



**Majock Construction v Executive Committee Member for Finance  
County Government of Kisumu & 3 others (Judicial Review Cause  
E003 of 2024) [2024] KEHC 13204 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13204 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
JUDICIAL REVIEW CAUSE E003 OF 2024  
MS SHARIF, J  
OCTOBER 29, 2024**

**BETWEEN**

**MAJOCK CONSTRUCTION ..... APPLICANT**

**AND**

**THE EXECUTIVE COMMITTEE MEMBER FOR FINANCE COUNTY  
GOVERNMENT OF KISUMU ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF OFFICER FINANCE COUNTY GOVERNMENT OF  
KISUMU ..... 2<sup>ND</sup> RESPONDENT**

**THE COUNTY SECRETARY COUNTY GOVERNMENT OF  
KISUMU ..... 3<sup>RD</sup> RESPONDENT**

**COUNTY ATTORNEY COUNTY GOVERNMENT OF KISUMU .... 4<sup>TH</sup>  
RESPONDENT**

**RULING**

**Background**

1. On 19.9.2024 this court found the Executive Committee Member for Finance Kisumu County (1<sup>st</sup> Respondent), the County Secretary (4<sup>th</sup> Respondent) and the Chief Officer Finance (2<sup>nd</sup> Respondent) guilty of contempt of court after the Respondents failed to comply with an order of mandamus issued by this court on 5<sup>th</sup> June, 2024 that compelled them to pay the ex parte applicant a sum of Kshs.21,016,710.70 plus costs at Kshs.130,000.
2. It is noteworthy that the conviction of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents was done in the presence of their Counsel one Ms. Oduor who requested for 1 week to enable her clients settle the judgment sum plus costs. Sentence was then scheduled on 26.9.2024. On 26.9.2024 the contemnors did not attend court



for purposes of sentencing and their advocate Ms. Oduor indicated that the 2<sup>nd</sup> and 4<sup>th</sup> Respondents were away on official duties while the 1<sup>st</sup> Respondent was taken ill but was said to be appearing virtually. Ms. Oduor sought for the court's leniency and despite opposition by Mr. Maua Counsel for the ex parte Applicant the sentencing was deferred to 17.10.2024.

3. On 17.10.2024 the contemnors were absent yet again and no explanation was tendered about their failure to appear before the court for sentencing. The sentencing was then rescheduled to 24.10.2024 when only the 2<sup>nd</sup> Respondent attended court and was duly sentenced to serve a custodial term of 5 months and to pay a fine of Kshs.200,000 and in default to serve a further term of 3 months.
4. On 25.10.2024 the Respondents then filed two applications; one by the officers of the County Attorney Kisumu and one by Messrs C. Obiero & Associates. A notice of withdrawal dated 25.10.24 was filed in respect of the application filed by the office of the County Attorney Kisumu and the same was duly adopted as an order of this court. Directions were then given on the application filed by Messr C. Obiero & Associates.
5. On 28.10.2024 when the surviving application came up for hearing inter parte, this court was informed that the office of the County Attorney had filed another application on Sunday the 27.10.2024 and parties proceeded to make oral submissions on both applications.
6. The notice of motion dated 25.10.2024 sought the following prayers:
  1. Certification of the application as urgent.
  2. That there be a stay of execution of the sentencing orders delivered on 24<sup>th</sup> October 2024 against the Chief Officer Finance in the County Government of Kisumu pending hearing and determination of this application.  

(Sic) That the court do grant leave to the 1<sup>st</sup> and 2<sup>nd</sup> intended interested parties to be joined in this suit as interested parties in person.
  3. That the planned sentencing of the 1<sup>st</sup> Respondent on 28.10.2024 be stayed pending hearing and determination of this application.
  4. That this Honourable court be pleased to review and/or set aside the sentencing order against the Chief Officer Finance County Government of Kisumu Mr. Martin Okode Opiyo and substitute it with appropriate reliefs.
7. The notice of motion dated 27.10.2024 seeks the following prayers:-
  1. Certification of the application as urgent.
  2. That this court be pleased to review and/or set aside its orders given on 19.9.2024 convicting the County Executive Committee Member for Finance Mr. George Okon'go Omondi and the Acting Chief Officer Finance Mr. Martin Okode Opiyo of contempt of court.
  3. That this Honourable Court be pleased to review and/or set aside the orders given on 24<sup>th</sup> day of October 2024 by which the Acting Chief Officer Finance Mr. Martin Okode Opiyo was sentenced to serve a sentence of 5 months and to pay a fine Kshs.200,000 and in default to serve an extra 3 months imprisonment.
  4. That the court be pleased to make a finding that the contemnors have fully purged the contempt.



