Republic v County Government of Meru & 5 others (Judicial Review E009 of 2024) [2025] KEELC 1211 (KLR) (4 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1211 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW E009 OF 2024

JO MBOYA, J

MARCH 4, 2025

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF MANDAMUS

AND

IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES 2010

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT 2015.

AND

IN THE MATTER OF THE JUDGEMENT AND ORDER ISSUED IN MERU MISC ELC. CIVIL APPLICATION NO. E054 OF 2023

BETWEEN

REPUBLIC ..... APPLICANT

AND

COUNTY GOVERNMENT OF MERU ..... 1ST RESPONDENT

MEMBER, FINANCE, ECONOMIC PLANNING & ICT ..... 2ND RESPONDENT

PLANNING COUNTY GOVERNMENT OF MERU ..... 3RD RESPONDENT

ADMINISTRATION ..... 4TH RESPONDENT

COUNTY GOVERNMENT OF MERU ..... 5TH RESPONDENT

COUNTY GOVERNMENT OF MERU ..... 6TH RESPONDENT

RULING

1. The Applicant herein [Joseph Mwirigi Kaburu]; an Advocate of the High Court of Kenya has approached the court vide application dated the 18th December 2024 and wherein the Applicant has sought for the following reliefs;

    i. That this Application be certified as urgent and be heard Ex-parte in the first instance.

    ii. That the Honourable Court do find that the 2nd to the 4th Respondents are in contempt of Court or disobedience of the Decree and Order of this Court issued on 13th day of November 2024.

    iii. That this Honourable Court do summon IBRAHIM MUTWIRI KIRIMI (CECM Finance,Economic Planning and ICT), CHARLES MWENDA (Chief Officer Finance,Economic Planning & ICT) & DICKSON MUNENE NKANATA (CECM Public Service Administration & Legal Affairs) to personally attend Court to Show cause why they should NOT be punished for Contempt of Court.

    iv. That costs of the Application be provided for.

2. The instant application is premised and anchored on the grounds which have been highlighted in the body thereof. In addition, the application is supported by the affidavit of Mwirigi Kaburu [hereinafter referred to as the Deponent] sworn on even date; and to which the deponent has annexed various documents including a copy of the decree issued by the court on the 13th November 2024, albeit extracted on the 20th November 2024.

3. Upon being served with the subject application, the respondent filed a Replying affidavit sworn on the 24th January 2025 by one Dr. Kiambi J. T Atheru, namely, the County Secretary-Meru County Government; and to which the deponent has raised and canvassed various issues. Pertinently, the deponent of the Replying affidavit has averred that the subject application does not touch on and concern the question of ownership of title to or occupation of land and hence same [application]does not fall within the jurisdictional remit of the Environment and Land Court.

4. Furthermore, the deponent has also averred that the monies at the foot of the decree sought to be executed vide the contempt proceedings herein are under challenge vide an appeal before the Court of Appeal. In this regard, the Respondents have contended that the application is thus legally untenable.

5. Additionally, the Respondents have also filed a Notice of preliminary objection dated the 4th January 2025. For coherence, the Notice of Preliminary objection highlights issues pertaining to the jurisdiction of the court to entertain and adjudicate upon the subject application.

6. The application beforehand came up for hearing on the 30th January 2025; whereupon the advocates for the parties covenanted to canvass and dispose of the application by way of written submissions. In this regard, the court proceeded to and circumscribed the timeline[s] for the filing and exchange of the written submissions.

7. Suffice it to underscore that the Applicant herein filed written submissions dated the 3rd February 2025, whereas the Respondent filed written submissions dated the 9th February 2025. For coherence, the two [2] sets of written submissions are on record.

8. The Applicant has raised and canvassed three [3] salient issues for consideration by the court. The issues raised by the Applicant are namely; whether the Environment and Land court is seized of the requisite jurisdiction to entertain the subject application or otherwise; whether the orders issued by the court on the 13th November 2024 were duly served upon the Respondents; and finally, whether the 2nd to 4th Respondent are in contempt of the lawful orders of the court.

9. Regarding the first issue, namely; whether the Environment and Land court is seized of the requisite jurisdiction to grant the orders sought or otherwise, learned counsel for the Applicant has submitted that the advocate client Bill of costs which was taxed by the Deputy Registrar and subsequently ratified by the Judge of the ELC, arose from and relate to a dispute which was canvassed in the Environment and Land court.

