



**Export Hydro Pump & Services (Africa) Ltd v County Government of Homa Bay & 3 others  
(Judicial Review E004 of 2021) [2023] KEHC 24319 (KLR) (25 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24319 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
JUDICIAL REVIEW E004 OF 2021  
KW KIARIE, J  
OCTOBER 25, 2023**

**BETWEEN**

**EXPORT HYDRO PUMP & SERVICES (AFRICA) LTD ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF HOMA BAY ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF HOMA  
BAY ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER IN CHARGE OF  
FINANCE COUNTY TREASURER COUNTY GOVERNMENT OF HOMA  
BAY ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The applicant herein moved the court by way of Notice of Motion dated 21<sup>st</sup> March 2023 and filed in court on 23<sup>rd</sup> March 2023. The application is brought under section 5 of the *Judicature Act*, Rule 81 (4) of the Civil Procedure Rules and Articles 1, 2 (a) & 159(1) of the *Constitution* of Kenya. The applicant is seeking the following orders:
  - a. That this application be certified urgent and an urgent inter-partes date be given.
  - b. That pending the inter-partes hearing and determination of the instant application, this honorable court be and is hereby pleased to issue summons for the personal attendance of the County Secretary, the County Government of Homa Bay, and the Homa Bay County Executive member in Charge of Finance (County Treasurer), on the date and time to be determined by this honorable court for the hearing of the instant application and to show cause



why they should not be cited for contempt of the Hon. court's order issued on 22<sup>nd</sup> February 2023.

- c. That in default of attendance upon issuance of summons, and pending the hearing and determination of the instant application the hon court be and is hereby pleased to appropriate Orders to secure their attendance including issuing warrants of arrest, to be enforced through the National Police Service, Officer Commanding Homa Bay Police Station.
  - d. That this honorable court be and is hereby pleased to cite the County Secretary, the County Government of Homa Bay, and the Homa Bay County Executive Member in charge of Finance (County Treasure) for contempt, and commit them to jail for a period not exceeding six months, for contempt of this honorable court's order issue on 22<sup>nd</sup> February 2023.
  - e. That the honorable court be pleased to issue any further orders and/or direction as may be necessary to give effect to the orders sought herein and that it deems fit in the interest of justice.
  - f. That the costs of this application be provided for.
2. The application was premised on the following grounds:
- a. The applicant instituted the instant proceedings before this honorable court vide an application dated 10<sup>th</sup> November 2021 seeking leave to pursue an order of mandamus to compel the county secretary and county executive member in charge of finance, the county treasurer, to within 7 days, remit the sum of kshs.6,523,546/- being the decretal sum in respect of the consent entered into between the applicant and the 1<sup>st</sup> respondent in Homa Bay Civil Case No.111 of 2016 – *Export Hydro Pump and Services (Africa) Limited vs. the County Government of Homa Bay*.
  - b. The applicant equally sought leave to pursue an order or mandamus to compel the county secretary and County Executive Member in charge of Finance, the County Treasurer, to within 7 days remit to the applicant the interest accrued on the sum of kshs.6,273,546/- at court rates from 15<sup>th</sup> August 2017 until payment in full.
  - c. This honorable court granted leave to the applicant on the 24<sup>th</sup> of January, 2022 which enabled the filing of the Notice of Motion dated 14<sup>th</sup> February, 2022 seeking the orders of mandamus against the respondents.
  - d. Notably, this honorable court allowed the applicant's application seeking the orders of m mandamus on the 22<sup>nd</sup> of February 2023 and ordered the 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors to remit the amount sought by the applicant within 7 days of the order.
  - e. Critically, on diverse dates including the 27<sup>th</sup> of February 2023, and the 10<sup>th</sup> of March 2023, the applicant unsuccessfully reached out to the Contemnors with a view to inquiring about the contemnors' efforts in ensuring compliance with the mandatory terms of the order issued by the honorable court on 22<sup>nd</sup> February 2023.
  - f. The contemnors are in full knowledge of the proceedings before this hon. court and the terms of the order which was issued in the presence of the respondent's counsel and again served upon the respondent's county attorney's office on the 9<sup>th</sup> of March 2023.
  - g. Despite the knowledge of the terms of the decree issued by this honorable court on 22<sup>nd</sup> February 2023 and the implications therein, the contemnors have to date willfully failed/



refused and neglected to remit the decretal sum of kshs.6,523,546/- and the accrued interest thereon at court rates from 15<sup>th</sup> August 2017 to the applicant.

