



**Republic v County Secretary, County Government of Mombasa & 2 others;
Ali t/a Mbarak Pit Contractors (Exparte) (Judicial Review Miscellaneous Civil
Application E007 of 2023) [2025] KEHC 6310 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6310 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
JUDICIAL REVIEW MISCELLANEOUS CIVIL APPLICATION E007 OF 2023**

**G MUTAI, J
MAY 9, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**THE COUNTY SECRETARY, COUNTY GOVERNMENT OF
MOMBASA 1ST RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE
COUNTY GOVERNMENT OF MOMBASA 2ND RESPONDENT**

THE COUNTY GOVERNMENT OF MOMBASA 3RD RESPONDENT

AND

ALI MBARAK ALI T/A MBARAK PIT CONTRACTORS EXPARTE

RULING

1. Vide a Notice Motion application dated 12th November 2024, the Exparte Applicant seeks the following orders: -
 - a. Spent;
 - b. That the County Executive Committee Member, Finance, of the County Government of Mombasa has disobeyed and is in contempt of the orders of this Honourable Court dated 18th April 2024 directing the payment of Kes. 14,203,064/80 to the Exparte Applicant;
 - c. That the County Executive Committee Member, Finance, of the County Government of Mombasa be committed to civil jail for a term not exceeding six months, for contempt of court order dated 18th April 2024; and



- d. The Respondents bear the costs of the application.
2. The application was supported by the annexed affidavit of the Exparte Applicant, Ali Mbarak Ali and the grounds in support of the application. It was stated that the Exparte Applicant obtained a judgment and decree in Mombasa CMCC No. 3154 of 2004; Ali Mbarak Ali trading as Mbarak Pit Contractors vs Municipal Council of Mombasa, against the County Government of Mombasa, from which decree and Certificate of Order of Costs against the County Government of Mombasa dated 8th October 2020 for the sum of Kes.14,203,064.80 was issued. Despite service, the Respondent failed to satisfy the Certificate of Order for Costs against the County Government of Mombasa, forcing the Exparte Applicants to commence judicial review proceedings seeking the prerogative order of mandamus to compel the Respondent to pay the decretal sum. The court delivered its judgment dated 18th April 2024, compelling the Respondent to pay Kes.14,203,064.80.
 3. To date, the order to settle the decretal sum has not been complied with despite the Respondents being aware of it.
 4. It was urged that the Respondents have acted, and continue to act, in total disregard of the orders of this honourable court, and as such, the Respondents are undermining the authority of this court and the rule of law. The Exparte Applicants argued that the Respondents' conduct was deliberate and that they are therefore in contempt of court.
 5. The Exparte Applicant stated that the orders were served. He attached the Certificate of Order for Costs dated 8th October 2024, decree issued on 25th July 2024, affidavit of service sworn on the 25th day of October 2024, and letters to the County Solicitor dated 15th May and 12th September 2024.
 6. In the application, it was argued that the County Executive Committee Member, Finance, is, under Section 103(3) of the *Public Finance Management Act*, the head of the County Treasury and is thus responsible for the financial and fiscal matters of the County.
 7. The Exparte Applicant filed an affidavit of service, sworn on 25th October 2024, in which it was averred that the Exparte Applicant was prevented from effecting personal service on the County Executive Committee Member, Finance, by the County security, and that service was effected instead on the County Attorney.
 8. The Respondents filed a Replying Affidavit, sworn by Mr Jimmy Waliaula on 3rd December 2024, which states that the Respondents believe in the rule of law and wouldn't disobey court orders.
 9. The deponent averred that it needed to be shown that the Respondent was personally served or was otherwise made aware of it, and that he had willfully disobeyed court orders.
 10. Mr Waliaula contended that the County Executive Committee Member, Finance, wasn't personally served with either the order of mandamus or the Certificate of the Order for Costs against the County Government.
 11. Mr Waliaula denied that either the Chief Officer, Finance, or the County Executive Committee Member, Finance, is the accounting officer under section 45 of the County Government Act. The deponent also denied that the County Attorney or the County Secretary were recognized officers for purposes of payments, nor were members of the County Treasury, as per Section 103 of the *Public Finance Management Act*. He therefore denied that service of documents upon the said officials was effective. The said officer deemed the act to be one in futility.
 12. It was also denied that service was effected. Consequently, the Respondents' counsel urged that justification for holding the Respondents in contempt hadn't been proved.



