



**Republic v Principal Secretary Office of the President, Provincial Administration and Internal Security & another; Okungu (Exparte Applicant) (Judicial Review Application 4 of 2013) [2023] KEHC 21873 (KLR) (25 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21873 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
JUDICIAL REVIEW APPLICATION 4 OF 2013**

**OA SEWE, J**

**AUGUST 25, 2023**

**IN THE MATTER OF AN APPLICATION BY THE EX PARTE APPLICANT  
FOR ORDER OF COMMITTAL TO CIVIL JAIL FOR CONTEMPT OF COURT**

**AND**

**IN THE MATTER OF CIVIL APPEAL NO. 25 OF 2006  
IN THE COURT OF APPEAL OF KENYA AT KISUMU**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE PRINCIPAL SECRETARY OFFICE OF THE PRESIDENT, PROVINCIAL  
ADMINISTRATION AND INTERNAL SECURITY ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**WYCLIFFE SAYIA OKUNGU ..... EXPARTE APPLICANT**

**RULING**

1. Upon leave being granted to the Ex Parte applicant, he filed a substantive Judicial Review application dated 18<sup>th</sup> February 2013. The said application was heard and allowed on 25<sup>th</sup> April 2014 by Hon. Odero, J. Thereafter, the applicant’s attempts to enforce the order of Mandamus have been futile. The applicant sought the intervention of the Court and was granted a Warrant of Arrest dated against the Permanent Secretary, Provincial Administration and Internal Security by the Deputy Registrar to enforce the payment of Kshs. 853,821/=.



2. The record shows that, as at 6<sup>th</sup> November 2015, the judgment debt had not been settled. Consequently, the applicant filed a Notice of Motion of even date seeking orders that:
  - (a) the Inspector-General of Police be committed to jail for contempt of court for disobedience and/or failure to enforce the warrant of arrest in Execution issued by the court on 15<sup>th</sup> May, 2015 against the Principal Secretary, Office of the President/Provincial Administration and Internal Security;
  - (b) the said Inspector-General of Police do pay the costs of the Application.
3. In his ruling dated 24<sup>th</sup> November 2016, Hon. Emukule, J. held that:

"2. The Applicants claim is that despite the award of some Kshs. 515,840/= in the principal award, the said sum had now grown to Kshs. 984,030/30 and was still accruing interest. The Applicant claims that despite the orders of mandamus, given to compel the Principal Secretary to pay, no payment had been made to settle the Applicant's claim. The Applicant therefore feels that in the circumstances, the only way to compel the Principal Secretary to pay, is to have him/her arrested and brought to court to show cause why he should not be committed to jail for disobeying a court order.

...

22. In light of the standard of proof in respect of matters of contempt of court (beyond reasonable doubt – Re Breamblevale supra), and beyond the balance of probability, but less than beyond reasonable doubt – Kenya), the Applicant has failed to meet the statutory minima (under Order 5, rule 15(1) and Order 6 rule 6(2) respectively on the affidavit of service, and on a certificate of service where delivery is disputed).

23. In the ultimate the Applicant has failed to advance any ground for the grant of the orders sought in the Notice of Motion dated 6<sup>th</sup> November, 2015 and filed on 10<sup>th</sup> November, 2015 which is hereby dismissed with a direction that each party bear its own costs."
4. That the debt was partially settled thereafter is manifest in the Application for Execution of Decree file herein on 6<sup>th</sup> February 2020. That application shows that an amount of Kshs. 872,912/= was paid leaving a balance of Kshs. 111,117.80. Accordingly, the application applied for a Notice to Show Cause to issue against the Inspector General of Police for his failure to execute the Warrant of Arrest against the Permanent Secretary, Provincial Administration, issued on 13<sup>th</sup> May 2015. The Notice to Show Cause shows that the sum outstanding at the time of issue was Kshs. 207,200/=.
5. Directions were given thereafter on 23<sup>rd</sup> March 201 by Hon. Mativo J. (as he then was) that the matter be canvassed by way of written submissions. Accordingly, counsel for the applicant filed his written submissions on 21<sup>st</sup> September 2022, giving the background of the matter. He urged the Court to find that the Inspector General is in contempt of court in refusing to comply with a valid order of the Court. He therefore sought that the Inspector General be summoned to attend Court to show cause why he should not be committed to civil jail for contempt of court.
6. Mr. Waga relied on *Shimmers Plaza Limited v National Bank of Kenya Ltd* [2015] eKLR; *Republic v The Kenya School of Law & Others* [2015] eKLR and *Republic v Permanent Secretary Office of the President, Ministry of Internal Security & Another* [2014] eKLR that court orders must be obeyed in order to maintain the Rule of Law and the principles of good governance as enshrined in Article 10 of *the Constitution*.



7. The respondents opted to file no submissions. However, Mr. Makuto addressed the Court on 25<sup>th</sup> January 2023 and confirmed that approvals have been made for payment of this debt; and that all that was awaited was funding.

8. It is manifest from the foregoing that, the Notice to Show Cause is essentially unopposed. A Warrant of Arrest was issued herein which remains unexecuted; and although a substantial portion of the debt has been paid, there is still an outstanding balance which the Permanent Secretary is obliged to pay by dint of Section 21(3) of the Government Proceedings Act. The provision states:

“(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon...”

9. I am therefore in total agreement with the expressions of Hon. Odunga, J. (as he then was) in Republic v The Attorney General & Another, Ex-Parte James Alfred Koroso that:

“...the ex parte applicant has no other option of realizing the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realized. Unless something is done he will forever be left baby-sitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of the Constitution which enjoins the State to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his/her lawful rights which have been decreed by a Court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under Article 129 of the Constitution executive authority derives from the people of Kenya and is to be exercised in accordance with the Constitution in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit...”

10. It is in the light of the foregoing that I allow the applicant’s application and order that the Inspector General of Police be summoned to appear before this Court to show cause why he should not be committed to civil jail for contempt of court.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 25<sup>TH</sup> DAY OF AUGUST 2023.**

**OLGA SEWE**

**JUDGE**

