



**Owino v Attorney General & another (Miscellaneous Civil Application
12 of 1996) [2025] KEHC 4624 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CIVIL APPLICATION 12 OF 1996**

AC BETT, J

APRIL 4, 2025

**IN THE MATTER OF AN APPLICATION FOR MANDAMUS DIRECTED
TO THE PERMANENT SECRETARY, MINISTRY OF PUBLIC WORKS IN
THE MATTER OF AN APPLICATION FOR NOTICE TO SHOW CAUSE
AGAINST THE ACCOUNTING OFFICER, THE ATTORNEY GENERAL**

BETWEEN

GEORGE OWINO APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

THE PERMANENT SECRETARY, MINISTRY OF WORKS .. 2ND RESPONDENT

RULING

1. The Applicant herein, through a Notice of Motion application dated 27th March 2024, which was later amended on 8th May 2024, moved the court seeking leave to cite the Attorney General for contempt of court order for failure to pay the Applicant Kshs 1,982,607.30 and upon the leave being granted, they are allowed to commit the Attorney General for contempt of court for failure to pay the Applicant the said sum.
2. In his Supporting Affidavit, the Applicant confirmed that he had instituted judicial review proceedings seeking orders of mandamus against the Respondent in the High Court Kenya at Kakamega vide Miscellaneous Application No 12 of 1996, which was determined in his favor.
3. He states that the court heard the application on 26th April 2017 and granted orders dated 3rd July 2017, where the accounting officer at the office of the Attorney General chambers was ordered to release to the Applicant the sum of Kshs 237,438 with interest on the same amount at 14% per annum with effect from 1st March 1993. He stated that he served in the office of the Attorney General on 13th July 2017, who has since failed to comply.



4. The Applicant went further and filed an application compelling the accounting officer in the office of the Attorney General to release the funds to him, and the application was heard by Hon. Musyoka and determined in his favor on 29th November 2022, and on 17th February 2023 he served the same upon the Respondent, who has since failed to comply with the order.
5. He now seeks leave to file contempt of court orders against the 1st Respondent and for them to show cause as to why they should not be committed.
6. The 1st Respondent filed their grounds of opposition dated 11th December 2024, where they argued that the application lacks merit since it was brought under the Contempt of Court Act, 2016, which had been declared unconstitutional in the case of Kenya Human Rights Commission v Attorney General & another (2018) eKLR.
7. They further claim that the application was incurably defective as the Attorney General is not the accounting officer of the Attorney General's office nor the Ministry of Public Works.
8. They relied on Article 156 of the Constitution, stating that the Attorney General is the Principal Legal Advisor of the Government and, as such, cannot be cited for contempt.
9. On the orders issued on 26th April 2017 and dated 14th July 2021, they claim that they never gave leave to the Applicant to file contempt proceedings against the Attorney General and further that there was no personal service done on the Attorney General and hence the Attorney General was not aware of the order dated 26th April 2017.
10. In conclusion, they maintained that the application for committal violated the fundamental rights and freedoms guaranteed under Articles 28, 28,29, 39, and 50 (1) of the Constitution of Kenya and further that it was unconstitutional for a public officer to be sentenced to imprisonment for a public debt.
11. On the claim of interest, they averred that it was statutory time-barred under the provisions of section 4 (4) of the Limitation of Actions Act.
12. The application was canvassed by way of written submissions.

Applicant's Submissions

13. The Applicant submitted that the Attorney General is the legal representative of the Government and relied on Article 156 (4) of the Constitution. He therefore argued that the Attorney General was under obligation to advise her clients to pay the costs and liabilities, and failure to which she would be rendered liable. He relied on the case of Peter Anyang' Nyong'o v the Solicitor General (2011) eKLR.
14. He further opined that the office of the Attorney General is the government department concerned with instituting civil proceedings and quoted the case of the Republic v Attorney General ex parte Kabungu Karebe.
15. He argued that whereas one cannot execute against the government, the accounting officer under the department has a statutory duty to satisfy a judgment made by the court against the department. He relied on the decision of Shah v Attorney General (No 3) Kampala HCMC. 31 of 1969.
16. He submitted that the Attorney General was under obligation to advise her client to settle the suit, and hence the Attorney General and the permanent secretary of the Ministry of Public Works were jointly liable.
17. In conclusion, the applicant posits that he was awarded the decretal sum; however, the Respondents have been reluctant to settle the claim despite existing court orders compelling them to pay.



18. The 1st Respondent failed to file their submissions despite the directions issued by the court.

Analysis and Determination

19. I have carefully considered the applicant's notice of motion, the grounds as supported by the supporting affidavit, submissions by his counsel, and the decisions relied on. I have also considered the Respondents' grounds of opposition and the case law cited.

20. There are two issues for determination in this application. The first is whether the threshold to invoke contempt proceedings has been met, and the second is whether the 1st respondent has failed to comply and should be held liable.

21. Black's Law Dictionary, 9th Edition, defines contempt as:-

“The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.”

22. The law concerning contempt of court proceedings is found under section 5 of the Judicature Act, which provides that:-

“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 that power shall extend to upholding the authority and dignity of subordinate courts.”