5. That the court be pleased to arrest and hold in abeyance the sentencing of the County Executive Committee Member in charge of finance set to take place on 28.10.24.
6. That the Chief Finance Officer be ordered released from prison on such terms as the court in its sole discretion may determine.
7. That at the ex parte hearing hereof, interim orders be issued in terms of prayer 5 and 6.
8. That costs of this application be in the cause.

**Submissions:**

8. Prior to the making of oral submissions the court was informed by Mr. Onyango for the Respondents that a consent order had been entered into dated 25.10.2024. This fact was confirmed by Mr. Maua Counsel for the ex parte Applicant.
9. Mr. Onyango submitted that a party found guilty of contempt of court can approach a court for mercy. He submitted that the contemnors have by entering into the consent order, purged their contempt wherefore the court should be pleased to review the orders of conviction dated 19.9.2024 by setting them aside all together and thereafter hold its hands against sentencing the 1<sup>st</sup> Respondent. Further that the court be pleased to release the 2<sup>nd</sup> Respondent from custody forthwith. Mr. Onyango submitted that the 1<sup>st</sup> Respondent had travelled to Nairobi to appear before Justice Gakeri and to also appear before the Senate and he tendered the travelling documents of the 1<sup>st</sup> Respondent in proof of this fact.
10. It was submitted that contemnors were the signatories to the ifmis account of the County Government of Kisumu and that the orders of this court will in essence grind the functions of the County Government to a halt.
11. Mr. Obiero and Ms. Oduor made submissions that were in pari materia to the ones made by Mr. Onyango. Ms. Oduor made an apology to the court on her failure to attend court on time until the court sought for her and she submitted that she had been engaged before Justice Gakeri in a matter involving the 1<sup>st</sup> Respondent whom she said had also been committed for contempt before the Employment and Labour Relations Court.
12. Mr. Maua submitted that he was principally not opposed to the applications save that he craved for deferment of the sentencing of the 1<sup>st</sup> Respondent to 11.11.2024 as the 1<sup>st</sup> payment per the consent was to be done on 8.11.2024.
13. On rejoinder Mr. Onyango submitted that this court ought to be used as a tool of effecting execution for the ex parte applicant.

**Analysis and determination:**

14. This court has considered the submissions of Counsels for the parties and the issues for determination are as follows: -
  1. Whether this court should enjoin the interested parties in person in this application.
  2. Whether this court should set aside the orders of conviction made on 19.9.2024.
  3. Whether this court should refrain from sentencing the 1<sup>st</sup> Respondent.
  4. Whether this court should revise the custodial sentence of the 2<sup>nd</sup> Respondent.



15. This court notes that no submissions were made by the Applicants’ advocates on the issue of joinder of the intended interested parties. The intended interested parties are already parties in this case wherefore I do not see the need of enjoining them yet again in their personal capacity. In any event they are in this application as employees of the County Government of Kisumu and not in their personal capacity.
16. On whether this court should set aside the conviction order made on 19.9.2024, I note that no grounds have been adduced for setting aside and/or review of the said order. Review of orders is premised on Section 80 of the *Civil Procedure Act* 21 Laws of Kenya Order 45 Rule 1 of the Civil Procedure Rules which provides that:
- Order 45 rule 1:
- “(1) Any person considering himself aggrieved—
- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
  - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay”.
17. There has been no discovery of any new and important matter that was not within the knowledge of the contemnors when this court made its orders on 19.9.2024. The contemnors while being aware of the existence of the orders of mandamus, willfully disobeyed the same hence their conviction for contempt of court. It is instructive to note that Ms. Oduor Counsel for the Respondents’ was present when the orders were made. No authorities have been cited for a review that is not compliant with Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules.
18. The Supreme Court of Kenya in the case of *Cogno Ventures Limited -vs- Bia Tosha Distributors Limited & Others (2023) eKLR* rendered itself on instances when a court can set aside its own orders thus:
- a) Where the judgment, ruling or order was obtained through fraud, deceit or misrepresentation of facts.
  - b) Where the judgment, ruling or order was a nullity by virtue of being made by a court which was not competent.
  - c) Where the court was misled into giving judgment, ruling or order under the belief that the parties had consented.
  - d) Where the judgment, ruling or order was rendered on the basis of a repealed law or as a result of a deliberate concealment of a statutory provision.
19. None of the above conditions exist in this case. This court had the competency to make the impugned orders.



