



Republic v County Government of Kisumu; Auma (Ex parte Applicant) (Environment and Land Judicial Review Case E001 of 2024) [2025] KEELC 6070 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6070 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2024
SO OKONG'O, J
SEPTEMBER 18, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF KISUMU RESPONDENT

AND

DOMINIC ODONDI AUMA EX PARTE APPLICANT

RULING

1. The ex parte applicant, Dominic Odondi Auma (hereinafter referred to only as “the applicant”) filed a civil suit in the Chief Magistrate’s Court at Kisumu, namely, Kisumu CMC ELC No. E034 of 2021, Dominic Odondi Auma v. Victor Sande & County Government of Kisumu (hereinafter referred to only as “the primary suit”).
2. In a judgment delivered in the primary suit on 10th May 2023, the court, among others, awarded the applicant against the defendants in the suit a sum of Kshs. 188,384/- as special damages, together with the costs of the suit, which were assessed at Kshs. 302,245/-. On 20th June 2023, the court in the primary suit issued a Certificate of Costs against the Government in favour of the applicant in the sum of Kshs. 490,629/- comprising the principal sum awarded and the costs of the suit. The applicant demanded the said decretal sum from the defendants in the primary suit, but the payment did not come forth.
3. On 2nd January 2024, the applicant applied to this court in the present suit for an order of judicial review in the nature of a mandamus to compel the County Government of Kisumu, the respondent herein, which is also the 2nd defendant in the primary suit, to pay the said sum of Kshs. 490,629/- to the applicant. On 8th July 2024, this court issued an order of mandamus compelling the respondent to pay to the applicant the said sum of Kshs. 490,629/-. The applicant was also awarded the costs of the application, which was taxed at Kshs. 87,555/-.



4. What is now before me is a Notice of Motion application dated 16th December 2024 brought by the applicant under Sections 3 and 5 of the Judicature Act, Chapter 8 of the Laws of Kenya, Sections 1A, 1B, 3A and 63 of the Civil Procedure Act, Chapter 21 of the Laws of Kenya and Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders;
 1. A declaration that the respondent has willfully disobeyed the lawful court order issued by this court on 8th July 2024 and consequently, it is in contempt of court.
 2. That Professor Peter Anyang Nyongo, the Governor of Kisumu County hence the Chief Executive Officer of the Respondent, be committed to jail for six months or such other period that the court may order.
 3. That Professor Peter Anyang Nyongo, the Governor of Kisumu County hence the Chief Executive Officer of the Respondent, be condemned to pay such fine as shall be commensurable or reasonably proportional punishment for the disobedience of the said court order.
 4. That the costs be borne by the respondent.
5. The application was brought on the grounds set out on the face thereof and on the supporting affidavit of the applicant's advocate, Edwin Omulama Onditi sworn on 16th December 2024. In summary, the application was brought on the grounds that on 8th July 2024, this court ordered the respondent to pay a sum of Kshs. 490,629/- being the decretal sum that was awarded to the applicant in the primary suit. The applicant averred that he demanded from the respondent the payment of the said sum of Kshs. 490,629/- together with additional costs of Kshs. 87,555/-, making a total sum of Kshs. 578,184/-. The applicant averred that the respondent refused to pay the said amount despite a warning given to it that contempt of court proceedings would be instituted against it. The applicant averred that he would be denied the right to enjoy the fruits of his judgment unless the court granted the orders sought.
6. The respondent was served with the application but did not file a response. The application was argued by way of written submissions. The applicant filed submissions dated 25th February 2025. The respondent did not file submissions. Since the facts were not in dispute in the application, the court had asked the parties to address it only on issues of law. The applicant framed two issues on which he submitted, namely;
 1. Whether the law envisages the Governor of a County Government being cited for contempt of court where the County Government fails to settle a decretal sum pursuant to a Certificate of Order against the government; and
 2. Whether the applicant had established the elements constituting Contempt of Court against the respondent.
7. On the first issue, the applicant submitted that in answering the question, the provisions of the Constitution of Kenya, the County Governments Act, Chapter 265 of the Laws of Kenya, the Public Finance Management Act, Chapter 412A of the Laws of Kenya, and the Government Proceedings Act, Chapter 40 of the Laws of Kenya must be considered.
8. The applicant submitted that Article 179 (1) and (2) were clear that the executive authority of the county is vested in, and exercised by, a county executive committee comprising of, the the county governor and the deputy county governor, and members appointed by the county governor, with the approval of the assembly, from among persons who are not members of the assembly. The applicant submitted that Article 179 (4) and (6) provide that the county governor and the deputy county



