



**Kinuthia v Registrar of Companies (Judicial Review Application 479 of 2016)
[2025] KEHC 6824 (KLR) (Judicial Review) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6824 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION 479 OF 2016
RE ABURILI, J
MAY 26, 2025
IN THE MATTER OF AN APPLICATION BY JOSEPH KIMUNYA
KINUTHIA FOR JUDICIAL REVIEW ORDERS OF MANDAMUS
AND
IN THE MATTER OF GITHUNGURI CONSTITUENCY RANCHING COMPANY LIMITED**

BETWEEN

JOSEPH KIMUNYA KINUTHIA APPLICANT

AND

THE REGISTRAR OF COMPANIES RESPONDENT

RULING

1. Before this Court for determination is a Notice of Motion dated 30th September 2024, brought by the Applicant, Joseph Kimunya Kinuthia, seeking an injunction to restrain the current directors of Githunguri Constituency Ranching Company Limited, a public company, from acting, signing, binding, or negotiating on behalf of the company; and an order citing the Respondent, the Registrar of Companies, for contempt of court, for failure to comply with a judgment and order of mandamus issued on 9th April 2018, requiring the Registrar to consider the Applicant's application for registration of officials elected on 23rd May 2015; and furnish written reasons within 30 days if the Registrar's decision was adverse.
2. The background information available in this age-old matter is that this Court, per Odunga J, entered judgment in favour of the Applicant on 9th April 2018, granting a mandatory order of Mandamus against the Registrar of Companies, to receive and consider the applicant's application for registration of the list of officials /directors of Githunguri Constituency Ranching Company Limited as presented by the applicants based on the elections held on 23rd May, 2015 and furnish the applicant with reasons



therefore if his decision is adverse to the interest of the applicant within 30 days from the date of service of the order.

3. The record shows that the Applicant did not take any steps to enforce the judgment or initiate compliance proceedings for over six years.
4. It was not until 14th August 2024, as evidenced by a letter on record, that the Applicant served the Respondent with a copy of the decree, a mere six weeks before filing the current application for contempt. The Applicant has not explained why there was such an extended period of inactivity or why service of the judgment and decree was delayed until 2024, from 9th April 2018 when judgment was rendered in his favour.
5. No attempt was made by the Applicant to previously pursue enforcement, execution or initiate compliance proceedings until this belated contempt application. This delay is unexplained, excessive, and inexcusable, to say the least.
6. Despite being served with the application, the Registrar of Companies did not file any response. Similarly, the current directors of the company, whose authority is under challenge, equally did not enter any appearance or file any replying affidavits.
7. Nonetheless, this Court must assess the merits of the application based on established legal principles and the evidence tendered.

Analysis and determination

8. Having considered the application and perused the court record, the question is whether the prayers for contempt of court against the Registrar of companies lie and whether an injunction sought is available against the current directors of the company.
9. The main issue against the Registrar of Companies is whether he is in contempt of the judgment issued on 9th April 2018. The legal threshold for contempt is high. The Applicant must prove that there was a clear and unambiguous order; that the order was served personally or the Respondent had knowledge of it; and that there was wilful disobedience.
10. While the Court is satisfied that an order was indeed issued on 9th April 2018 and in the presence of all counsel for the parties, with Prof. Wangai recorded as present for the applicant, there is no evidence of service at the time, nor of any attempt to enforce the said order in a timely manner. The only service evidenced is by a letter dated 14th August 2024, more than six years after the order was issued. In fact, it was not until 3rd October 2019 that the applicant presented to this Court a letter dated 26th September, 2019 asking for three copies of the certified order of mandamus as issued on 9th April, 2018.
11. In the absence of timely and effective enforcement of the order of this court in judicial review proceedings of this nature, and no explanation for the delay, this Court cannot find that the Respondent has wilfully disobeyed the order. The fault lies not with the Registrar, but with the Applicant's indolence in pursuing compliance.
12. Although the *Contempt of Court Act* was found to be unconstitutional and therefore the six months limitation period does not apply, the Court in the same Constitutional Petition No 87 of 2017, *Kenya Human Rights Commission v Attorney General & another* appreciated that:

Limitation periods served public interest. People were expected to pursue their claims with reasonable diligence and the lapse of time could mean that crucial evidence could be lost. The 6 months limitation period would not hinder the course of justice.