23. I note that on 24th October 2022, the Honourable Judge W.M. Musyoka gave an order to the accounting officer in the office of the Attorney General to release to the Applicant the sum of Kshs 237,438/= with interest at 14% per annum with effect from 1st March 1993 to the date of settlement which has not been done to date.

24. The Applicant now seeks leave from the court to file contempt proceedings against the Attorney General, whom they claim has disobeyed the court orders and failed to pay them the said sum.

25. According to the 1st Respondent, the Attorney General cannot be held in contempt as they are not the accounting officer of the office of the Attorney General or the Ministry of Public Works; hence, they are not properly enjoined in the application.

26. While it is true that the Attorney General is not the accounting officer to the office of the Attorney General or the Ministry of Public Works, she is, however, sued on behalf of the government, and as such, is under obligation to advise the 2nd Respondent, being the Principal Secretary of the Ministry of Public Works to settle the claim.

27. I am of the view that when the Attorney General is sued on behalf of the government as was the case in the original suit, she is obliged to advise her client to pay any costs and liabilities that arise out of her representation. Where she feels that she is not the right party to be held liable, she should seek to have the right parties enjoined. If she conducts the suit to its conclusion as the sole defendant, then she will be duty-bound to fulfil her obligations under the decree.

28. In the case of Republic v Attorney General ex parte Kabugu Karebe [2012] eKLR, it was held that:-

“Though it is true that the Attorney General had been sued in RMCC 6263/1999 on behalf of the Commissioner of Police, the important point to note is that the Attorney General was the only defendant named in the suit, and after a full hearing of the applicant's case on



the merits, judgment was entered by a court of competent jurisdiction for the plaintiff (now applicant) against the Attorney General (Respondent). That judgment remains valid and enforceable since there is no evidence that it has been overturned on appeal or set aside. If the Attorney General was of the view that he was not the proper party to be held liable for acts of negligence attributed to the police officer whose negligence caused personal injuries to the Applicant, he ought to have had himself struck out from the suit as the defendant so that in his place the proper party would have been brought on board as the defendant. The fact that this was not done and judgment was eventually entered for the plaintiff against the Attorney General as the defendant means that the final decree was issued against the Attorney General and the Attorney General is duty-bound to satisfy that decree.”

29. In the case of *Peter Anyang' Nyong'o & 10 others v Solicitor General* [2011] eKLR, Warsame J. expressed himself as follows:

“No doubt the decree is against the Attorney General, but in his representative capacity. As stated earlier, the Attorney General was representing one arm of the government, and if any costs or liability accrue from his representation, he is obliged to pay the costs. It is for the attorney general to advise his clients to pay the costs that attracted his representation on behalf of the said client. Being a constitutional representative and being the principal legal advisor to the three arms of the government, he is required to direct any arm of the government he represents to pay the costs of any suit in which he acted on its behalf. It is the duty and the function of the attorney general to advise his client, and if a particular organ refuses to pay, he will be responsible on behalf of his agent. In that regard, the Solicitor General, being the accounting officer of the Attorney General, was rightly sued by applicants. In my mind, the applicants clearly and correctly sued the Solicitor General and are entitled to the orders sought.”

30. The Attorney General is deemed as the department of government concerned, and any judgment obtained against the Attorney General in such proceedings is deemed as a judgment against the said department.
31. I associate with the above decision, and it is therefore my view that the accounting officer in the office of the Attorney General can be held to be in contempt of court.
32. On the claim by the Respondent that the Attorney General was not personally served, the Court of Appeal quoted Lenaola J in *Basil Criticos v Attorney General & 8 others* (2012) eKLR, where the learned Judge pronounced himself as follows:-
- “... the law has changed, and as it stands today, knowledge supersedes personal service... where a party acts and shows that he knew a court order, the strict requirement that personal service must be proved is rendered unnecessary.”
33. The Applicant has attached a copy of the email address serving the office of the Attorney General with the court order dated 29th November 2022.
34. It is evident that the office of the Attorney General was aware of the matter from the beginning and has, on several occasions, filed pleadings and submissions to rebut the Applicant’s claim but had not taken any steps to advise the 2nd Respondent to settle the decretal sum owed to the Applicant despite the several orders issued by the court compelling them to pay. That the Attorney General is well aware of the orders of the court is reinforced by the grounds of opposition filed in response to the instant application.



35. Having considered the application, I find the same to be meritorious. However, at this stage of the proceedings, the only order that this Court can issue is a notice to the 1st Respondent to attend court to show cause why contempt of court proceedings cannot be commenced against her in default of settlement of the decree.
36. In the premises, I hereby direct that a notice to show cause be served upon the 1st Respondent calling upon her to attend court on 12th June 2025 and to show cause why contempt of court proceedings cannot be commenced against her for failure to comply with the orders of the court.
37. The costs of this application are awarded to the Applicant to be borne by the 1st Respondent.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 4TH DAY OF APRIL 2025.

A. C. BETT

JUDGE

In the presence of:

Mr. Arwanda for Applicant/Decree Holder

No appearance for 1st Respondent

No appearance 2nd Respondent/Judgement Debtor

Court Assistant: Polycap