- governor are the chief executive and deputy chief executive of the county, respectively, and that the members of a county executive committee are accountable to the county governor for the performance of their functions and exercise of their powers.
9. The applicant submitted that Section 6 of the *County Governments Act* Chapter 265 of the Laws of Kenya provides that a county government is a body corporate with perpetual succession, while Section 30 (2) of the Act outlines the functions and responsibilities of a county governor to include, among others;
- (a) diligent execution of the functions and exercise of the authority provided for in the *Constitution* and legislation;
 - (d) appointment, with the approval of the county assembly, the county executive committee in accordance with Article 179(2)(b) of the *Constitution*;
 - (e) constitution of the county executive committee portfolio structure to respond to the functions and competencies assigned to and transferred to each county;
 - (f) submitting the county plans and policies to the county assembly for approval;
 - (g) considering, approving and assenting to bills passed by the county assembly;
 - (h) chairing of meetings of the county executive committee;
 - (i) assigning to every member of the county executive committee, responsibility to ensure the discharge of any function within the county and the provision of related services to the people;
 - (j) submitting to the county assembly an annual report on the implementation status of the county policies and plans;
 - (k) delivering annual state of the county address containing such matters as may be specified in county legislation; and
 - (l) signing and causing to be published in the county Gazette, notice of all important formal decisions made by the Governor or by the county executive committee.
10. The applicant submitted that Section 30 (3) of the *County Governments Act* provides that while performing the functions and responsibilities above, the governor shall, among others; provide leadership in the county's governance and development; provide leadership to the county executive committee and administration based on the county policies and plans; promote democracy, good governance, unity and cohesion within the county; and be accountable for the management and use of the county resources.
11. The applicant submitted that Section 31 (c) of the *County Governments Act* grants the governor the power to appoint an accounting officer for each department, entity or decentralized unit of the county government. The applicant submitted that this section did not give the governor power to appoint the accounting officer for the county government as a whole because the governor, as the Chief Executive Officer of a county government, is its Chief Accounting Officer.
12. The applicant submitted that Section 39 (1) of the *County Governments Act* leaves no doubt that the governor is the Accounting Officer of the county government by providing that the members of the county executive committee are individually and collectively accountable to the governor in the exercise of their powers and performance of their duties and responsibilities.



13. The applicant submitted that Section 2 of the *Public Finance Management Act*, Chapter 412A of the Laws of Kenya, defines “County Executive Committee Member for finance” to mean the member of a County Executive Committee responsible for the financial affairs of the County and for the County Treasury.”
14. The applicant submitted that the same section of the *Public Finance Management Act* defines “accounting officer” in relation to a county government entity, as the accounting officer referred to in Section 148 of the same Act, which provides for the designation of accounting officers for county government entities by the County Executive Committee Member for finance. The applicant submitted that Section 148 of *Public Finance Management Act* provides among others that; a County Executive Committee Member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation; except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity, and a County Executive Committee Member for finance shall ensure that each county government entity has an accounting officer in accordance with Article 226 of the *Constitution*.
15. The applicant submitted that “county government entity” is defined in Section 2 of the *Public Finance Management Act* as any department or agency of a county government, and any authority, body or other entity declared to be a county government entity under Section 5 (1). The applicant submitted that the respondent is the County Government of Kisumu as opposed to an entity within the County Government of Kisumu.
16. The applicant submitted that the Chief Executive Officer of the county, who is also the governor of the county, serves as the Chief Accounting Officer. The applicant submitted that if the framers of the *Public Finance Management Act* had intended to designate the County Executive Committee Member for finance as the accounting officer of the county executive, it would have been easier for that to have been expressly provided for in Section 148(4) of the said Act.
17. The applicant submitted that Section 21(5) of the *Government Proceedings Act*, Chapter 40 of the Laws of Kenya, provides that the procedure for the satisfaction of orders against the national government under Section 21 of the said Act shall apply with necessary modifications to the county governments. The applicant submitted that Section 21(3) of the *Government Proceedings Act* provides that, if such order against the Government 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, pay to the person entitled the amount so certified to be due to him together with interest, if any, lawfully due thereon.
18. The applicant submitted that Section 21 (3) of the said Act was drafted with the national government in mind. The applicant submitted that the head of the national government is not subject to the court process while in office, hence the need for an accounting officer of the government department concerned to satisfy the orders against the government. The applicant submitted that, unlike the president, the governor is not immune from suit while in office. The applicant urged the court to modify Section 21(3) of the Act in line with Section 21(5) of the same Act and incorporate the governor as the Chief Accounting Officer of the entire county government and, as such, responsible for honouring the relevant Certificate of Order against the county government or suffer the consequences of not doing so. The applicant submitted that the County Executive Committee Member for finance is accountable to the governor for the performance of his functions and exercise of his duties, and as such, he would be ill-suited for the role of the accounting officer.