Limitation periods had the purpose of ensuring that litigation was brought to a quick conclusion. Where a court order was violated, an aggrieved party could not wait for six months to commence contempt proceedings as in waiting for that long the aggrieved party would be deemed to have condoned the contemptuous act. There was no unconstitutional purpose or effect in the limitation period provided for in section 34 of the Act.

Section 35 of the impugned Act disallowed the initiation of contempt proceedings in relation to a decision made or directions given by a speaker of a house of parliament in the performance of his or her official responsibilities...”

13. This court is not limiting the power of the court to punish for contempt but the unreasonable delay of over six years which is unexplained is in itself, not acceptable, coupled with the question of whether the subject matter of the proceedings herein is still live.
14. This Court reiterates that contempt of court is an exceptional remedy, which must be pursued promptly and with diligence. A party seeking to enforce an order through contempt must act promptly. Inordinate delay, particularly without explanation, defeats the purpose of contempt jurisdiction. In the case of *Daphene Parry v Murray Alexander Carson* [1963] E.A. 546 cited by the Court of Appeal in *Multipurpose Co-operative Society Ltd v Serser & 3 others* (Civil Appeal 160 of 2018) [2023] KECA 441 (KLR) (14 April 2023) (Judgment), the Court of Appeal for eastern Africa had the following to say:

“If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy.”
15. Although the subject matter in the above case was delay in filing an application for review, the same principles apply.
16. It follows that courts can refuse to punish for contempt where the application comes years after the order, noting that justice delayed in enforcement weakens judicial integrity.
17. In my view, Contempt proceedings are quasi-criminal in nature and cannot be invoked casually or after undue delay, as this would abuse the court’s process.
18. On whether the injunctive relief is available against the current directors of the Company, Githunguri Constituency Ranching Company Limited, the Applicant also seeks to bar the current directors from acting on behalf of the company. This prayer, though framed as an injunction, is in effect a request to interfere with the governance of a public company.
19. As governed by the *Companies Act*, 2015, public company directors are elected and removed according to the Articles of Association and the *Companies Act*, including rotation, disclosure, and shareholder approval (see Sections 128–132).
20. The Applicant has not shown that the current directors were improperly elected, noting that it is over seven years since an election took place; that they are the same persons who were in office in 2018 when mandamus order was issued; and that the directors elected in May 2015 are still in office, a decade later.
21. It is further notable that the Applicant has not annexed the Articles of Association of Githunguri Constituency Ranching Company Limited. This omission is significant, given that the Articles form the foundational governance document of the company and would have clarified the procedure for appointment and tenure of directors, including any provisions specific to the elections held on 23rd May 2015.



22. In the absence of these Articles of Association of the Company, the Court is unable to verify whether the Applicant's purported list of officials was validly constituted under the company's internal framework. This omission further weakens the Applicant's case, particularly in light of the reliefs sought against individuals presently acting as directors without clear evidence of illegitimacy or irregularity.
23. I find that the applicant has not demonstrated the threshold for granting an injunction as outlined in *Giella v Cassman Brown & Company Ltd* [1973] E.A. 35. No prima facie case, no irreparable harm, no showing that the balance of convenience favours the Applicant who has been indolent all these years holding a mandamus decree and not enforcing it until nearly ten years later.
24. In my humble view, the relief sought amounts to a judicial takeover of corporate functions without due cause.
25. In the end, this Court is not satisfied that the Registrar of Companies is guilty of contempt. The Applicant has been indolent, has offered no explanation for the delay and has failed to demonstrate wilful disobedience
26. Accordingly, the prayer for committal for contempt is declined due to inordinate delay.
27. The prayer for injunctive relief against the current directors of Githunguri Constituency Ranching Company Limited is equally declined as unmerited in law and fact.
28. On the whole, the application dated 30th September, 2024 is hereby dismissed.
29. Each party shall bear their own costs of the application as the respondent did not participate in the dismissed application.
30. It is so ordered.
31. This file is closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF MAY 2025

R.E. ABURILI

JUDGE