13. The Respondents' counsel thus urged that the application be dismissed for being without merit.
14. The application was canvassed by way of oral submissions.
15. Ms Osewe, the learned counsel for the Applicants, stated that the orders sought to be enforced were issued on 18th April 2024. The Applicants had gone through severe hardships in seeking payment, to no avail. She urged that, despite the order of mandamus being issued almost a year ago, there had been no reasonable payment proposal. She therefore prayed that the application be allowed.
16. Ms Osewe averred that since the Respondent was represented by an advocate, Mr Tajbhai, on the date the judgment on the application for the order of mandamus was delivered it must be assumed that they were aware of the debt and their obligation to satisfy it. She therefore prayed that the application be allowed.
17. On the other hand, Mr Tajbhai, learned counsel for the Respondents, urged that the application be dismissed. He relied on the Replying Affidavit sworn by Mr Jimmy Waliaula. Mr Tajbhai submitted that since the application sought to punish the Respondents for alleged contempt of court, there was a higher burden on the applicant. He had to show that there was personal service of the order, personal knowledge of the orders and willful and deliberate disobedience of the orders.
18. He submitted that the County Executive Committee Member Finance wasn't served with the order and that, in any event, there was no evidence of such service. He relied on section 107 of the *Evidence Act* in support of his proposition that it was the duty of the Applicant to prove service of the court orders.
19. I have considered the application, the response thereto and the oral and written submissions of the parties. I must now make my determination as to whether there is merit in the application and what orders ought therefore to issue.
20. The law of contempt seeks to safeguard the integrity of the court and to uphold the principles of the rule of law.
21. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J. (as he then was), discussed the law on contempt and stated as follows: -

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”
22. *Koilel & 2 others v Koilel & another* [2022] KEHC 10288 (KLR), F Gikonyo, J stated as follows:-

“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 (*Kristen Carla Burchell v Barry Grant Burchell*, Eastern Cape Division Case No. 364 of 2005).”

23. Although the Respondents’ counsel submitted at length on the need for personal service, I disagree with him on this point. The law in this regard has developed. There is now an emphasis on knowledge of the court order, rather than service.

24. This point was stated in the Koilel case (supra) in the following terms: -

“ 34. The jurisprudence now favours knowledge of the existence of Court orders as opposed to strict personal service. In the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR the Court of Appeal posed the question as to whether knowledge of a Court order or judgment by an Advocate of the alleged contemnor would be sufficient for purpose of contempt proceedings and answered the question in the affirmative stating: -

“We hold the view that it does. This is more so in a case as this one, where the Advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an Advocate appears in Court on instructions of a party, then it behoves him to report back to the client all that transpired in Court that has a bearing on the client’s case...”

25. In this case, the knowledge of the advocates can be deduced from the fact that Mr Tajbhai, learned counsel for the Respondent was in Court when the judgment was delivered. In the circumstances, I am satisfied that the Respondents knew of the order. The terms of the order were quite explicit on the issue of payments. To date, the decretal sum has not been satisfied. His/their actions are willful and deliberate. In the circumstances, I find and hold that the Respondent is in contempt of court.

26. What orders should be issued? In my view, the Court should not issue orders in vain. Court orders must be complied with. The Applicant has been denied payment for a very long time. The Respondents have used technicalities to delay the day of reckoning. This court must take decisive action against such conduct.

27. As the County Executive Committee Member, Finance, of the County Government of Mombasa is in contempt of Court, I hereby sentence him to six (6) months imprisonment. The sentence will, however, be suspended for 1 month to give the said officer a chance to pay the Ex parte Applicant in full the amount outstanding, and thus atone for his actions. This matter will be mentioned on June 10, 2025 in open Court before the Presiding Judge, Ngaah, J. The County Executive Committee Member, Finance, of the County Government of Mombasa is to be personally present.

28. I award the Applicant the costs of this application.

29. Orders accordingly.

DATED AND SIGNED IN MOMBASA THIS 9TH DAY OF MAY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI



JUDGE

In the presence of:-

No appearance for the Applicants;

No appearance for the Respondents; and

Arthur – Court Assistant.