19. The applicant submitted that he had established the elements constituting contempt of court against the respondent. In support of this submission, the applicant cited the decision of the court in Cecil Miller v. Jackson Njeru & Another [2017] e KLR.
20. The applicant submitted that the respondent did not file any pleading to controvert the assertions made by the applicant in the application, which must be deemed as proved. The applicant urged the court to grant prayers 2, 3, 4 and 5 of the Notice of Motion Application dated 16th December 2024.

Analysis and Determination

21. I have considered the applicant's application together with the affidavit filed in support thereof. Following the amendment of the Government Proceedings Act (Chapter 40 of the Laws of Kenya) in 2015, Section 21 of the Government Proceedings Act, which relates to the satisfaction of orders against the government, now applies to county governments. Section 21 of the Government Proceedings Act provides as follows: -

1. Where in any civil proceedings by or against the government or any proceedings in connection with any arbitration in which the government is a party, any order (including an order for costs) is made by any court in favour of any person against the government or against a government department, or against an officer of the government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of 21 days from the date of the order or, in case the order provides for the payment of costs and the costs are required to be taxed, at any time after the costs have been taxed, whichever is the latter, issue to that person a certificate in the prescribed form containing the particulars of the order:

Provided that if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

2. A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney General.
3. If the order provides for the payment of any money by way of damages or otherwise, or any costs, the certificate are to state the amount 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:

Provided that the court by which any such orders are as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein. (Emphasis added)

4. Save as aforesaid no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the government



of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the government, or any government department, or any officer of the government as such, of any money or costs.

5. This section shall, with necessary modification, apply to any civil proceeding by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.”
22. It is not disputed that on 8th July 2024, this court ordered the respondent to pay the applicant a sum of Kshs. 490,629/- being the decretal amount that was awarded to the applicant by the lower court. It is not disputed that the respondent has not made the payment as ordered by the court. It is also not disputed that the person responsible for making the payment in compliance with the court order is the respondent’s accounting officer. In the application before the court, the applicant has sought to hold the governor of the respondent responsible for the payment of the said decretal amount. The applicant has contended that the governor is the accounting officer of the respondent and, as such, must be held responsible for the payment of the said decretal amount. The main issue the court has been called upon to determine is whether the governor of the respondent is the accounting officer of the respondent and should be punished for the respondent’s failure to pay the said decretal amount. I am grateful to the applicant’s advocates for their elaborate and incisive submissions on the issue.
23. The applicant has referred to various provisions of the Constitution and statutes in support of his contention that the governor of a county is the accounting officer of the county government. This is not a novel issue. There are several decisions on the same, including some by this court. Curiously, the applicant did not cite any case law in support of his submissions on the issue. There appears to be no clear consensus among judges as to who “the accounting officer” of a county government is. I will refer to a few recent decided cases on the issue. In Nairobi Judicial Review Application No. E097 of 2025, Agnes Mutethya Mulwa v. The County Attorney, The County Executive Committee Member for Finance, County Government of Kiambu, the Chief Officer Finance, County Government of Kiambu, and the Governor, County Government of Kiambu, Aburili J. held that the accounting officer of a county government is the Chief Officer Finance, designated for that purpose by the County Executive Committee Member for finance which the judge equated to the Principal Secretary in the case of the national government. The judge struck out the County Attorney, the County Executive Committee Member for finance and the governor of Kiambu County from the application that sought an order of mandamus to compel them to pay a decretal amount.
24. In Mombasa Judicial Review Application No. E006 of 2024, Republic v. The County Government of Mombasa, The Chief Officer Finance, and the County Attorney, Sewe J. held that in the absence of any evidence that the County Executive Committee Member for finance of Mombasa County had designated the Chief Officer of finance, County Government of Mombasa as the accounting officer of the County, the accounting officer of Mombasa County was the County Executive Committee Member for finance. An application for an order of mandamus to compel the Chief Officer of finance, County Government of Mombasa, to pay a decretal amount was struck out.
25. In Council of Governors & Others v. The Senate [2015] eKLR, a three-judge bench of the High Court referred to Article 226 of the Constitution, Section 148 of the Public Finance Management Act and stated as follows in paragraphs 135 and 137 of their judgment:

“135. It therefore follows that “an accounting officer” for a County Government entity is the person so appointed and designated as such by the County Executive Committee Member for Finance under Section 148 of the Public Finance Management Act. Indeed, Section 148 (3) of the Public Finance



Management Act mandates the County Executive Committee Member for Finance to ensure that each County government entity has an accounting officer as provided for under Article 226(2) of the Constitution....

137. Having found as we have, it follows that the question posed by the Petitioners as to whether the County Governor is an Accounting Officer, must be answered in the negative. He is not an Accounting Officer and we have said why.”
26. The three-judge bench, like Aburili J. held that a Governor is not an accounting officer of the County Government.
27. In Nairobi ELC Judicial Review No. 14 of 2019, Republic v. The Governor of Nairobi City County Government and the County Executive Committee Member For Finance, Nairobi City County Government, which was an application for an order of mandamus to compel payment of a decretal amount, this court held that the County Executive Committee Member for finance of a county government is the accounting officer of the County Government and as such has an obligation under Section 21(3) of the Government Proceedings Act to pay or settle any judgment made against the County Government.
28. I have considered the applicant’s submissions and the judgments of my colleagues on the issue cited above. Upon further consideration of the matter, I will depart from my earlier position on the issue. I would agree with the position of Aburili J. in her decision in Nairobi Judicial Review Application No. E097 of 2025(supra), that the accounting officer of a county government is the Chief Officer for finance, designated for that purpose by the County Executive Committee Member for finance and not the County Executive Committee Member for finance.
29. Under Section 2 of the Public Finance Management Act (the Act), “accounting officer” in relation to a national government means an accounting officer of a national government entity referred to in Section 67 of the Act. In the same Section of the Act, “accounting officer” in relation to a county government means an accounting officer of a county government entity referred to in Section 148 of the said Act. Section 67 of the Act gives the Cabinet Secretary in charge of finance the power to designate accounting officers to be responsible for managing the finances of the national government entities, as specified in the designation. In the same way, Section 148 of the Act gives the County Executive Committee Member for finance the power to designate accounting officers to be responsible for managing the finances of the county government entities, as specified in the designation.
30. Article 155 of the Constitution establishes the office of the Principal Secretaries, who are the administrators of state departments. Section 45(1) of the County Governments Act provides for the appointment of Chief Officers to be the administrators of the county government departments. Section 45(3) of the County Governments Act provides that a county Chief Officer shall be responsible to the respective County Executive Committee Member for the administration of a county department as provided under section 46 of the Act.
31. I am of the view that the Principal Secretaries in the case of the national government and the Chief Officers in the case of the county governments are among those who are supposed to be designated as the accounting officers by the Cabinet Secretary in charge of finance and the County Executive Committee Member for finance under Sections 67 and 148 of the Public Finance Management Act. Sections 67(1) and (3) and 148(1) and (3) of the Act make it mandatory for the Cabinet Secretary in charge of finance and the County Executive Committee Member for finance, respectively, to appoint



and maintain accounting officers for national and county government departments and entities at all times.

32. Section 148 (2) of the *Public Finance Management Act* provides that:

Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity shall be the accounting officer responsible for managing the finances of that entity.”

33. As mentioned earlier, under Section 45(3) of the *County Governments Act*, the administrators of the County Government departments are the Chief Officers and not the Executive Committee Members or Governors. These are, therefore, the accounting officers in their various departments.

