



**Republic v Wajir County Government; CECM Finance and Economic Planning Wajir County Government & 2 others (Contemnor); Wajir Ark Limited (Exparte Applicant) (Judicial Review 6 of 2022) [2025] KEHC 6291 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6291 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
JUDICIAL REVIEW 6 OF 2022  
JN ONYIEGO, J  
MAY 15, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**WAJIR COUNTY GOVERNMENT ..... RESPONDENT**

**AND**

**CECM FINANCE AND ECONOMIC PLANNING WAJIR COUNTY GOVERNMENT ..... CONTEMNOR**

**CHIEF OFFICER FINANCE AND ECONOMIC PLANNING WAJIR COUNTY GOVERNMENT ..... CONTEMNOR**

**THE COUNTY SECRETARY WAJIR COUNTY GOVERNMENT ..... CONTEMNOR**

**AND**

**WAJIR ARK LIMITED ..... EXPARTE APPLICANT**

***(IN THE MATTER OF ENFORCEMENT OF A JUDGMENT OF THE MAGISTRATE COURT AT WAJIR MAGISTRATE COURT DATED 06.08.2021 IN THE CIVIL CASE NUMBER E003 OF 2020 (WAJIR ARK LIMITED VS COUNTY GOVERNMENT OF WAJIR))***

**RULING**

1. The matter for determination before this court is a notice of motion dated 06.12.2024 seeking orders that:
  - i. Spent.



- ii. That this Honourable Court be pleased to find the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents (contemnors) to be in contempt of the decree and court orders issued on 13.06.2024.
  - iii. That upon grant of order (ii) above, this Honourable Court be pleased to issue an order to commit the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents (contemnors) to civil jail for a period not exceeding six months for contempt and disobedience of the court orders issued on 13.06.2024.
  - iv. That this Honourable Court be pleased to grant any other orders as the interest of justice dictates for the purpose of protecting the dignity and authority of the court.
2. The application is founded on the grounds set on the face of it and further amplified by the supporting affidavit of Abdullahi Mahat Aden, the director of the exparte applicant company herein sworn on 06.12.2024. It was deposed that on or about 25.03.2019, the County Government of Wajir engaged the exparte applicant vide tender number WCG/DIR/EM/PSSP/008/2018 – 2019 for the supply of emergency food and non-food items at a consideration of Kes. 9,992,500/-. That the exparte applicant duly performed and fulfilled its contractual obligations but the respondents failed to pay thus prompting the exparte applicant to file Civil Case Number E003 of 2020 at Wajir Magistrates Court (Wajir Ark Limited vs County Government of Wajir).
  3. Judgment was duly entered on 06.08.2021 and a decree consequently issued together with the certificate of order against the County Government of Wajir awarding the exparte applicant an amount of Kes. 9,992,500 together with interests on the principal amount of Kes. 2,997,750 plus costs of the suit at Kes. 866,550. It was averred that the respondents paid the principal sum amounting to Kes. 9,992,500 but failed to pay the interest and costs of the suit as awarded by the court.
  4. It was averred that the exparte applicant sought for orders of mandamus against the respondents which were issued on 22.12.2023 but the respondents herein have declined to honour the same. It was urged that it was the non-compliance that prompted the applicant to write to the controller of budget vide a letter dated 23.06.2023 bringing to her attention the non – payment of the interest on the principal amount and costs of the suit by the County Government of Wajir thus seeking her intervention on the same.
  5. As a response, the controller of budget wrote to the CECM Finance and Economic Planning, Wajir County Government, Mr. Salah Adan Abdi vide a letter dated 26.06.2023 demanding a response on whether the pending bills had been paid and if not, give an explanation as to why they had not settled the same noting that the financial year was about to end. It was averred that, the said letter did not elicit any response nor action from the respondents to date.
  6. The exparte applicant averred that it also did a letter dated 07.06.2024 to the firm of Garane & Somane Advocates who in response wrote a letter dated 19.06.2024 to the exparte applicant's advocates informing it that they had communicated the content of the letter dated 07.06.2024 to their clients who were allegedly in the process of consolidating the actual accounts and record and that they were to revert back aptly. That despite writing to the office of the controller for a second time, the respondents have remained mute to date hence the contempt proceedings herein. It was averred that due to non-payment of the outstanding amount, the applicant's business has since halted and therefore, in the interest of justice, the orders sought herein ought to be allowed.
  7. The County Attorney, Naema Somo on behalf of the CECM Finance and Economic Planning, the Chief Officer Finance and Economic Planning and the County Secretary, filed a replying affidavit sworn on 13.03.2025 deposing that following the receipt of the High Court ruling and decree, it is true that the respondent through the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents were working hand in hand with the