10. In the premises, learned counsel has posited that the taxation of the client bill of costs stem[s] from the Original Meru ELC No. E027 of 2021; which is a suit that was filed before and handled by the Environment and Land Court.

11. To the extent that the taxation giving rise to the instant proceedings was relating to a dispute handled and entertained by the Environment and Land court, learned counsel for the Applicant has submitted that the Environment and Land court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject matter.

12. In support of the foregoing submissions, learned counsel for the Applicant has cited and referenced the decision[s] in Bruce Odeny & Co *Advocates v Pride Kings Security Services Ltd [Misc. Civil Application No. E113 of 2023*] [2024] KEHC 5180 and Dennis K Magare and Ben Musundi T/a Magare Musundi & Co Advocates v Parminda Sign Mankur & Another [2021]eKLR.

13. Secondly, learned counsel for the Applicant has submitted that the orders of mandamus which were issued by this court [differently constituted] were duly extracted and served upon the Respondents. In this regard, learned counsel for the Applicant has referenced the affidavit of service attached to the supporting affidavit and wherein it is shown that various document[s] including a copy of the decree extracted on the 20th November 2024 were duly served on the designated persons.

14. It has been submitted that the question of service has neither been impugned nor challenged. In any event, it has also been submitted that other than service of the orders of mandamus, the Respondents herein are privy to and knowledgeable of the existence of the orders of mandamus and that the Respondents cannot now be heard to feign ignorance of the said Order[s].

15. In the circumstances, learned counsel for the Applicant has submitted that irrespective of whether service was effected or otherwise; where it is shown that the contemnor was knowledgeable of the court order, then such a contemnor cannot evade punishment [sic] on account of lack of service.

16. To buttress the foregoing submissions, learned counsel for the Applicant has cited and referenced the decision in Ngau Mbithi v Daniel Kiilu Ngomo [2019]eKLR and Shimmers Plaza Ltd v National Bank of Kenya [2015]eKLR.

17. Finally, learned counsel for the Applicant has submitted that despite being privy to and knowledgeable of the judgment of the court which ordered and directed payment of the decretal sum and coupled with the orders of mandamus, the Respondents herein and in particular, the 2nd and 4th Respondents have failed, neglected and/or refused to abide by the orders of the court.

18. Consequently, and in this regard, it has been submitted that the Respondents and in particular, the 2nd to 4th Respondents are in contempt of court.

19. Flowing from the foregoing submissions, learned counsel for the Applicant has therefore invited the court to find and hold that the 2nd to 4th Respondents are guilty of contempt and therefore same [2nd to 4th Respondents] ought to be cited and punished for contempt; or disobedience of the Lawful Court Order[s].

20. In support of the foregoing submissions, learned counsel for the Applicant has cited and referenced the holding in the case of Republic v County Government of Kitui Ex-parte Fairplan System Ltd [2022]eKLR and Shimmers Plaza Ltd v National Bank Ltd [2015]KECA 945 KLR, respectively.

21. Arising from the foregoing submissions, learned counsel for the Applicant has implored the court to find and hold that the application beforehand is meritorious and thus same ought to be allowed. For coherence, the court has been invited to find and hold that the Respondents and in particular, the 2nd to the 4th Respondents, are indeed guilty of contempt.

22. The Respondents filed written submissions dated the 9th February 2025; and wherein same [Respondents] have raised and canvassed four [4] salient issues for consideration by the court. The issues raised by the Respondents are namely; the Environment and Land court is devoid and divested of the requisite jurisdiction to entertain and adjudicate upon the subject Application; the orders of the court issued on the 13th November 2024 were never served upon the Respondents or at all; the decree dated the 20th November 2024 was never indorsed with the requisite penal notice; and lastly, that the 2nd to 4th Respondents are not in contempt of the court order.

23. Regarding the first issue, namely; that the Environment and Land court is devoid and divested of the requisite jurisdiction to entertain and adjudicate upon the said application or at all, it has been submitted that the jurisdiction of the Environment and Land court is circumscribed by the provisions of Article 162[2][b] of *the Constitution* and Section 13[2] of the *Environment and Land Court Act*, 2011.

