



Wayreen Enterprises Limited v County Secretary, Nairobi City County & another (Judicial Review Application 118 of 2020) [2025] KEHC 4294 (KLR) (Judicial Review) (2 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4294 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION 118 OF 2020
RE ABURILI, J
APRIL 2, 2025**

BETWEEN

WAYREEN ENTERPRISES LIMITED APPLICANT

AND

THE COUNTY SECRETARY, NAIROBI CITY COUNTY 1ST RESPONDENT

**THE CHIEF OFFICER/COUNTY TREASURER, NAIROBI CITY
COUNTY 2ND RESPONDENT**

RULING

1. The application before me for determination and filed by Warren Enterprises Limited, is dated 14th June 2024 seeking orders, that the County Secretary, Nairobi City County and the Chief Officer/ County Treasurer, Nairobi City County be cited for contempt for failure to comply with this Court's Order of 20th July 2022. The applicant also prays that this court do imprison the respondents herein for being in contempt of this court's orders made on 20th July 2022 for a period of six months or for such other period until the respondents settle the decree dated 14th December 2018 in Milimani CMCC 5590 of 2018 as comprised in the certificate of order dated 5th July 2023.
2. The applicant's case is that on 20th July 2022 an order for mandamus was issued as per the judgment for mandamus delivered on 6th July 2022 compelling the respondents herein to settle decree and certificate of order against the Government together with costs as ordered in Milimani CMCC No. 5590 of 2018 together with interest at the rate of 25% p.a. from 28th October 2015 until payment in full. The certificate of order against the government dated 12th March 2020 is for Kshs 8,944,852.42 plus further interest at the rate of 25% per annum from 14th Day of December, 2018 on the principal sum.



3. That order for mandamus has not been complied with by way of settling the decree and certificate of order against the government hence this application for contempt of court.
4. The respondents filed a response and submissions in which they contend that the application is incurably defective and that it offends section 30 of the [Contempt of Court Act](#); that there is no proof that the respondents are guilty of contempt of court; that the application does not meet the threshold for citing contemnors for contempt in enforcing decrees; and that the applicant cannot combine two prayers in one application, a prayer citing the respondents for contempt of court and notice to show cause.
5. The application was canvassed by way of written submission with each party's counsel filing written submissions reiterating their positions as pleaded and in depositions. I need not delve too much into those submissions for reasons that this is a very straight forward matter and the type of contempt contemplated here is that of failure to settle decree as opposed to other types of contempt.
6. The issue for determination therefore is whether the prayers as sought are merited. The respondents' counsel has argued at length citing section 30 of the [Contempt of Court Act](#). I will not elaborate much save to state that the [Contempt of Court Act](#) was declared unconstitutional in Kenya Human Rights Commission v Attorney General & Another [2018] e KLR and therefore none of its provisions are applicable in this case. At most, the parties can rely on the [Judicature Act](#) at section 5 which imports the practice in England on punishing for contempt of Court and section 36 of the High Court Organization and Administration Act on punishment for contempt of court. Therefore, the submissions relating to section 30 of the [Contempt of Court Act](#) which take the bulk of the respondents' submissions and contentions are hereby expunged from the respondents' counsel' submissions. They are a waste of precious judicial time.
7. The relevant provisions in England, relating to contempt of court for failure to settle decrees and judgments is Rule 81. 4 of the Civil Procedure (Amendment No. 3) Rules, 2012 which the Court of Appeal made reference to in Christine Wangari Gachege versus Elizabeth Wanjiru Evans & 11 Others [2014]e KLR, which reads as follows, inter alia:

Enforcement of judgment, order or undertaking to do or abstain from doing an act

81.

4. —

- (1) If a person—(a)required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or(b)disobeys a judgment or order not to do an act, then, subject to the Debtors Acts 1869(5) and 1878(6) and to the provisions of these Rules, the judgment or order may be enforced by an order for committal.
- (2) If the time fixed by the judgment or order for doing an act has been varied by a subsequent order or agreement of the parties under rule 2.11, then references in paragraph (1)(a) to the time fixed are references to the time fixed by that subsequent order or agreement.



- (3) If the person referred to in paragraph (1) is a company or other corporation, the committal order may be made against any director or other officer of that company or corporation.
- (4) So far as applicable, and with the necessary modifications, this section applies to undertakings given by a party as it applies to judgments or orders. (Rules 81.17(3) and (4) make provision for cases in which both this Section and Section 6 (Committal for making a false statement of truth or disclosure statement) may be relevant.)
- (5) If a judgment or order requires a person to deliver goods or pay their value—
 - (a) the judgment or order may not be enforced by a committal order under paragraph (1);
 - (b) the person entitled to enforce the judgment or order may apply to the court for an order requiring that the goods be delivered within a specified time; and(c)where the court grants such an order, that order may be enforced under paragraph (1).Requirement for service of a copy of the judgment or order and time for service....