- accounts department and the auditors. That in the exercise, the respondent unearthed several issues and in particular, that the applicant had already been paid Kes. 9,820,215.50 /- prior to delivery of the judgment.
8. Additionally, that the respondent further made payments of the decretal amount of Kes. 9,992,500 to the applicant yet the applicant neither disclosed the said information to his advocate on record nor the court. That the information herein was readily available at the time of filing response to the judicial review proceedings but the same was never pleaded.
  9. It was the respondent's assertion that the actions by the applicant were not only malicious but also geared towards defrauding the respondents of the tax payers' money. She further averred that the applicant had connived with unknown persons who previously worked for the respondents in defrauding the respondents and as a result, the record of the payments was well hidden. That the same was only discovered at the time when they received central bank of Kenya's statements during the auditing exercise. As such, it was urged that the application ought not be allowed for the aforesaid reasons.
  10. The applicant filed a supplementary affidavit sworn on 29.03.2025 by Ahmed Mohamed, the director of the applicant wherein reiterating the content of his previous affidavit annexed to the application herein and further deposed that by the fact that the principal amount was paid a month before the delivery of the judgment, such payment did not exempt the respondents from paying the interests and costs arising from the judgment. That this Honourable Court in its ruling found that the applicant had complied with section 21 of the Government Proceedings Act but the respondents had without lawful justification and/or excuse failed to fulfil its obligations.
  11. Counsel contended that he is aware that county governments process payments through the Integrated Financial Management Information System (IFMIS), a system designed to prevent duplicate payments by flagging transactions linked to the same LPO/LSO. That once an LPO/LSO has been used for payment, it is marked as settled thus making a second payment for the same transaction impossible. In the same breadth, counsel took issue with the fact that the purported bank statement marked as annexure NS1 relates to an amount of Kes. 9,820,215.50 and not the contractual amount of Kes. 9,992,500. Further, it was deposed that the document being an electronically generated document, no certificate of extraction was annexed to attest to its authenticity hence the same remains inadmissible. In further support to the applicant's case, counsel urged that the fact that the respondents could not clarify to the controller of budget the allegations currently paraded before this court, the same are simply an afterthought. This court was therefore urged to allow the prayers sought herein.
  12. The application was canvassed by way of written submissions in which the applicant via submissions dated 26.03.2025 urged that the main issue for determination is whether the application herein is merited. Counsel urged that there is no dispute that a judgment was delivered on 06.08.2021 and a decree dated 25.10.2021 issued arising from the lower court's decision in Wajir Civil Suit No. E003 of 2020 by Hon A.K. Mokeross. The applicant did not dispute that the respondent paid the contractual sum of Kes. 9,992,500 being the principal sum but urged that interests on the principal and costs of the suit as awarded by the lower court remains unpaid till date.
  13. It was urged that for an application for contempt of court to succeed, the applicant has to prove the following: the terms of the order, knowledge of these terms by the respondent and failure by the respondent to comply with the terms of the order. [ See the case of Sheilla Cassat Issenberg & Another vs Antony Machatha Kinyanjui [2021] KEHC 5692 (KLR)].
  14. In this case, the applicant urged that this Honourable Court's orders of mandamus issued vide the judgment delivered on 22.12.2023 and the consequential decree issued on 13.06.2024 were not only



outright but also unambiguous. This court was further urged that the knowledge of these terms were made to the respondent when this court's ruling delivered on 07.06.2024 was served upon the respondents through their lawyers on record, Garane & Somane Advocates via a letter dated 07.06.2024. That knowledge of the said order was exhibited by the respondents as enunciated in their replying affidavit sworn by the county counsel that the service and receipt of this court's ruling and decree prompted a financial audit which unearthed the alleged payment of the contractual sum of Kes. 9,820,215.50.