24. Furthermore, it has been submitted that the current application does not touch on and/or concern the question of ownership of; Title to and/or occupation of land; and hence the application does not fall within the jurisdiction of the Environment and Land court.

25. Secondly, it has been submitted that even though the applicant herein has referenced the decree and order of the court issued on the 13th November 2024, the said decree and order has neither been annexed nor exhibited to the application.

26. Moreover, it has submitted that the decree that has been exhibited [annexed] is dated the 20th November 2024; which is said to be different from [sic] the decree issued on the 13th November 2024.

27. Be that is may, it has been submitted that the Applicant herein has neither served the issued decree on the 13th November 2024. Further and in any event, it has been submitted that the decree dated 20th November 2024 which has been annexed lacks the court seal and hence same is neither authentic nor verifiable.

28. Regarding the issue of contempt by the Respondents, the learned counsel has submitted that the Respondents and in particular, the Second to the Fourth Respondents do not have control over sources of money for the County Government of Meru; or the budget allocation for the expenditure. In particular, it has been submitted that the County Government expenditure is an issue that involves several organs including; the County Assembly and the Office of the Controller of Budget.

29. Premised on the foregoing, it has been submitted that the Second to the Fourth Respondents cannot therefore be held accountable for the non-payment of [sic] the decretal sum in question by the County Government of Meru.

30. Other than the foregoing, it has been submitted that the monies in question, which are colossal and substantial [enormous], would impact on the ability/capacity of the County Government of Meru to offer the services to the People of Meru.

31. Additionally, it has been submitted that the dispute herein touches on and concerns usage of public funds and resources. In this regard, it has been posited that the court is obliged to take into account and consider public Interests and policy prior tp and before issuing the Order[s] in question.

32. Arising from the foregoing submissions, learned counsel has invited the court to find and hold that the application beforehand is premature and misconceived. In any event, it has been submitted that the court is equally divested of the requisite jurisdiction to entertain and adjudicate upon the subject Application.

33. Consequently, and to this end, the court has been implored to strike out the Application beforehand with costs to the Respondents.

34. Having reviewed the application and the responses thereto and upon consideration of the written submissions filed by the respective parties it appears that the issues which do emerge are three [3] issues; namely; whether the Environment and Land court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject application; whether the Respondents and in particular, the 2nd to 4th Respondent were duly served with the decree issued on the 13th November 2024 or better still, whether same are knowledgeable of the terms of the said Decree; and whether the Applicant has proved contempt as against the 2nd to 4th Respondents.

35. Regarding the first issue, namely; whether the Environment and Land court is seized of the requisite Jurisdiction to entertain and adjudicate upon the subject application, the counsel for the Respondents has submitted that the dispute beforehand does not touch on and/or concern ownership of; title to or occupation of land. In this regard, it has been posited that the dispute does not fall with the jurisdictional remit of the Environment and Land court.

36. On the other hand, learned counsel for the Applicant has submitted that the current application stems and/or emanates from the Advocates- client bill of costs and which Bill of Cost[s] is stated to have arisen from the parent file, namely, Meru ELC N0. E027 of 2021.

37. Additionally, it has been submitted that following the taxation of the advocate client bill of costs vide Meru ELC Misc. Land E016 of 2024, the court [ELC] proceeded to and entered judgment in favour of the Applicant herein. Furthermore, it has been posited that it is the Environment and Land court which issued the primary orders which underpin the [Orders] of mandamus.

38. Moreover, the Applicant has also highlighted that the orders of mandamus which are the subject of execution vide the contempt application, were issued by the Environment and Land court and not otherwise. In this regard, the Applicant has posited that it is the Environment and Land Court is therefore seized of the requisite jurisdiction to entertain and adjudicate upon the subject matter and not otherwise.

39. Having considered the rival submissions, I beg to take the following position. Firstly, there is no gainsaying that the dispute underpinning the current application emanate[s] from the proceedings

undertaken vide Meru ELC No. E027 of 2021; and wherein the services of the Applicant herein had been retained by the County Government of Meru.

40. In addition, there is no gainsaying that the Applicant herein after being retained and/or engaged by the County Government of Meru to defend Meru ELC No. E027 of 2021 proceeded to and filed the advocates client bill of cost vide Meru Elc Misc. No. 016 of 2024. Suffice it to underscore that the advocate client bill of costs under reference was thereafter taxed by the Deputy Registrar of the Environment and Land court.

