



Otieno, Ragot & Co. Advocates v Secretary, County Government of Kisumu & 2 others (Miscellaneous Civil Application E186 of 2022) [2023] KEHC 24018 (KLR) (29 September 2023) (Judgment)

Neutral citation: [2023] KEHC 24018 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E186 OF 2022
MS SHARIFF, J
SEPTEMBER 29, 2023**

BETWEEN

OTIENO, RAGOT & CO. ADVOCATES APPLICANT

AND

**THE SECRETARY, COUNTY GOVERNMENT OF KISUMU . 1ST RESPONDENT
COUNTY EXECUTIVE MEMBER FINANCE, COUNTY GOVERNMENT OF
KISUMU 2ND RESPONDENT
COUNTY GOVERNMENT OF KISUMU 3RD RESPONDENT**

JUDGMENT

1. This ruling is in respect of the application dated November 24, 2022 in which the applicant seeks the following reliefs;
 - a. The court be pleased to find the respondents are in contempt of the court for willful disobedience of the orders of the court made on September 29, 2022.
 - b. Upon finding as above, the court be pleased to direct that the 1st and 2nd respondents be arrested and they be sentenced to serve such a prison sentence for such a period of time as the court may in its discretion direct for being in contempt of the orders made on September 29, 2022.
 - c. further to the above, the court be pleased to impose fine or mete out such additional punishment as it may deem appropriate to the respondents.
 - d. Upon finding the persons named in contempt of court, the court be pleased to direct them to purge the contempt in such a manner as the court may direct



failing which they be denied any further audience until such a time as they will have purged the contempt.

- e. Costs of the application.
2. The application is grounded on the fact that the applicant filed an advocate-client bill of costs dated May 29, 2019 in respect of services rendered in Kisumu CMCC 537 of 2007 which bill was taxed on September 12, 2019 in the sum of Kshs 205,972.20. A certificate of costs was issued on October 4, 2019 and adopted as judgement of the court.
3. That thereafter, the applicant extracted a certificate of order against the government but the respondents persisted in their non-compliance. The applicant then filed a judicial review application seeking order of mandamus compelling the respondents to settle the sum. The application was allowed. The decree was served but the respondents declined to comply thus the instant application.
4. Despite service, the respondents did not respond to the application.

Analysis and determination.

5. The application before me is that of contempt of court by the respondents who have failed to make payment to the applicant despite court orders to that effect. The respondents did not contest the position.
6. Basically, the issue whether the respondents are in contempt of the orders of the court given on September 29, 2022 in judicial review number E011 of 2021. The decree has been annexed to the application. It is stated that the same was served upon the respondents on 26th and October 27, 2022 with no reaction from the respondents.
7. As stated by case law, the ingredients to be satisfied before one successfully prosecutes a contempt application was stated by Mativo J in Samuel M. N. Mweru (supra) where the learned judge held;

It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove;

- (i) the terms of the order,
- (ii) Knowledge of these terms by the Respondent,
- (iii) Failure by the Respondent to comply with the terms of the order.

Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.

.....:-

“There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;



- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate..”

8. On the first ingredient, there is no doubt about the terms of the order. The order annexed to the application is that the 1st and the 2nd respondents were to pay the applicant sum of money stated.
9. The second ingredient relates to the knowledge of the terms of the order. There is evidence the respondents’ advocate was in court on the day of judgement. There cannot be any doubt the terms were understandable to them.
10. On the failure by the respondent to comply with the terms of the order, the applicant asserts that they have not been paid the decretal sum to date. There is no explanation from the respondents for the failure.
11. In the circumstances of the mater herein and the available evidence, I am inclined to find that the applicant has presented a case sufficient to find the respondents in contempt of court. I therefore proceed to find that the 1st and 2nd respondents being employees of the 3rd respondent are in contempt of the court’s orders made on September 29, 2022 and issued on even date.
12. The 1st and 2nd respondents in their personal capacities and as holders of the respective offices within the 3rd Respondent’s structure are directed to appear in court on 17th day of October, 2023 for purposes of sentencing.
13. The above ruling to apply *mutatis mutandis* to Misc. No. 187/2022 and 188/2022.

DELIVERED, DATED AND SIGNED AT KISUMU THIS 29TH DAY OF SEPTEMBER 2023.

MWANAISHA S. SHARIFF

.....

JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