15. On whether the respondents failed to comply with the court's orders, counsel urged that for the maintenance of the rule of law and order, the authority and the dignity of this court must be upheld at all times. That this court should neither condone deliberate disobedience of its orders nor shy away from its responsibility to deal firmly with proved contemnors.
16. It was urged that in as much as the respondent argues that the applicant was paid twice, it was not demonstrated by way of evidence. That if at all the alleged double payment was made, the same would have resulted to criminal prosecution against the applicant which proceedings have never been commenced. Further, it was urged that it is a well-known fact county governments process payments through the Integrated Financial Management Information System (IFMIS), a system designed to prevent duplicate payments by flagging transactions linked to the same LPO/LSO once an LPO/LSO has been used for payment. Additionally, that the fact that the principal sum was paid a month before the delivery of the lower court's judgment, the same does not absolve the respondents herein from their obligation to pay the interests accrued from the principal amount.
17. In disputing the allegation by the respondents that payment had been made to the applicant twice, the applicant stated that the purported bank statement marked as annexure NS1 relates to an amount of Kes. 9,820,215.50 and not the contractual amount of Kes. 9,992,500 and further, that the document being an electronically generated document, no certificate of extraction was annexed to attest its authenticity.
18. On costs, the applicant implored the court that in as much as the same is at the discretion of the court, the respondents unyielding behaviour towards complying with a court's order ought not go unpunished. To that end, this court was urged to award costs to the applicant.
19. Ms. Ibrahim on behalf of the respondents submitted orally wherein she stated that the applicant was paid in full on 01.03.2019. That the applicant is seeking for unjust enrichment and further, that Mr. Kinaro's submissions is misplaced as section 106 B of the Evidence Act does not apply in the circumstances herein. This court was urged to take judicial notice that county governments are overburdened financially and therefore, the application herein ought to be dismissed.
20. On a rejoinder Mr. Kinaro urged that the bank statements annexed by the county attorney did not in any way show the alleged double payment and further, the argument of delay of funds from treasury is not a good reason for the applicant to be denied his fruits of judgment.
21. I have considered the application herein together with the respondents' response and submissions by the parties. The only issue which germinates for consideration is whether the exparte applicant has met the threshold for grant of the orders sought.



22. The essence of the law on contempt is to safeguard the honour of the court and uphold the principles of the rule of law. In the case of *Gatharia K. Mutikika vs Baharini Farm Ltd* [1985] KLR 227 it was held that-

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily... it must be higher than proof on a 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 criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be heard to process contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject...applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and on an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

23. The court in the case of *Koilel & 2 others v Koilel & another (Civil Appeal E002 of 2021)* [2022] KEHC 10288 (KLR) (30 June 2022) (Judgment) discussed the essential elements of contempt is thus:

“32. Judicial borrowing from contemporary jurisdiction: in order to succeed in civil contempt proceedings, the Applicant has to prove; (i) the terms of the order; (ii) Knowledge of these terms by the Respondent; and (iii) Failure by the Respondent to comply with the terms of the order (Also see *Kristen Carla Burchell vs Barry Grant Burchell*, Eastern Cape Division Case No. 364 of 2005).

24. In the instant case, the trial court ordered that the 1<sup>st</sup> respondent pay Kes. 9,992,500/- being the decretal sum awarded in a judgment entered on 06.08.2021 together with interest on the foregoing amount at court rates from 26.03.2019 when the County government of Wajir, vide LPO’s 007954 and 007955 made a commitment that funds to pay the applicant were available and not forgetting the costs of the suit.