41. Moreover, it is not lost on this court that after the taxation of the advocate client bill of costs vide Meru ELC Misc. No. 016 of 2024, the County Government of Meru [sic] felt aggrieved and thereafter instructed its previous [erstwhile] counsel to file a reference against the certificate of taxation. Notably, the reference was heard and determined by the Environment and Land court.

42. First forward, the Applicant herein being alive to the fact that the entirety of the proceedings trace their root to the dispute before the Environment and Land court proceeded to and filed Judicial Review proceedings, namely; ELC JR No. E009 of 2024 and wherein same [Applicant] sought for mandamus. Yet again, the orders for mandamus were granted vide a judgment of the Environment and Land court.

43. Pertinently, it is the orders of mandamus which were issued by the Judge of ELC vide ELC JR No. E009 of 2024, which are contended to have been disregarded. Simply put, the orders that underpin the application for contempt beforehand were issued by the Environment and Land court and not otherwise.

44. With the foregoing background in mind, I am now disposed to determine whether or not the application for contempt of the orders issued by the Environment and Land court falls within the jurisdictional remit of the Environment and Land court or otherwise.

45. To start with, there is no gainsaying the Environment and Land court is a superior court of record. To this end, the Environment and Land court is seized of and possessed with the statutory mechanism for enforcing, executing and/or implementing its orders and where there is disobedience and/or contempt of the orders of the Environment and land court, it is the Environment and land court that has the requisite jurisdiction to cite and punish for such disobedience and/or contempt.

46. The jurisdiction of the Environment and Land court to punish for disobedience and/or contempt, stems from various statute[s] including Section 5 of the *Judicature Act*, Chapter 8, Laws of Kenya; and Section 29 of the *Environment and Land Court Act*, 2011[2016].

47. The provision[s] under reference are reproduced as hereunder;

> 5. Contempt of court;
>
> (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.
>
> (2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.

48. Section 29 of the *Environment and Land Court Act*, 2011[2016] states as hereunder;

29. Offences Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.

49. Bearing the foregoing provisions of the law in mind and taking into account that the provisions of Section 5 of the *Judicature Act* [supra] must be read in line with the provisions of Section 7 of the Sixth Schedule of *the Constitution*, 2010; I am afraid that the contention by the Respondents that the subject application does not fall within the jurisdiction of this court [Environment and Land Court] is erroneous and premised on misapprehension of the law.

50. Other than the foregoing provisions, which have been referenced in the preceding paragraphs, it is also important to underscore that the Environment and land court is also granted the power to cite and punish for disobedience [read contempt] by the said provisions of Section 63[e] of the *Civil Procedure Act*.

51. For ease of appreciation, Section 63[e] [supra] provide as hereunder;

63. Supplemental proceedings

In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed—

(a) issue a warrant to arrest the defendant and bring him before the court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the court to be just and convenient.

52. Moreover, it is worthy to reiterate that by virtue of being a superior court of record, the environment and land court cannot forsake the implementation, execution and enforcement of its orders to another superior court of record. Such an endeavour, if it were to happen would be tantamount to the Environment and land court ceding its constitutional space to some other court, which is contrary to the constitutional architecture .[See the decision of the Supreme Court in the case of Republic versus Karisa Chengo [2017] eklr at paragraph 50 thereof]

53. Pertinently, the Environment and land court is seized of the jurisdiction to enforce its own orders and more particularly, the orders issued by a Judge of the Environment and land court. Instructively, contempt proceedings like the one beforehand, constitutes one of the prescribed mechanisms for enforcing and ensuring compliance with the orders of the court.

54. Before departing from this issue, it is apposite to cite and reference the decision of the Supreme Court in Re*public v Chengo & 2 others (Petition 5 of 2015*) [2017] KESC 15 (KLR) (26 May 2017) (Judgment), where the court held as hereunder;

50. It is against the above background, that article162(1) categorises the ELC and ELRC among the superior Courts and it may be inferred, then, that the drafters of *the Constitution* intended to delineate the roles of ELC and ELRC, for the purpose of achieving specialization, and conferring equality of the status of the High Court and the new category of Courts. Concurring with this view, the learned Judges of the Court of Appeal in the present matter observed that both the specialised Courts are of " equal rank and none has the jurisdiction to superintend, supervise, direct, shepherd and/or review the mistake, real or perceived, of the other" . Thus, a decision of the ELC or the ELRC cannot be the subject of appeal to the High Court; and none of these courts is subject to supervision or direction from another. In their words:

