



**Republic v Municipal Council of Busia & another; County Government of Busia (Interested Party); Julius Orina Manwari t/a Manwari & Company, Advocates (Exparte) (Judicial Review Miscellaneous Application 15 of 2011) [2023] KEHC 24076 (KLR) (27 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24076 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 15 OF 2011  
WM MUSYOKA, J  
OCTOBER 27, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**MUNICIPAL COUNCIL OF BUSIA ..... 1<sup>ST</sup> RESPONDENT**

**THE CLERK, MUNICIPAL COUNCIL OF BUSIA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**COUNTY GOVERNMENT OF BUSIA ..... INTERESTED PARTY**

**AND**

**JULIUS ORINA MANWARI T/A MANWARI & COMPANY,  
ADVOCATES ..... EXPARTE**

**RULING**

1. These are contempt proceedings, initiated within Judicial Review proceedings. They are founded on a Motion, dated 6<sup>th</sup> May 2022. The *ex parte* applicant is Julius Orina Manwari. He holds a decree, arising from a ruling that was delivered herein on 30<sup>th</sup> July 2013, when a mandamus order was made, directed at the respondents herein, who have since been succeeded by the interested party, after promulgation of the Constitution of Kenya, on 27<sup>th</sup> August 2010, to pay to the *ex parte* applicant, a sum of Kshs. 7,804,294.00, together with costs and interests. Due to further costs and interests, the amount has since ballooned to Kshs. 23,652,225.00. That decree stands unsettled to date, hence the application herein, for citation of Phaustine Barasa, the County Executive Member of the interested party, responsible for Finance, and, therefore, the accounting officer for the interested party, for contempt of court, in



disobeying the orders of 30<sup>th</sup> July 2013. There is also a prayer for citation of the said Phaustine Barasa under Chapter 6 of the Constitution.

2. I have ploughed through the file of papers herein, to establish whether the person cited, who I shall refer hereto as the contemnor, has responded to the application, dated 6<sup>th</sup> May 2022, and I have not come across any response to that application. It would appear, from the written submissions, dated 9<sup>th</sup> May 2022, which the County Solicitor filed herein on even date, that the contemnor opted to rely on affidavits earlier filed, dated 22<sup>nd</sup> March 2022 and 23<sup>rd</sup> March 2022. He cites pendency of an appeal against the ruling of 30<sup>th</sup> July 2013, at the Court of Appeal, said to be Kisumu CACA No. 31 of 2021, as one of the reasons for not settling the decretal amount. He also cites correspondence to the *ex parte* applicant, where certain information was sought, to facilitate part-payment, but the same is yet to be availed. The contemnor also argues that he is not the substantive accounting officer, as he is merely holding the office of County Executive Officer for Finance in an acting capacity. Among other arguments. For all practical purposes, the said application has not been resisted by counter facts set out in an affidavit, nor by counter arguments set out in grounds of opposition, which are the established modes of responding to a Motion supported by an affidavit, by dint of Order 51 rule 14 of the [Civil Procedure Rules](#).
3. Directions were given on 30<sup>th</sup> June 2022, for filing of written submissions. As indicated above, the interested party filed its submissions, on 9<sup>th</sup> May 2022, as its substantive response to the application. The *ex parte* applicant filed his written submissions on 31<sup>st</sup> October 2022. I have read through both sets of written submissions, which are supported by judicial precedents, and I have noted the arguments made.
4. The matter is fairly straightforward, in my view. The court made an order of mandamus, directed at the predecessor of the interested party, way back on 30<sup>th</sup> July 2013, commanding it to pay a certain sum of money to the *ex parte* applicant. From 2013 to date, that money has not been paid, meaning that the command by the court, taking the form of the order of mandamus of 30<sup>th</sup> July 2013, has been ignored, and thereby disobeyed. Disobedience of a court order amounts to contempt of court, and attracts retribution.
5. Has the interested party or the contemnor explained themselves, to justify a citation not issuing against the contemnor? One explanation given is pendency of an appeal at the Court of Appeal, filed sometime in 2021. I have not seen papers relating to that appeal, as there is no reply to the application, to assess whether the same is against the mandamus order of 30<sup>th</sup> July 2013, and I have not seen an order from the Court of Appeal staying these proceedings. Crucially, the said appeal was filed 7 or so years after the decree was passed, instead of the 30 days allowed for civil processes. The second argument is that the contemnor is holding office in an acting capacity. Nothing has been placed before me, as authority that an officer holding office in an acting capacity cannot be cited for contempt of a court order. The third argument is that the *ex parte* applicant has failed to avail certain information, which has hampered processing of the decretal amount. There is also the argument that the said debt was not incurred by the interested party, but rather by its predecessor.
6. I am not persuaded that good grounds exist, for the failure by the interested party to obey the command in the mandamus order of 13<sup>th</sup> July 2013. That order remains valid and subsisting, and awaits obedience and compliance, 10 years after it was made. There has to be an end to litigation. Court orders are there to be obeyed. They are not made in vain. They are not propositions, which the parties can play around with, in terms of deciding which order to obey and which one not to obey, or in terms of choosing when to obey and when not to. Court orders are not suggestions. The pain of not obeying a court order is being punished for it, by way of either being committed to civil jail, or sequestration, or both.



7. As no plausible or reasonable cause has been shown, why the mandamus order of 30<sup>th</sup> July 2013 has not been obeyed, by the interested party, to date, I do hereby cite its County Executive Member, responsible for Finance, being the accounting officer for the interested party, Phaustine Barasa, for contempt of the said order of 30<sup>th</sup> July 2013, in terms of prayer 2 of the Motion, dated 6<sup>th</sup> May 2022. I, accordingly, find him guilty of contempt of court, and I hereby convict him. He shall appear at the High Court, before the Judge, on 1<sup>st</sup> November 2023, for mitigation and sentence. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 27<sup>TH</sup> DAY OF OCTOBER 2023**

**W MUSYOKA**

**JUDGE**

Advocates

Mr. Manwari, the ex parte applicant, in person.

Mr. Sekwe, Advocate for the interested party.