25. Counsel for the respondents averred in her affidavit and further attached a document alleging double payment to the applicant by urging that the same was made available to them at the time when audit was carried out by the respondents. Of importance to note is the fact that counsel for the applicant objected to the same urging that no certificate was annexed to buttress the authenticity of the said document.

26. The Court of Appeal in *County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others* [2015] eKLR while discussing the application of Section 106 (B) observed that:

“Section 106B of the *Evidence Act* states that electronic evidence of a computer recording or output is admissible in evidence as an original document “if the conditions mentioned in this section are satisfied in relation to the information and computer.”



In our view, this is a mandatory requirement which was enacted for good reason. The court should not admit into evidence or rely on manipulated (and we all know this is possible) electronic evidence or record hence the stringent conditions in sub-section 106B (2) of that Act to vouchsafe the authenticity and integrity of the electronic record sought to be produced”.

27. The court proceeded to consider the requisite contents of a certificate meeting the conditions in the section before stating that:

“The *Evidence Act* does not provide the format the certificate required under sub-section 106B (2) thereof should take. The certificate can therefore take any form including averments in the affidavit of the recorder.”

28. In the same breadth, Section 65 (8) of the *Evidence Act* states:

“(8) In any proceedings under this Act where it is desired to give a computer print-out or statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say —

- (a) identifying a document containing a print-out or statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
- (c) dealing with any of the matters to which conditions mentioned in the subsection (6) relate, which is certified by a person holding a responsible position in relation to the operation of the relevant device or the management of the activities to which the document relates in the ordinary course of business shall be admissible in evidence.”

29. In this case, counsel alleged that the annexed document was a statement from the Central Bank yet nothing was attached to verify the contents of the said annexure and/or how it was retrieved. It is my view that counsel in this case cannot run away from the requirements of section 106 A and B of the *Evidence Act* and as such I find the allegation not admissible.

30. Regarding the question whether the respondents had knowledge of the orders, it is trite that unless the court dispenses with service, a judgment or order may not be enforced by way of an order for contempt unless a copy of it has been served on the person required to do or not do the act in question. In the matter herein, the applicant stated that his counsel on record vide a letter dated 07.06.2024, wrote to the firm of Garane & Somane Advocates who in response wrote a letter dated 19.06.2024 informing counsel for the applicant that they had communicated the contents of the letter dated 07.06.2024 to their clients who were allegedly in the process of consolidating the actual accounts and record after which, they would revert back aptly.

31. Therefore, it is not in dispute that in deed, the respondents were in the know of the orders of the court. Further, it could be discerned from the record that the county attorney was in the know of the court orders only that she urged that the county had already settled the bill and further, that the court ought to take judicial notice of the fact that counties were burdened financially.



32. With this evidence at hand, this court is fully convinced that the respondents were not only duly served with the necessary orders but were also aware of the same, which was a command they were expected to heed to in promoting constitutional values and principles of governance such as the rule of law besides upholding the dignity and authority of the Court.
33. On whether the respondents have wilfully disobeyed the orders of the court, the court observed that the respondents' inaction and neglect in that regard is a deliberate disregard of a valid court order which in my view is akin to undermining the dignity of this Court. It is essential for the maintenance of the rule of law and order that the authority and the dignity of courts is upheld at all times. [See *Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another* [2005] 1 KLR 828].
34. In the given circumstances, it is my finding that the application herein is meritorious and the same is allowed with orders that;
- i. The Respondents have been found to be in contempt of court orders.
  - ii. The 1<sup>st</sup> Respondents are hereby given a period of 30 days to purge the contempt.
  - iii. In default of compliance with order (ii) above, a Notice to Show Cause will be issued against the Respondents to appear in person before the Court on to show cause why they should not be committed to civil jail for disobedience of this Court's orders.
  - iv. Costs to the applicant.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DAY OF MAY 2025**

**J. N. ONYIEGO**

**JUDGE**