> "By being of equal status, the High Court therefore does not have the jurisdiction to superintend, supervise, direct, guide, shepherd and/or review the mistakes, real or perceived, of the ELRC and ELC administratively or judiciously as was the case in the past. The converse equally applies. At the end of the day however, ELRC and ELC are not the High Court and vice versa . However, it needs to be emphasized that status is not the same thing as jurisdiction. *The Constitution* though does not define the word 'status'. The intentions of the framers of *the Constitution* in that regard are obvious given the choice of...
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> ..... words they used; that the three Courts (High Court, ELRC and ELC) are of the same juridical hierarchy and therefore are of equal footing and standing. To us it simply means that the ELRC and ELC exercise the same powers as the High Court in performance of its judicial function, in its specialised jurisdiction but they are not the High Court."

55. Arising from the foregoing, I come to the conclusion that the preliminary objection which has been canvassed by and on behalf of the Respondents, is misconceived, legally untenable and otherwise stillborn.

56. Respecting the second issue, namely; that the Respondents were neither served with the decree of the court issued on the 13th November 2024, it is important to underscore that the Applicant herein has filed and annexed a copy of the affidavit of service sworn on the 27th November 2024 and which clearly stipulates that a copy of the letter dated the 20th November 2024 and decree dated 20th November 2024 were duly served on the various Respondents.

57. Before venturing to interrogate whether service was duly effected or otherwise, there is an aspect/ arguments which merits mention and a short disposal. The argument herein touches on the contention that the Applicant did not serve the decree issued on the 13th November 2024 but has merely annexed the decree dated 20th November 2024. Furthermore, it has been posited that the decree dated the 20th November 2024 is different from the one issued on the 13th November 2024.

58. The arguments raised and canvassed by learned counsel for the Respondents [details in terms of the preceding paragraphs] falls within the category of arguments that can very well be described as hair-splitting arguments. Such arguments are devoid of substance.

59. I say the foregoing arguments are hair splitting arguments because learned counsel for the Respondents is privy to and knowledgeable of the provisions of Order 21 Rules 7 & 8 of the Civil Procedure Rules 2010, which regulates the extraction and sealing of decrees and orders of the court.

60. Suffice it to state and underscore that an order/decree of the court shall have the date of issue [namely date of judgment] and the date of sealing [namely when the decree is dated] and signed by the Deputy Registrar of the Court.

61. Bearing the foregoing position in mind, it is obvious that the decree dated the 20th November 2024 shows the date when it was extracted by the Applicant. However, the date of issue, which must correspond with the date of judgment remains the 13th November 2024. For coherence, the date of issuance is evident from the decree under reference.

62. To my mind, it is therefore self- defeating for the Respondents to advert to [sic] a decree dated 20th November 2024 which is said to be different from the decree issued on the 13th November 2024.

63. Notwithstanding the foregoing observation, it is apposite to underscore that the Respondents herein have neither moved this court or otherwise to challenge the validity and/or propriety of the decree dated 20th November 2024 or at all.

64. To my mind, the arguments by and on behalf of the Respondents and more particularly, the contents of paragraphs 26, 27, 28 and 29 of the R eplying affidavits sworn on the 24th January 2025, are misconceived.

65. Having disposed of the foregoing issue, I beg to return to the question as to whether the Respondents were duly served with the decree issued on the 13th November 2024, albeit extracted on the 20th November 2024. Instructively, the Applicant herein has filed an affidavit of service sworn on the 27th November 2024. The contents of the said affidavit of service are crystal clear.

66. Even though the Respondent has endeavoured to dispute service by making several innuendos, including questioning [sic] the authenticity of the stamp affixed on the face of the served order, it is not lost on this court that the Respondents did not seek to cross examine the deponent of the affidavit of service.[See the provisions of Order 5 Rule 17 of the Civil Procedure Rules, 2010]

67. For coherence, whenever there is a dispute as pertains to service, it behoves the person impugning service to seek for leave to cross examine the deponent of the affidavit of service.