- h. It is apparent that the contemnors' conduct is in willful and deliberate disregard, disobedient, and defiance of the hon. court's order bringing the authority of the Hon. Court and indeed the rule of law into ridicule and disrepute, threatening the very administration of justice.
  - i. This misconduct cannot be countenanced in so far as it voids the applicant's right to fair administrative action, and the enjoyment of the fruits of its judgment paying due regard to the fact that the amount comprised in the order of mandamus was the subject of a consent judgment between the applicant and the 1<sup>st</sup> respondent entered into on 14<sup>th</sup> August 2017 and adopted as an order of the court on 17<sup>th</sup> October, 2017 and remains unpaid since, despite the orders of this honorable court requiring the contemnors to comply.
  - j. This honourable court ought to move speedily to affirm its statutory authority and uphold its integrity and the sanctity of its processes to ensure that its decision and orders are not rendered in vain by allowing the orders sought herein.
  - k. It is in the interest of justice that the honourable court does issue the orders sought herein.
3. The respondents opposed the application on the following grounds:
- a. That the contempt proceedings were not served on the individuals whose liberty the contempt order will interfere with; and
  - b. That the application is fatally defective.
4. The applicant has argued that The County Secretary, County Government of Homa Bay the 2<sup>nd</sup> respondent/contemnor, and the County Executive Committee Member in charge of Finance/County Treasurer County Government of Homa Bay, the 3<sup>rd</sup> respondent/contemnor, the respondents herein, are in contempt of the court orders issued in the favour of the applicant on the 22<sup>nd</sup> February 2023.
5. The purpose of contempt proceedings was explained in the case of [\*Kenya Human Rights Commission v Attorney General & another\*](#) [2018] eKLR the court stated thus:

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."

61. It is therefore a fundamental rule of law that court orders be obeyed and where an individual is enjoined by an order of the court to do or to refrain from doing a particular act; he has a duty to carry out that order. The court has a duty to commit that individual for contempt of its orders where he deliberately fails to carry out such orders. (*Louis Ezekiel Hart v Chief George 1 Ezekiel Hart* (- SC 52/2983 2<sup>nd</sup> February 1990) and in *Hon. Martin Nyaga Wambora and Another v Justus Kariuki Mate & Another* [2014] eKLR, the Court stated the duty to obey the law by all individuals and institutions is cardinal in the maintenance of rule law and administration of justice.

6. Section 30 (1) & (2) of the [\*Contempt of Court Act\*](#), 2016 provides:
- (1) Where a State organ, government department, ministry or corporation is guilty of contempt of court in respect of any undertaking given to a court by the State organ, government



department, ministry or corporation, the court shall serve a notice of not less than thirty days on the accounting officer, requiring the accounting officer to show cause why contempt of court proceedings should not be commenced against the accounting officer.

- (2) No contempt of court proceedings shall be commenced against the accounting officer of a State organ, government department, ministry or corporation, unless the court has issued a notice of not less than thirty days to the accounting officer to show cause why contempt of court proceedings should not be commenced against the accounting officer.
7. The question that begs an answer is who the County accounting officer is between the County Secretary and the in charge of Finance/County Treasurer, County Government of Homa Bay.
8. Secondly, when an applicant is seeking to have an individual punished for contempt, such an office bearer must be cited by name (in person) as opposed to citing the office such as the County Secretary, County Government of Homa Bay, and the in charge of Finance/County Treasurer, County Government of Homa Bay, as in this case. These two offices are perpetual. The court takes judicial notice that public offices change hands and a current holder of the office may be punished for contempt committed by another. This may occasion a miscarriage of justice.

In this case, although the applicant has a valid complaint, the requested orders cannot be granted for the reasons stated above. The application is dismissed with no orders as to costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 25<sup>TH</sup> DAY OF OCTOBER 2023**

**KIARIE WAWERU KIARIE**

**JUDGE**

