



**Republic v County Secretary of the County Government of Machakos;
Kimani (Exparte Applicant) (Environment and Land Case Judicial Review
Application E003 of 2020) [2024] KEELC 5259 (KLR) (10 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5259 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION E003 OF 2020
A NYUKURI, J
JULY 10, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**COUNTY SECRETARY OF THE COUNTY GOVERNMENT OF
MACHAKOS RESPONDENT**

AND

DR. JOSHUA KIMANI EXPARTE APPLICANT

***(COUNTY SECRETARY OF THE COUNTY GOVERNMENT
OF MACHAKOSRESPONDENT AND DR. JOSHUA
KIMANIEX-PARTE APPLICANT)***

RULING

1. Before court is a notice of motion dated 17th May 2022 filed by the applicant seeking the following orders;
 - a. Summons be issued against the respondent to appear before this court and show cause why he should not be committed to civil jail for such term or punished as the court may deem just.
 - b. The respondent be cited for contempt of court and committed to civil jail for a term of six (6) months or punished as the court may deem fit for failure to obey this court’s orders dated 25th May 2021.
 - c. The respondent do pay the cost of this application.



2. The application is premised on the affidavit of Benjamin Mwikya Musyoka advocate for the applicant. The applicant's case is that the respondent disobeyed the court's order of *mandamus* dated 25th May 2021, which required him to pay Kshs. 148,731/- and costs of the application. Further that the debt has been outstanding for a long time and that it is unfair and unjust to keep the respondent waiting. He also averred that the action by the respondent amounted to contempt of the court's authority.
3. He further stated that the order was served on the respondent on 10th August 2021. That he has since been calling for payment from the respondent in vain yet the respondent is the accounting officer of the County Government of Machakos demonstrating that he is showing utter disrespect of the court.
4. He urged the court to guard the sanctity of its orders. He attached the order of 25th May 2021; and a return of service dated 17th September 2021.
5. The respondent was represented by counsel who attended court, but no reply was filed to oppose the application and therefore the same is unopposed.

Analysis and determination

6. The law governing contempt of court is enshrined in Section 5 of the [Judicature Act](#) which provides as follows;
 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.
7. Contempt has been defined in the [Black's Law Dictionary 11th Edition](#) as follows;

The act or state of despising; the quality, state or condition of being despised; conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable, usually by fine or imprisonment.
8. Obedience of court orders is the cornerstone of a democratic state. Unless a court order is set aside or stayed, it must be obeyed accordingly, even where the respondent intends to challenge its validity.
9. In the case of [Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another](#) [2005] KLR 828 the court stated the importance of obeying court orders as follows;

It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proven contemnors. It is the plain and unqualified obligation of every person against whom an order is made by a court of competent jurisdiction to obey it unless and until the 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 the order believes it to be irregular or void.
10. Similarly, in the case of [T.N. Gadavarman Thiru Mulpad v. Ashok Khot & Another](#) [2006] 5 SCC, the Supreme Court of India weighed in on the risks of disobeying court orders as follows;

Disobedience of this court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic Society. Judiciary is the guardian of the rule of law. Hence it is not only the third pillar but also the Central pillar of the democratic state. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and



authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our Constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that court orders are to be followed and complied with.

11. Contempt proceedings are quasi criminal proceedings and therefore the standard of proof is higher than that required in ordinary civil suits, but slightly lower than the standard of proof for criminal cases of beyond reasonable doubt, as the liberty of the alleged contemnor is at stake. (See *Mutikika v. Baharini Farm Limited* [1985] LR 229. 234).
12. To prove contempt of a court order, an applicant must demonstrate (a) that there exists an order with clear unambiguous terms requiring the respondent to do or refrain from doing something; (b) that the respondent is aware of the terms of the order and; (c) that the respondent has willfully breached the clear terms of the order. (See *Cecil Miller v Jackson Njeru & another* [2017] eKLR).
13. In the instant case, it is not disputed that there exists an order of *mandamus* issued by this court on 25th May 2021 compelling the County Secretary Machakos County to pay to the applicant Kshs. 148,731/- together with interest until payment in full. Therefore, I find and hold that the order of 25th May 2021 has clear and unambiguous terms requiring the respondent herein to pay the applicant the sum of Kshs. 148,731/-, with interest thereon.
14. On whether the respondent was made aware of the order; the applicant filed a return of service, which clearly demonstrates that the respondent was served with the said order on 10th August 2021. In addition, although the respondent was ably represented by Mr. Nzyuko Advocate, he did not contest the fact that he was served as no response was filed in opposition to the application. In view of the return of service showing that the order of 25th May 2021 was received by the respondent's office, I find and hold that the respondent was aware of the clear terms of the order of 25th May 2021.
15. On whether there was willful violation of the order, it is clear that the order required the respondent to pay the applicant the sum of Kshs. 148,731/- with interest. The applicant deponed that this payment has not been done. The respondent did not contest the applicant's averment that non compliance was deliberate as he has not given any reasons or justification for non compliance. In the premises, I find and hold that the respondent has deliberately breached the orders of 25th May 2021.
16. In view of the above reasons, I find and hold that the respondent is in contempt of the orders of *mandamus* issued by this court on 25th May 2021. I therefore order the respondent to appear before this court for mitigation and sentencing on 26th day of November 2024.
17. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 10TH DAY OF JULY 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Mr. Muli holding brief for Kasimu for applicant

No appearance for respondent

Court assistant – Josephine

