



**Kikinga House Limited v County Secretary, County Government of
Kiambu & another; Kikinga House Limited (Exparte Applicant) (Judicial
Review 30 of 2017) [2025] KEHC 1765 (KLR) (21 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 1765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
JUDICIAL REVIEW 30 OF 2017
DO CHEPKWONY, J
JANUARY 21, 2025**

BETWEEN

KIKINGA HOUSE LIMITED APPLICANT

AND

**COUNTY SECRETARY, COUNTY GOVERNMENT OF KIAMBU 1ST
RESPONDENT**

COUNTY GOVERNMENT OF KIAMBU 2ND RESPONDENT

AND

KIKINGA HOUSE LIMITED EXPARTE APPLICANT

RULING

1. This is a ruling in respect of a Notice of Motion application dated 26th November, 2024, in which the Applicant seeks the following orders:-
 - a. Spent.
 - b. That Peter Ndegwa, County Secretary, County Government Of Kiambu and, Nancy Njeri Kiumba the County Accounting Officer Kiambu County be arrested and committed to civil jail for contempt of disobedience of this Honourable Court orders issued on 8th day of February, 2017 in Judicial Review No. 30 of 2017.
 - c. That the aforesaid officials of the County Government of Kiambu, Peter Ndegwa and Nancy Njeri Kiumba do pay the costs of this application.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Josphat Muchaba Ngamau sworn on 28th November, 2024. According to the Applicant, this Honourable



Court issued an Order of Mandamus compelling 1st and 2nd Respondents to pay him through his advocates the sum of Kshs. 864,910/= as at 22nd March, 2021 at 12%p.a. The Applicant holds that on 22nd October, 2021, this Court further issued orders holding the Respondents in contempt. It is the Applicant's contention that the orders were served upon the Respondents on 5th November, 2024 but they have been in breach of the said Court Order as the amount remains unpaid to-date.

3. The Applicant also contends that at the time the Court Orders were issued, one Martin Njogu was the County Secretary while Wilson Kangethe, was the Finance CEC. However, before the order and arrest were effected, the General Elections were held and the two officials were replaced by one Peter Ndegwa and Nancy Njeri Kirumba in the respective positions.
4. The Applicant holds that the new officials are aware of the orders as they were served but have continued to ignore them. He argues that these officers should be held in contempt as the applicant remains to suffer from the non-payment of the said decretal sum.
5. The Respondents filed Grounds of Opposition dated 29th November, 2024 in response to the application and stated that the application is premature, misconceived and bad in law as it unfairly seeks the arrest and committal to civil jail of officers who have not refused or neglected to settle the decretal sums but explain that the delay has been occasioned by lack of sufficient funds to pay for the same. It is the Respondents' contention that the County Government depends on monies paid out by National Government for seeking liabilities or expenditure but the same not having been provided, has made it difficult for them to comply with the orders.
6. According to the Respondents, the officials cited in the application are Civil Servants and they should not be personally held liable for the failure by the County Government to obey Court Orders and the orders sought will violate their rights under Articles 27, 28, 29 and 48 of the Constitution. The Respondent has urged that the application is an abuse of court's time and it will be in the interest of justice and fairness for the application to be dismissed with costs.
7. Having read through the affidavits filed by the Applicant in support of its application and the Grounds of Opposition filed by the Respondent, I have also read through the record of proceedings and find that it is not in dispute that on 22nd March, 2021, this Court granted an express Order of Mandamus compelling the Respondent to satisfy the Decree in favour of the Applicant which stood at Kshs.894,910.00 with interest at the rate of 12% per annum. The terms of this order were clear and the Respondents were required to take necessary steps to ensure the decretal sum, costs and accrued interest were paid to the Applicant forthwith. These orders were not issued in vain and they ought to have been obeyed.
8. The Respondents did not comply with the said orders and this led the court to issue a Contempt of Court Order against them on 22nd October, 2021. According to the Applicant, the Warrants of Arrest could not be executed due to change of leaders at the County Government of Kiambu following the General Elections, hence the need for fresh Contempt Orders to issue.
9. The Applicant has filed Affidavits of Service to confirm that copies of the Order of Mandamus were served upon the offices of both County Secretary and the County Executive Committee (CEC) for Finance. On the other hand, the records show that the Respondents and or their counsel on record during the Judicial Review Proceedings and have not denied their awareness of the Order of Mandamus. Their only argument is that their failure to pay or settle the said decretal sum is as a result of lack of funds or budgetary constraints and the elaborate procurement and allocation framework to the failure by the National Government in funding them.