68. Other than the foregoing, it is common ground that where the affidavit of service is not impugned vide cross examination, like in the instant case, the court of law is obligated to presume service in accordance with the affidavit of service. This is the doctrine of presumption of service on the basis of the Affidavit of service.

69. To this end, it suffices to cite and reference the decision of the Court in the case of Harun Miruka v Jared Otieno Abok & another [1990] KEHC 91 (KLR), where the court stated as hereunder;

> " 3. Presumption as to service – There is a presumption of service as stated in the process server's report, and the burden lies on the party questioning it, to show that the return is incorrect. But an affidavit of the process server is admissible in evidence and in the absence of contest it would normally be considered sufficient evidence of the regularity of the proceedings. But if the fact of service is denied, it is desirable that the process server should be put into the witness box and opportunity of cross-examination given to those who deny the service."

70. Moreover, the Court of Appeal has also re-affirmed the foregoing position in the case of Justus Kariuki Mate & Jim G. Kauma v Martin Nyaga Wambora & County Government of Embu (Civil Appeal

24 of 2014) [2014] KECA 376 (KLR) (30 September 2014) (Judgment), where the court stated as hereunder;

> (28) An affidavit of service consists of sworn factual evidence of the deponent. This Court in Shadrack arap *Baiywo --vs- Bodi Bach, Civil Appeal No. 122 of 1986* (UR) while applying the principles restated in; Miruka -vs- Abok & Another, [1990] KLR 544, Platt, JA stated:-
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> "There is a qualified presumption in favour of the process server recognized in MB Automobile -vs- Kampala Bus Service [1966] EA 480 at p 484 as having been the view taken by the Indian courts in construing similar legislation. On Chitaley and Annaji Rao: The Code of Civil Procedure Vol. II p 1670, the learned commentators say:-
>
> "3.Presumption as to service – There is a presumption of service as stated in the process server's report, and the burden lies on the party questioning it, to show that the return is incorrect. But an affidavit of the process server is admissible in evidence and in the absence of contest it would normally be considered sufficient evidence of the regularity of the proceedings. But if the fact of service is denied, it is desirable that the process server should be put into the witness box and opportunity of cross-examination given to those who deny the service."
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> See also this Court's decision in Kingsway Tyres & Automart Ltd. –vs- Rafiki Enterprises Ltd., – Civil Appeal No. 220 of 1995. Going by the material that is before us regarding the service of the order and the dicta enunciated the aforesaid authorities we agree with counsel for the 1st respondent that the burden lay with the appellants to demonstrate that the affidavit of service was incompetent.

71. To my mind, evidence abound that the Respondents were duly and effectively served with the orders of mandamus which were issued on the 13th November 2024 but which were extracted on the 20th November 2024.

72. Other than the finding that the orders of mandamus were duly and effective served, it is important to state that the law on contempt of Court has since evolved from the strictures of service and indorsement of a penal notice. Suffice it to state that the current jurisprudence is to the effect that knowledge of the court order is paramount and where it is shown that a party [read contemnor] was knowledgeable of the orders then such knowledge suffices.

73. The Court of Appeal in the case of Executive Committee Kisii County, Governor, Kisii County & County Government of Kisii v Masosa Construction Company Limited & Transition Authority (Civil Appeal 39 of 2016) [2020] KECA 801 (KLR) (3 April 2020) (Judgment), highlighted the current jurisprudence.

74. The court stated as hereunder;

> 19. In Justus Kariuki Mate v Martin Nyaga Wambora, [2014] eKLR this Court acknowledged the move from the position that an order endorsed with a penal notice must be personally served on a person before contempt can be proved. Lenaola, J (as he then was) in the case of Basil Criticos v Attorney General [2012] eKLR perceived an additional ground for dispensation with the requirement for personal service; "...where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary". Similarly, the requirement of notice of the prohibitory judgement or order would also be satisfied where a party is represented counsel who was present in court when the orders were made. Therefore, knowledge of the judgment or order by an alleged contemnor's advocate suffices for contempt proceedings.

There is a presumption that when an advocate appears in court on instructions of a party, it behoves him to report back to the client all that transpired in court that has a bearing on the client's case. This presumption is in line with the dicta of the Canadian Supreme Court in the case of Bhatnager v Canada, (Minister of Employment and Immigration 1990] 2 SCR 217 where it was held that a finding of knowledge on the part of the client may be inferred from the fact that the solicitor was informed.Similarly, in the United States case of United States v Review 834 F.2d 1198, 1203 (5th Cir. 1987) it was held that a defendant had adequate notice of a show cause order because his attorney was on notice.