20. As regards the issue of whether this court ought to refrain from sentencing the 1<sup>st</sup> Respondent, I do find that prayer as absurd, and alien to our jurisprudence. A conviction for contempt of court attracts penal consequences as envisaged in criminal jurisprudence. A court of law cannot upon making a conviction refrain from sentencing the convict. To do so at the instance of the contemnors will be to allow this court to be subject to the control of or direction of the contemnors contrary to Article 160 of the Constitution of Kenya 2010 which provides that:
160. (1) In the exercise of judicial authority, the Judiciary, as constituted by Article 161, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.
21. Whereas the Contempt of Court Act had under Section 30 thereof set out the punishment for contempt of court for accounting officers as a fine not exceeding Kshs.200,000 and under Section 28 punishment for individuals was set as a fine not exceeding Kshs.200,000 or an imprisonment term not exceeding six months or both. In the advent of its declaration as being unconstitutional by Justice E. C. Mwita in the case of Kenya Human Rights Commission -vs- A.G and Another Constitutional Petition No. 87 of 2017 (2018) eKLR, this court has unfettered powers to punish for contempt. These powers are donated to it by the people of Kenya under Articles 1(1), 1(3) (c) and 159 (1) of the Constitution of Kenya 2010.
22. Kenya is a democratic country founded on national values and principles of governance (see article 4(2) of the Constitution of Kenya 2010). Article 2 of the Constitution of Kenya 2010 declares the Constitution as the supreme law of the land which binds all persons and all state organs at both levels of government. Every person is obligated under article 3 to respect, uphold and defend the Constitution. All state organs, state officers, public officers and all persons are bound by the national values and principle of governance as provided for under article 10 of the Constitution thus:
- “(1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—
- (a) applies or interprets this Constitution;
  - (b) enacts, applies or interprets any law; or
  - (c) makes or implements public policy decisions.
- (2) The national values and principles of governance include—
- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
  - (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
  - (c) good governance, integrity, transparency and accountability; and
  - (d) sustainable development”.
23. As County Government Officers the Respondents are enjoined to uphold the rule of law and exercise good governance, integrity, transparency and accountability. It is only through fulfillment it’s contractual obligations that the County Government of Kisumu is able to achieve sustainable development.



24. This court will at all times uphold and protect its dignity. In the case of Human Rights Commission -vs- A.G & Anor (2018) eKLR, Justice E. C. Mwita rendered himself on the need for courts to punish contempt as follows:-

“Courts therefore punish for contempt to insulate its processes for purposes of compliance so that the rule of law and administration of justice are not undermined. Without this power or where it is limited or diminished, the court is left helpless and its decisions would mean nothing. This ultimately erodes public confidence in the courts; endangers the rule of law, administration of justice and more importantly, development of society”. That is why the court stated in *Carey v Laiken* [2015] SCC17 that; “Contempt of court rests on the power of the court to uphold its dignity and process. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect”.

25. In the same case Justice E. C. Mwita quoted with approval of the Canadian case of *Canadian Metal Co. Ltd -vs- Canadian Broadcasting Corp (No. 2)* (1975) 48. D. hR (30) thus:

“To allow court orders to be disobeyed would be to tread the road toward anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn... if the remedies that the courts grant to correct... wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the courts will quickly result into the destruction of our society.”

26. On the question on whether the court ought to release the 2<sup>nd</sup> Respondent, I do note that there has been concerted efforts made by the contemnors to purge the contempt as demonstrated by the filing of the consent order dated 25.10.2024 by the parties herein which outlines the agreed mode of compliance by the Respondents/Contemnors with the orders of mandamus wherefore this court is inclined to review the sentence against the 2<sup>nd</sup> Respondent.

27. On the balance the prayer for setting aside and/or review of conviction made against the contemnors on 19.9.2024 is disallowed.

28. The 1<sup>st</sup> contemnor is hereby sentenced to pay a fine of Kshs.200,000 and serve an imprisonment term of 2 months. In the event of default of payment of the fine the 1<sup>st</sup> contemnor shall serve a custodial term of 3 months. The sentence of 2 months is hereby suspended until the 19.12.2024. The default sentence shall not be suspended.

29. The sentence against the 2<sup>nd</sup> Respondent is reduced to a period of 2 months and the same shall be suspended until the 19.12.2024.

30. The 2<sup>nd</sup> Respondent shall thus be released forthwith unless otherwise lawfully held.

It is hereby so ordered.

**DELIVERED, DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF OCTOBER, 2024.**

**M. S. SHARIFF**

**JUDGE**

**In the presence of:**

1. Mr. Maua for the ex parte applicant

2. Mr. Otieno Obiero for the 2<sup>nd</sup> contemnor



3. Ms. Marion Abuya for the 2<sup>nd</sup> contemnor
4. Ms. Oduor for the Respondents appearing with Mr. Charles Onyango
5. Mr. Otieno Aluoka the County Attorney Kisumu County