10. The jurisprudence on the law on contempt is that actual or constructive knowledge of a court order suffices to imply contempt. In the case of *Shimmers Plaza Limited –vs- National Bank of Kenya Limited* [2015]eKLR, the Court of Appeal had the following to say on contempt proceedings:-

“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.

The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and center. 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.”

11. From this findings, the Court of Appeal was clear that personal service need not be proved if the Contemnor had actual or constructive knowledge of the order. It is evident that in this case, the Respondents had knowledge of the Order of Mandamus compelling them to make the payments.
12. According to the Respondents, the delay in settling the decretal sum owed to the Applicant has not been deliberate and them being Civil servants, the County Officials cited should not be personally held liable for the County Government’s failure to comply with the Court Order as this would be in violation of their rights under Articles 27, 28, 29 and 48 of the *Constitution*.
13. Be that as it may, this Court is required to consider whether such administrative or budgetary processes absolve the Respondents as Officers of the County Government of Kiambu from a clear duty imposed by a Judicial Order. In the case of *Republic –vs- County Chief Officer, Finance and Economic Planning, Nairobi City County, Ex-parte Wainana Kigathi & Another* [2017]eKLR, the Court underscored that once an Order of Mandamus is issued, the relevant Accounting Officer is personally obligated to ensure payment is made. Therefore, legislative or bureaucratic constraints cannot be used as a statement to shield against compliance. Such officer must demonstrate real, unsurmountable obstacles or show bona-fide steps taken to comply or seek directions from the court.
14. It is worth-noting that this is a matter instituted way back in 2017 where Judgment issued on 22nd March, 2021 remains unsettled todate. The Respondents, who have all along been aware of this Judgment have not presented any evidence to show any genuine efforts taken to comply or settle the same. They have not even approached the court to seek for extension of time, request for partial payments and or any structured settlement. All they rely on is their blanket excuse of “budget constraints” or “lack of provision of funds from the National Government” which this Court finds is insufficient in light of a valid Court Order that required immediate settlement as soon as it was issued.
15. Therefore, in the absence of concrete evidence demonstrating inability to comply, this Court finds that the Respondents’ inaction amounts to wilful disobedience of a Court Order and their explanation a mere excuse intended to obstruct and or delay payment of their liabilities to the detriment of creditors who stand denied the enjoyment of the fruits of their Judgment and access to justice.
16. This Court also finds that to allow the Respondents continue with this conduct would be unfair and prejudicial to the Applicant, who has worked for over three (3) years to realise the Judgment, and stands to continue with this wait if the court does not come to its aid.
17. In arriving at this decision, the Court has in mind that the purpose of content proceedings is two-fold:-



- a. To uphold the dignity and authority of the court and court affirmed that deliberate non-compliance of an Order of Mandamus can attract committal to jail, but it is often prudent to give the contemnor a window to purge the contempt.
 - b. To ensure compliance with court orders.
18. As such, the court retains discretion to impose sanctions that are proportionate to the nature and extent of contempt. Under Section 5 of the Judicature Act, and coupled with courts inherent powers, the court may impose a fine or commit a Contemnor to civil jail, among other sanctions.
19. In the case of Republic –vs- Principal Secretary, Ministry of Defence Ex-parte James Ndyumbwa [2017] eKLR, the court affirmed that deliberate non-compliance of an Order of Mandamus can attract committal to civil jail, but it is often prudent to give the Contemnor a window to purge the contempt.
20. Having found a valid Order of Mandamus was issued on 22nd march, 2021 and duly served and or communicated to the Respondents, and that Respondents having failed to demonstrate any genuine steps taken to comply with the said order, this Court is persuaded that their continued failure to satisfy the decretal sum constitutes wilful disobedience of a Court Order. Infact, from their response, there appears to be no demonstration of how the Applicants Judgment will be satisfied. In view of the aforementioned findings, the application has merit and is hereby allowed in the following terms:-
- a. That Peter Ndegwa, County Secretary, County Government of Kiambu and, Nancy Njeri Kiumba the County Accounting Officer Kiambu County be arrested and committed to civil jail for contempt of disobedience of this Honourable court orders issued on 8th day of February 2017 in Judicial Review No. 30 of 2017.
 - b. That the Respondents to pay costs of the application.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 21ST DAY OF JANUARY, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Loius Wahone counsel for the Ex-parte Applicant

N/S Kibathi counsel for Respondents

Court Assistant - Martin