(See also Kenya Supreme Court dicta in Justus Kariuki Mate & another v Martin Nyaga Wambora & another [2017] eKLR).

20. In the instant matter, the admission by the appellants that they were served with the court order disposes the ground urged that the learned judge erred in failing to find that personal service was a pre-requisite for the issuance of a contempt order. Contempt proceedings are a quasi-criminal proceedings hence the need for personal service. The requirement of personal service is to ensure that the alleged contemnor is personally aware of the serious implication of the quasi-criminal proceedings. In the instant matter, the appellants having conceded that they were duly served with the court order, we are satisfied that this Court will be acting in vain in considering the issue of personal service as a ground of appeal.

75. Taking the foregoing position, and juxtaposing same against the totality of the evidence on record, including the contents of paragraph 11 of the affidavit of Dr. Kiambi J T Atheru sworn on 12th January 2025 [which is on record], I come to the conclusion that the Respondents herein were knowledgeable of and privy to the terms of the order of mandamus.

76. Finally, it is also important to underscore that the contemnors who are the subject of the current application, namely; the 2nd, 3rd and 4th Respondents have neither contested service nor denied knowledge of the orders of mandamus.

77. To this end, it is instructive to posit that the contemnors themselves are at peace with the question of service and knowledge of the court order. I say no more.

78. Arising from the foregoing, my answer to issue number two [2] is twofold. Firstly, evidence abound that the Respondents were duly and effectively served with the decree underpinning the orders of mandamus. For good measure, the affidavit of service on record has not been impugned or otherwise.

79. Secondly, there is no gainsaying that the jurisprudence as pertains to contempt proceedings has since moved from the strictures of personal service and orders being indorsed with penal notices.

80. Lastly, there is the question of contempt. There is no gainsaying that this court [differently constituted] issued an order of mandamus. The order of mandamus directed due compliance by payment of the sum of Kes.82, 176, 731/= only plus interests to the Applicant. For coherence, the Order of Mandamus is a command from the Superior Court and ought to be complied with. [See the decision of the Court of Appeal in the case of Kenya National Examination Council versus Geoffrey Gathenji [1996]eklr]

81. Pertinently, the orders of mandamus, whose details are well known to the Respondents and in particular the 2nd to the 4th Respondents [contemnors] has not been challenged, reviewed [if at all] and/or appealed against. Furthermore, I am privy to the provision of Section 8[2] & 9 of the *Law Reform Act*, Chapter 26 Laws of Kenya which provides that once a prerogatory writ [Order] is issued, such an order is incapable of recall save for when same is stayed or set aside by the Appellate Court.

82. Be that as it may, it is common ground that the orders of mandamus remain in situ and has not been invalidated or at all. In any event, it is common knowledge that the only attempt at appeal was in respect of the decision issued vide the reference and not otherwise.

83. For coherence, no appeal has been mounted against the order adopting the certificate of taxation as judgment of the court in terms of the provisions of Section 51[2] of the *Advocates Act*, Chapter 16, Laws of Kenya. Furthermore, no appeal has been mounted against the orders of mandamus.

84. Given the foregoing factual and legal matrix, I come to the conclusion that there is no reasonable excuse and/or explanation why the 2nd to the 4th Respondents [the Contemnors] have neither complied nor adhered to the orders of mandamus.

85. I hear the Respondents to be saying that the amounts in question are exorbitant and colossal. I also hear the Respondents to be stating that the expenditures of the county government involves various organs including the County Assembly of Meru and the Controller of budget.

86. Nevertheless, it is not lost on this court that compliance with the decree and/or orders of the court is not subordinate to the actions of the County Assembly of Meru. Furthermore, compliance with the orders of the court is also not subordinate to the directives or otherwise of the controller of budget.

87. For the umpteenth time, it suffices to posit that compliance with the orders of the court is one of the critical tenets of the rule of law and by extension Article 10[2] of *the Constitution* 2010. [See the holding of the Court in the case of Teachers Service Commission versus Kenya National Union of Teachers [2013]eklr]

88. Additionally, I am alive to the fact that the arguments like the ones being propagated by the Respondents herein were also considered and addressed by the Court of Appeal in the case Executive Committee Kisii County, Governor, Kisii County & County Government of Kisii v Masosa Construction Company Limited & Transition Authority (Civil Appeal 39 of 2016) [2020] KECA 801 (KLR) (3 April 2020) (Judgment).