- 8. The respondents’ overreliance on the law that was declared unconstitutional shows how counsel need to read the law as it merges from legislative enactments to judicial pronouncements and in this case, it is indeed sad that the advocate for the respondents spent too much time even defining and interpreting that section 30 of the non-existent law and the terms used including ‘shall.’
- 9. I trust that the Law Society of Kenya, our Premier Bar Association shall at the opportune time during their Continuing Professional Development programmes engage all advocates and enlighten them on what laws are in effect and which ones are stale.
- 10. What this court is interested in at this stage in these proceedings is whether the respondents were served with the order or whether they were made aware of the order or decree in question, whether the decree or order is clear and unambiguous and whether the respondents have brazenly disobeyed the said order by failing to settle decree or comply with the order.
- 11. The mandamus order issued on 20th July 2022 as per the judgment of 6th July 2022 is clear and unambiguous. It annexed the certificate of order against the Government dated 5th July 2023 spelling out the amount which was due right from the principal sum, costs, further interest and further costs all totalling Kshs 15,581,173.16. there is no appeal pending, challenging that decree or certificate of order against the government. The interest, as decree in the lower court, continues to accrue at 25% per annum until payment in full.



12. There is evidence annexed to the supporting affidavit sworn by Ms Berline Adhiambo the director of the applicant on 14th July 2024 of that certificate of order against the government issued on 5th July 2023 and a letter dated the same day were received by the respondents' office of the County Solicitor on 6th July 2023 and the said office dully stamped the said documents.
13. What the respondent is expected to tell this court is whether the decree has been settled and not whether section 30 of the stale and lifeless Contempt of Court Act has been complied with.
14. There is no evidence that the decree has been settled or that there are any payment plans in place to settle the said decree. The respondents' counsel is engaged in very technical non-essential arguments which are irrelevant as opposed to advising the client to settle the decree.
15. However, section 21 of the Government proceedings Act as read with the Public Finance and Management Act places the duty of settling decrees on the accounting officers. There is no evidence that the County Secretary is the Accounting Officer of the Nairobi City County Government. I hereby expunge the office of County Secretary and its holder from these proceedings.
16. I am satisfied that the applicant has established that the 2nd respondent was served with the decree for mandamus and certificate of order against the government following that decree and that there is no evidence of the said respondent settling the decree.
17. I am also satisfied that there is no evidence of the now sole respondent making any efforts to settle the decree in question thereby leaving the applicant decree holder with a barren decree and a mere pious explorer in the judicial process.
18. Not making efforts to settle decree is what is called brazen disobedience and impunity of the highest order. If court decrees are not settled, then the country shall have litigants losing faith in the judicial process and they are likely to engage in self help mechanisms to get their dues from the judgment debtors. That will be dangerous for a country that is built on a constitutional order and the rule of law. The role of the rule of law in maintaining order and stability, is so pronounced that its absence can lead to a breakdown of social structures and governance, potentially resulting in chaos and a lack of control.
19. Courts exercise judicial authority on behalf of the people of Kenya as espoused in Articles 1 and 159 of the Constitution. Courts do not issue orders in vain or on their own behalf. It follows that punishing for contempt is not to satiate the ego of the Judge making the order. Where an order of the court is issued, compliance should be the default and not an exception. That judicial authority of the people only delegated to the courts will, unless court orders are obeyed, collapse the foundation and essence of the judicial system. This is so because persons who disobey court orders cannot, themselves expect the same judicial system to serve them or their interests.
20. As was held in Republic v The County Secretary Nairobi City County & Another Ex-Parte Wachira Nderitu Ngugi & Co Advocates [2016] eKLR, public officers have a duty to act with integrity and accountability, and failure to obey a court order constitutes contempt of court punishable by imprisonment. Additionally, that once a court of law issues an order, it is not optional for the party at whom it is directed to choose whether to obey or disobey the same. Court orders are to be obeyed. See Republic v Attorney General & Another Ex-parte James Alfred Koroso [2013] eKLR.
21. In Republic v Ahmad Abolfathi Mohammed & another SC Criminal Application No. 2 of 2018 [2018] eKLR, the Supreme Court stated:

“It is, therefore, evident that not only do contemnors demean the integrity and authority of Courts, but they also deride the rule of law. This must not be allowed to happen. We are



also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of Court is well established. In the case of *Mutitika v. Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

22. Public officers are obligated to uphold the rule of law and ensure compliance with lawful orders of the court, such that where they experience difficulty with compliance, they are at liberty to approach the court and explain the situation, not to put up a spirited technical fight, hoping that the duty bestowed on them will execute itself without their active involvement or participation.
23. In this case, I find that there is brazen disobedience of the decree for Mandamus issued by this court compelling the respondent Chief Officer in charge of Finance and the County Treasury, who is also the accounting officer Nairobi City County Government to settle the decretal sum due, there being no appeal to challenge that decree and as the respondent has not explained why the decree has not been settled despite service upon them way back in July 2023, I find that the respondent is in contempt of court orders issued on 20th July, 2022.
24. Upon being found to be in contempt of court order, the court proceeds to convict the respondent for contempt of court orders of Mandamus issued on 22nd July, 2022.
25. However, as to whether the court should imprison the respondent, I hesitate to make such an order at this stage. That prayer is premature because the respondent has not been called upon to mitigate before he can be sentenced in accordance with the law. Due process must be followed. This court cannot follow other decisions made, blindly or be directed by parties to use short cuts in decision making. It must follow due process in contempt proceedings.
26. Accordingly, I decline to issue notice to show cause and order that the respondents appear in this court for mitigation on 21st May, 2025, before appropriate orders as to sentencing can issue.
27. The applicant shall have costs of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF APRIL, 2025

R.E. ABURILI

JUDGE

