



Republic v Chief Officer Finance Kisumu County Government & 3 others; Masinde (Exparte Applicant) (Judicial Review Application 23 of 2022) [2024] KEHC 2897 (KLR) (19 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2897 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW APPLICATION 23 OF 2022**

RE ABURILI, J

MARCH 19, 2024

IN THE MATTER OF AN APPLICATION BY LIVINGSTONE MALANGO MASINDE (SUIING AS GUARDIAN AND NEXT FRIEND TO EILEEN ONDECHE MALANGO)

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY WAY OF MANDAMUS

AND

IN THE MATTER OF COUNTY GOVERNMENT OF KISUMU

AND

IN THE MATTER OF GOVERNMENT PROCEEDINGS ACT, CAP 40 LAWS OF KENYA

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF OFFICER FINANCE KISUMU COUNTY GOVERNMENT 1ST RESPONDENT

CHIEF OFFICER – MEDICAL SERVICES KISUMU COUNTY GOVERNMENT 2ND RESPONDENT

COUNTY SECRETARY KISUMU COUNTY GOVERNMENT 3RD RESPONDENT

HEALTH ADMINISTRATIVE OFFICER JARAMOGI OGINGA ODINGA TEACHING & REFERRAL HOSPITAL 4TH RESPONDENT

AND

LIVINGSTONE MALANGO MASINDE EXPARTE APPLICANT



RULING

1. On 22nd January, 2024, this court delivered judgment on the application dated 21st November 2021 which sought for Judicial Review Orders of Mandamus to issue to the Respondents herein to pay the exparte applicant the sum of one milling shillings (Kshs. 1, 000,000) being decretal amount in Kisumu Chief Magistrate Civil Case No. 217 of 2017.
2. In the said judgment, the court struck out the motion on the ground that despite leave to apply being granted on 9th November 2023, the Applicant only filed the substantive Notice of Motion on 9th February 2024 which was beyond the 21 days stipulated in Order 53 of the *Civil Procedure Rules*.
3. The Applicant has since filed the application dated 31st January 2024 seeking to review the striking out order on the ground that there is an error on the face of the record as the application for mandamus dated 21st November 2022 was filed on 25th November 2023 within 17 days of the date when leave to apply was granted.
4. After perusing the affidavit and annexures in support, I observe that there is an error apparent on the face of the record.
5. The application was filed and paid for on 25th November 2022 but the date stamp on the face thereof is 9th February 2023, the same date that the application came up for hearing.
6. For the above reasons, I find and hold that this is an appropriate case where review as envisaged in Section 80 of the *Civil Procedure Act* as read with Order 45 of the *Civil Procedure Rules* would be invoked by this court to correct the apparent error and to avoid hardship and injustice being occasioned to the party affected by the striking out of their suit.
7. Accordingly, I find the application dated 31st January 2024 merited. I review and set aside the judgment of 22nd January 2024 striking out the application dated 21st November 2022 and reinstate the application for consideration on merit.
8. As there was no merit determination, judgement on the substantive Notice of Motion dated 21st November 2022 shall be delivered on 15th May 2024.
9. I make no orders as to costs.
10. Orders accordingly.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 19TH DAY OF MARCH, 2024

R. E. ABURILI

JUDGE