89. Flowing from the foregoing, I am persuaded that the application beforehand is meritorious. For coherence, it is imperative to remind the Respondents and in particular the 2nd, 3rd and 4th Respondents that compliance with the orders of the court is the general rule and not an exception. It is an unqualified obligation that reposes in all and sundry.

90. To this end, I adopt and reiterate the succinct [apt] exposition of the law by the Court of Appeal in the case of Shimmers Plaza Ltd v National Bank of Kenya Ltd [2015]KECA 945, where the court stated as hereunder;

> It cannot be gainsaid that the duty to obey the law by all individuals and institutions is paramount in the maintenance of the rule of law, good order and the due administration of justice.
>
> As stated by Romer, L.J. In Hadkinson –vs- Hadkinson, (1952) ALL ER 567,
>
> "It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C., said in Chuck –vs- Cremer (1) (1 Coop. temp.Cott 342):
>
> "A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their

solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed."

Further, this Court in Refrigeration and Kitchen Utensils Ltd. –vs- Gulabchand Popatlal Shah & Another, -Civil Application No.39 of 1990 held,

" ... It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts is upheld at all times."

The above pronouncements of law ring true now as they did over sixty years ago when they were made in Hadkinson's case. Unfortunately what we have now is persons both ordinary mortals and persons in authority treating Court orders with unbridled contempt with blatant impunity.

Was the respondent one such person? Unfortunately the answer to this question is in the affirmative. The order was made in presence of counsel for the respondent who as stated earlier must be presumed to have informed the respondent of the same. He went ahead and transferred the property before the due date of the judgment seemingly impatient to have this matter concluded once and for all. He acted in clear contempt of this Court. Government institutions, State officers, banks, and all and sundry are enjoined by law to comply with Court orders. We must deprecate in the strongest terms possible the worrying trend in this country where court orders are treated with tremendous contempt by persons and institutions which think wrongly of course, that they are above the law.

We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26th President of the United States of America once said:-

"No man is above the law and no man is below it; nor do we ask any man's permission to obey it. Obedience to the law is demanded as a right; not as a favour".

The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by *the Constitution*.

The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy .We think we have said enough to send this important message across.

91. For the reasons highlighted elsewhere herein before, my answer to the third issue is to the effect that the Applicant has duly established and proved contempt against the 2nd, 3rd and 4th Respondents.

92. For good measure, the 2nd, 3rd and 4th Respondents were the persons who were enjoined to act vide the order of mandamus and hence the only persons capable of being cited for Contempt of Court and not otherwise.

Final Disposition:

93. Having analysed the various perspectives [which were enumerated in the body of the ruling herein], it must have become crystal clear that the application for contempt is meritorious. Suffice it to state that the Applicant has duly satisfied the standard of proof as envisaged in the decision in the case of Mututika v Baharini Farm Ltd [1985]eKLR.

94. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder;

    i. The Application dated 18th December 2024 be and is hereby allowed.

    ii. The 2nd, 3rd and 4th Respondents be and are hereby cited for contempt of the lawful court orders issued on the 13th November 2024 [the orders of mandamus].

    iii. The 2nd, 3rd and 4th Respondents shall personally appear before the court on the 25th March 2025, for purposes of mitigation and punishment, in accordance with the provisions of Section 5 of the *Judicature Act* as read together with Section 29 of the *Environment and Land Court Act*, 2011.

    iv. In default by the 2nd, 3rd and 4th Respondent to physically attend court, warrants of arrest shall issue and same shall be executed by the County Police Commandant – Meru county.

    v. The matter shall be mentioned on the 25th March 2025 for further directions.

    vi. Costs of the Application be and are hereby awarded to the Applicant.

95. It is so ordered.

DATED SIGNED AND DELIVERED ON THE 4 TH DAY OF MARCH, 2025.

OGUTTU MBOYA

JUDGE

In the presence of:-

Mr. Mutuma – Court Assistant.

Mr. Mutembei for the Respondents.

Mr. Mwirigi Kaburu for the Applicant.