



**Republic v Principal Secretary Ministry of Water & Sanitation; Tamba (Exparte Applicant)
(Judicial Review 6 of 2022) [2023] KEHC 18242 (KLR) (30 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
JUDICIAL REVIEW 6 OF 2022
PJO OTIENO, J
MAY 30, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**THE PRINCIPAL SECRETARY MINISTRY OF WATER &
SANITATION RESPONDENT**

AND

CHARLES M TAMBA EXPARTE APPLICANT

RULING

1. Before me is the ex-parte applicant's notice of motion application dated 6th May, 2022 brought pursuant to article 165(6) of *the Constitution* of Kenya 2010 and section 5 of the *Judicature Act* seeking the following orders: -
 - i. That leave be granted to the ex-parte applicant to proceed to argue this application to commit the respondent to jail for contempt of court.
 - ii. That summons be issued against the Principal Secretary Ministry Of Water And Sanitation to appear before this court and show cause why he should not be committed to civil jail for a period of six months.
 - iii. That this court be pleased to issue an order punishing the respondent namely Principal Secretary Ministry Of Water And Sanitation by way of committal to prison for a term not exceeding six months or by imposing a fine or both for having deliberately disobeyed the court order issued by Honourable Justice Njoki Mwangi J Dated 10th March 2015 In Kakamega Judicial Review No. 13 Of 2014.



- iv. That in the alternative and without prejudice to the foregoing prayers, the respondent be ordered to purge the contempt.
 - v. Costs of the application be granted.”
2. The application is supported by the affidavit of Charles Musira Tamba sworn on May 6, 2022 in which he avers that he filed a suit against the Attorney General and the Ministry of Water and Sanitation in Kakamega CMCC No. 635 of 2000, obtained judgment which remains unsettled to date. He was thus forced to file Judicial Review No. 13 of 2014 which was determined in his favour in that an order of mandamus was issued compelling the respondents to pay to the ex-parte applicant the sum of Kshs 1,316,363/ together with interests at court rates from 29.6.2010 till payment in full.
 3. Despite service acknowledged by attendance before the court coupled with repeated request for adjournment to enable respondents get instruction including a chance to pay once remittance is received from the treasury, no response nor submissions were filed. The motion thus proceeded as unopposed and with a clear indication by the state counsel that the debt is wholly acknowledged.
 4. The acknowledgment notwithstanding, the ex parte applicant contends in the submissions filed that the application should be allowed as prayed since service was effected on the Attorney General and the Ministry of Water and Sanitation and that no response has been tendered by either of them.

Issue, Analysis and Determination

5. The sole issue that presents itself for this court’s determination is whether the respondent is in contempt of the of the orders of this court issued on March 10, 2014.
6. With the nullification of the *Contempt of Court Act*, this court derives retains its jurisdiction to punish for contempt of court under section 5 of the *Judicature Act*.
7. The onus of proof upon an applicant, in establishing contempt of court, is now settled to be that the clear terms of the order were brought to the knowledge of the Respondent who has deliberately failed to comply therewith.
8. The existence of a judgment in favour of the ex parte applicant pending execution by the respondent is not disputed since the respondent was well represented by the Attorney General which office acknowledged to have received the certificate orders against the Government and wrote a letter dated May 20, 2023 advising the respondents to pay the ex parte applicant a total sum of Kshs. 4,604,375.30 to no avail.
9. Where a party willfully refuses to obey court orders, this court is called to enforce its orders under article 159 of *the Constitution* of Kenya, 2010 as was held in *Kenya Human Rights Commission Vs Attorney General & Another* (2018) eKLR that: -

“Article 159 of *the constitution* recognizes the judicial authority of courts and tribunals established under *the constitution*. Courts and tribunals exercise this authority on behalf of the people. The decisions courts make are for and on behalf of the people and for that reason, they must not only be respected and obeyed but must also be complied with in order to enhance public confidence in the judiciary which is vital for the preservation of our constitutional democracy.”



10. The significance of obedience of court orders was further stressed in the case of Hon. *Martin Nyaga Wambora and Another v Justus Kariuki Mate & Another* [2014] eKLR where the court held;

“It is therefore clear that the importance of the judiciary in the maintenance of constitutional democracy cannot be overemphasized. In order to achieve this constitutional mandate, the judiciary requires the power to enforce its decisions and punish those who disobey, disrespect or violate its processes otherwise courts will have no other means of ensuring that the public benefit from the judgments they hand down and the orders and or directions made on their behalf. When stripped of this power courts will be unable to guarantee compliance with their processes and will certainly become ineffective in the discharge of their duties and performance of their functions with the ultimate result that the public, as trustees of the rule of law, will be the major victim.”

11. For the reasons set out above, it is the courts finding that the orders of mandamus compelling payment are yet to be complied with by the respondent which scenario portends grave danger to the administration of justice and the rule of law. The court determines that the respondent is in contempt of the orders of mandamus issued by court in Kakamega JR NO. 14 of 2014. Let the contempt be purged by the respondent paying the sum due within six months from today.
12. In the event that no payment is made by the 30.11.2023, let the respondent attend court and show cause why he cannot be punished for failure to comply with court orders.
13. The costs of these proceedings are awarded to the ex-parte applicant. Let the order be extracted and served upon both Respondent and the Attorney General within 14 days from today.
14. Mention on 16.10.2023.

DATED, DELIVERED AND SIGNED AT KAKAMEGA THIS 30TH DAY OF MAY 2023.

PATRICK J. O. OTIENO

JUDGE

In the presence of:

No appearance for the Ex-parte Applicant

No appearance for the Respondent

Court Assistant: Polycap