34. Section 149 of the *Public Finance Management Act* provides for the responsibilities of accounting officers designated for county government entities as follows:

- (1) An accounting officer is accountable to the county assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is—
 - (a) lawful and authorised; and
 - (b) effective, efficient, economical and transparent.
- (2) In carrying out a responsibility imposed by subsection (1), an accounting officer shall, in respect of the entity concerned—
 - (a) ensure that all expenditure made by the entity complies with subsection (1);
 - (b) ensure that the entity keeps financial and accounting records that comply with this Act;
 - (c) ensure that all financial and accounting records that the entity keeps in any form including in electronic form are adequately protected and backed up;
 - (d) ensure that all contracts entered into by the entity are lawful and are complied with;
 - (e) ensure that all applicable accounting procedures are followed when acquiring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safe guarding and maintenance;
 - (f) bring a matter to the attention of the County Executive Committee member responsible for the entity if, in the accounting officer’s opinion a decision or policy or proposed decision or policy of the entity may result in resources being used in a way that is contrary to subsection (1);
 - (g) prepare a strategic plan for the entity in conformity with the medium term fiscal framework and financial objectives of the county government;
 - (h) prepare estimates of expenditure of the entity in conformity with the strategic plan referred to in paragraph (g);
 - (i) submit the estimates of an entity, which is not a county corporation, to the County Executive Committee member for finance;
 - (j) submit the estimates of an entity, which is a county corporation, to the executive committee member responsible for the entity who, after approving it, shall forward it to the County Executive Committee member for finance;



- (k) not later than three months after the end of each financial year, prepare annual financial statements for that financial year and submit them to the Auditor-General for audit, with a copy to the County Treasury;
 - (l) try to resolve any issues resulting from an audit that remain outstanding;
 - (m) manage the assets of the entity to ensure that it receives value for money when acquiring, using or disposing of its assets;
 - (n) dispose of assets at the most competitive price and at the lowest possible cost ensuring that the proceeds from all asset disposals are deposited in a bank account of the entity;
 - (o) ensure that the respective county government entity has adequate systems and processes in place to plan for, procure, account for, maintain, store and dispose of assets, including an asset register that is current, accurate and available to the relevant County Treasury or the Auditor-General;
 - (p) provide the County Treasury with any information it requires to fulfil its functions under this Act;
 - (q) provide information on any frauds, losses, or any violations of subsection (1) and provide explanations for the actions taken to prevent similar conduct in future; and
 - (r) carry out such other responsibilities as may be specified in regulations by the County Executive Committee member for finance.
- (3) Not later than three months after the county assembly has adopted a report by a committee of the county assembly with respect to a report submitted by the Controller of Budget under Article 228(6) of the *Constitution*, an accounting officer shall, for each entity for which the officer is designated—
- (a) prepare a report on actions taken by the entity to implement any recommendations made in the committee’s report as adopted by the county assembly; and
 - (b) submit the report to the county assembly with a copy to the County Treasury.
- (4) Not later than one month after receiving a report by an accounting officer under subsection (3), the County Treasury shall submit to the county assembly the accounting officer’s report and any comments on the report by the County Treasury.
- (5) The report referred to in subsection (3) shall be published and publicised.”
35. There is no doubt that the foregoing responsibilities can only be undertaken by those who are in charge of the day-to-day administration of these entities, who are civil servants appointed by the Public Service Board, as opposed to the County Executive Committee Members appointed by the Governor.
36. Having concluded that an accounting officer in a county government is the Chief Officer of a department or entity designated by the Executive Committee Member for finance, the next question that arises is, against which Chief Officer should a litigant who has a judgment against a County Government for payment of money enforce the judgment? Section 21(3) of the *Government Proceedings Act* places an obligation to settle a decretal amount upon “the Accounting Officer for the Government department concerned”. Both the county and national governments operate through departments. It is the accounting officers of these departments who have an obligation to settle the decretal amounts awarded by the courts. In the case before me, the county government department



concerned with the payment of debts is the finance department. The accounting officer responsible for payment in this case is therefore the Chief Officer of finance at the County Government of Kisumu.

Conclusion

37. In conclusion, I find no merit in the applicant's application. The application fails for non-joinder. The application should have been brought against the Chief Officer for finance, County Government of Kisumu, rather than against the governor of the county. The application is struck out. Since the application was not opposed, each party shall bear its costs.

DELIVERED AND SIGNED AT KISUMU ON THIS 18TH DAY OF SEPTEMBER 2025

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Omulama for the Applicant

N/A for the Respondents

Ms. J.Omondi-Court Assistant

