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

HOMA BAY COUNTY ASSEMBLY SERVICE BOARD 1ST RESPONDENT

THE CLERK, HOMA BAY COUNTY ASSEMBLY 2ND RESPONDENT

HOMA BAY COUNTY ASSEMBLY 3RD RESPONDENT

AND

OTIENO, RAGOT & COMPANY ADVOCATES EXPARTE APPLICANT

RULING

1. The ex parte applicant herein moved the court through a Notice of motion dated 25th April 2023. It was brought under Order 53 Rules 3 & 4 of the Civil Procedure Rules and Article 159 of the Constitution of Kenya. The applicant is seeking the following orders:
 - a. This honourable court be pleased to extend the 21 days allowed in the ex-parte Chamber Summons application dated 19/1/2023 for filing of the substantive Notice of Motion Application and, in so doing, the Notice of Motion herein be admitted and deemed as properly filed.
 - b. An order of Judicial Review by way of mandamus should be directed to the Homa Bay County Assembly service board and the clerk, Homabay County Assembly, to pay the applicant the sum of kshs.996,958.80/- together with interest at Court rates of 14% per annum as from 8/12/2014 being the decree and the certified costs in Homa Bay High Court Miscellaneous



- c. The respondents are to bear the costs of this application.
2. The application was premised on the following grounds:
- a. The ex-parte Chamber Summons Application dated 19/1/2023 was filed on 17/2/2023 and was listed for hearing before the honourable judge on 2/3/2023.
 - b. That Ms. Otieno Monica advocate attended the virtual session before the honourable judge on the aforementioned date for the hearing of the said application when the judge directed that the application ought not to have been listed for hearing and, instead, it should have first been placed before the judge in chambers so that the honourable judge may consider its merits and give directions accordingly.
 - c. The honourable judge directed that the said application be placed before him in chambers for his consideration and that the applicant follow up with the court registry on the directions issued.
 - d. Following those directions given by the court, I continued to follow up with the registry every day from 2/3/2023 until 13/3/2023 by way of making telephone calls and eventually, given that state of affairs, I thought it would be prudent to have my inquiry set out in writing hence my email of 14/3/2023 inquiring of the directions issued by the honourable judge concerning the application dated 19/1/2023 to which they responded that the contents of our email were noted and that they would update us on the status of the matter.
 - e. Despite the assurance given to me in response to my above email, there was no further response from the registry regarding the status of the matter or whether any directions were issued, if at all. Nonetheless, I continued with my informal inquiries without any success, and ultimately, on 24th March 2023 and 4th April 2023, respectively, I decided to send reminders inquiring about the status of the matter.
 - f. Both reminders were never responded to, and faced with this now continued worrisome predicament, I opted to send our office clerk, Mr. Tobias Ouma, to the registry on 11th April 2023, who informed me that after making several inquiries from various courts clerk s including Mr. Kevin who is attached to the High Court civil registry, as well perusing the file movement register, it was finally Mr. Kevin who managed to retrieve the file and informed Mr. Tobias that the application dated 19th January 2023 had been placed before the learned judge and left to commence these Judicial Review proceedings was granted by this honourable court on 2nd March 2023.
 - g. All correspondence between the applicant and the court registry concerning this matter has always been via email from filing the ex-parte chamber Summons Application until now, under the practice directions on electronic case management issued by the chief justice.
 - h. That the applicant now seeks an extension of time within which to file the substantive Notice of Motion application, noting that the 21 days have since lapsed, sufficient reasons for failure to file the substantive Notice of Motion within time having been given.
 - i. In the interest of justice, the honourable court exercises its inherent powers by extending the timelines within which to file the substantive Notice of Motion application and, in so doing, the Notice of Motion herein be admitted and deemed as properly filed.



3. The application was served, but the respondent did not file any grounds of opposition or submissions.
4. I have perused the grounds on which the application is based and the supporting affidavit. I am satisfied that the oversight was occasioned by a genuine mistake. The application is, therefore, allowed in terms of prayer (a) and (b).
5. Costs be in the cause.

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

KIARIE WAWERU KIARIE

JUDGE

