



**Republic v County Government of Homa Bay & another; Shaneebal Limited (Exparte)
(Judicial Review E003 of 2021) [2024] KEHC 4368 (KLR) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4368 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW E003 OF 2021**

KW KIARIE, J

APRIL 25, 2024

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY GOVERNMENT OF HOMA BAY 1ST RESPONDENT

**THE CHIEF OFFICER, PHYSICAL PLANNING AND URBAN DEVELOPMENT
AT THE COUNTY GOVERNMENT OF HOMA BAY 2ND RESPONDENT**

AND

SHANEEBAL LIMITED EXPARTE

JUDGMENT

1. Shaneebal Limited, the *ex parte* applicant, moved the court by way of a Notice of Motion dated the 23rd day of August 2022 under Rule 3 (2) of the *High Court (Practice and Procedure) Rules*, section 57 of the *Interpretation and General Provisions Act*, Order 50 Rules 6 of the *Civil Procedure Rules*, section 9 (2) of the *Fair Administration Action Act* and Articles 47, 48 and 159 (2) of *the Constitution* of Kenya. The applicant is seeking the following orders:
 - a. That the application be certified urgent, the same be heard *ex parte* and service be dispensed with at the first instance. [spent]
 - b. The honourable court be pleased to extend the leave granted to the applicant on the 9th day of February 2022 to institute Judicial Review Proceedings.
 - c. That the Notice of Motion dated the 23rd day of August 2022 be admitted out of time and the same be deemed to have been properly filed.
 - d. That the cost of this application be provided for.



2. The application was premised on the following grounds:
 - a. On November 10, 2021, the applicant filed a Certificate of Urgency, a Chamber summons application dated November 10 2021, in the Judicial Review Proceedings against the Respondent seeking orders of *mandamus*.
 - b. That leave was granted by Hon. Justice K. W. Kiarie of the Judicial Review Division of the High Court on 9 February 2022.
 - c. That the applicant's advocate on record belatedly learnt of the leave granted after the lapse of the period within which the substantive Notice of Motion application ought to have been filed.
 - d. The Notice of Motion application was not filed within the period prescribed under the [Civil Procedure Rules 2010](#) due to an oversight on the part of the counsel handling the matter on behalf of the firm on record for the applicant. The oversight was discovered after the advocate left the firm.
 - e. This court has jurisdiction under Order 50 Rule 6 of the [Civil Procedure Rules 2010](#) to extend the time the substantive notice of motion should have been filed.
 - f. This court has the inherent power to extend the time stipulated by the rules or set by its orders.
 - g. The Respondent will suffer no prejudice if the extension is granted.
 - h. The judicial review application that the applicant seeks to institute against the respondent is to satisfy a decree obtained by the applicant against the respondent in Homabay CMCC Suit Number 99 of 2019; *Shaneebal Limited v Homabay County Government*.
 - i. The respondent has neither appealed against the judgment that gave rise to the said Decree nor taken any steps to challenge the said Decree.
 - j. It is in the interest of justice that time be enlarged to allow the issues raised in this judicial review application to be ventilated and determined on their merits.
3. The respondents opposed the application on the following grounds:
 - a. That the application offends Order 53 Rule 3 (1) of the [Civil Procedure Rules](#).
 - b. No tangible reasons for failure to comply within the timelines have been given.
 - c. That the application lacks merit.
4. On the 9th day of February 2022, the applicant was granted leave to apply for an order of *mandamus* in this court. This was in the presence of Mr. Oyugi, who was holding brief for Mr. Omondi for the applicant. Once leave has been granted, the applicant was expected to comply with Order 53 (3) (1) of the [Civil Procedure Rules](#) that provides:

When leave has been granted to apply for an order of *mandamus*, prohibition or certiorari, the application shall be made within twenty-one days by notice of motion to the High Court, and there shall, unless the judge granting leave has otherwise directed, be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.



5. The applicant did not make the application within the prescribed time and therefore filed the current application for extension of time. Any party seeking the extension of the prescribed timelines must demonstrate to the satisfaction of the court that the extension sought is merited.
6. The averment in paragraph 3 of the verifying affidavit is misleading. As earlier indicated, when the leave was granted Mr. Oyugi, who was holding brief for Mr. Omondi for the applicant, was present. The need to inquire about the position from the court could not have arisen.
7. The applicant has been reluctant. After the filing of the instant application, there was inaction. When the court noticed this, several notices for mention were issued to the parties as follows: 15th day of September 2023, 21st September 2023 and October 6, 2023. On these three occasions, neither party attended court. When another notice for mention was issued, only the respondent's advocate attended. The matter was mentioned in the registry on the 9th day of November, 2023. Only the respondent's advocate attended.
8. On November 23rd, 2023, Ms Kagoya, advocate for the applicant, finally attended and now sought a date for directions.
9. I have enumerated these dates to show the applicant's lack of seriousness. This party has not demonstrated that he deserves the exercise of the court's discretion in his favour. The application is dismissed for lack of merits.

DELIVERED AND SIGNED AT HOMA BAY THIS 25TH DAY OF APRIL 2024

KIARIE WAWERU KIARIE

JUDGE

