



**Republic v Wajir County Government & 3 others; Alhidik Hardware and Construction Company Limited (Exparte Applicant) (Judicial Review E007 of 2022) [2025] KEHC 5869 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5869 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
JUDICIAL REVIEW E007 OF 2022**

**JN ONYIEGO, J**

**MAY 8, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**WAJIR COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY SECRETARY WAJIR COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF OFFICER FINANCE AND ECONOMIC PLANNING WAJIR COUNTY GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER FINANCE AND ECONOMIC PLANNING WAJIR COUNTY GOVERNMENT ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**ALHIDIK HARDWARE AND CONSTRUCTION COMPANY LIMITED ..... EXPARTE APPLICANT**

**RULING**

1. The applicant brought judicial review proceedings herein through a notice of motion dated 06.12.2024 seeking orders that:
  - i. Spent.
  - ii. The Honorable Court be pleased to find the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents to be in contempt of the decree and court orders issued on 13.06.2024.



- iii. Upon the grant of Order 2 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 to civil jail for a period not exceeding six months for contempt and disobedience of court orders issued on 13.06.2024.
  - iv. 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.
  - v. The costs of this application be in the cause.
2. The application is premised on the grounds on its face and further supported by the annexed affidavit of Omar Ibrahim Abdi. The core grounds being that on or about 09.12.2019, the County Government of Wajir engaged the applicant vide tender number WCG/OT/WTR/10/2019 – 2020 for the construction of 20,000m<sup>3</sup> water pan at Garaska, Dadajabuila Ward, Habaswein Sub County at a consideration of Kes. 9,500,000/-. The applicant duly performed and fulfilled its contractual obligation but the respondent failed to pay prompting the applicant to file Civil Suit No. E019 of 2021 at Garissa Magistrate Court (Al Hidik Hardware and Construction Company Limited vs County Government of Wajir). That judgment was issued together with the certificate of costs against the County Government of Wajir.
  3. It is the applicant's case that despite judgment being entered on 22.07.2021 and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents being served with a copy of the said judgment, extracted decree, certificate of Order and the certificate of order for costs the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents have failed to pay the decretal sum.
  4. It was urged that upon hearing the applicant's Judicial Review Application for an Order of Mandamus, this Honourable Court delivered its ruling on 22.12.2023 in which the order of mandamus was issued compelling the respondents jointly and severally to pay the applicant a decretal sum of Kes. 11,276,500 together with interest and costs.
  5. That to date, there has been no response from the respondents thus prompting the applicant to institute contempt proceedings against the respondents.
  6. Despite being served, the respondents did not file any response to the application herein.
  7. I have considered the application before me which is not opposed. In my considered view, the issue for determination is whether the respondents should be cited for contempt of court.
  8. It is not in dispute that an order of mandamus was issued by the court pursuant to a judgment delivered on 22.12.2023, wherein the ex parte applicant was granted the following orders:
    - i. An order of mandamus is hereby issued to remove into this Honourable Court compelling the respondents jointly and severally to pay the applicant decretal award of Kes. 11,276,500 together with interest and costs as per the judgment entered on 22.07.2021 and decree issued in Civil Suit Number 019 of 2021 (Al Hidik Hardware and Construction Company Limited vs County Government of Wajir).
    - ii. That costs of this application be provided for.
  9. That even after the order of mandamus was issued, the respondents have ignored and/or neglected to satisfy the decretal amount as had been ordered by this court. This is what the ex parte applicant describes in his application as disobedience of the court orders that has brought about this application.
  10. In the case of Samuel M. N. Mweru & others vs National Land Commission & 2 others [2020] eKLR and Katsuri Limited v Kapurchand Depor Shah [2016] eKLR, citing Kristen Carla Burchell vs Barry Grant Burchell (Eastern Cape Division Case No. 364 of 2005) it was stated that;



“in order for an applicant 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,
  - iii. Failure by the Respondent to comply with the terms of the order.
11. Upon proof of these requirements, the presence of willfulness and bad faith on the part of the respondent would normally be inferred, but the respondents could rebut this inference by contrary proof on a balance of probabilities.
  12. In the instant case, the court order was outright and unambiguous. This is manifestly clear considering that on 22.12.2023 this court issued an order of mandamus upon the respondents compelling them to implement the judgment awarded against them in Garissa CM’s court Civil Case No. 019 of 2021 on 22.07.2021 being the decretal sum of Kes. 11,276,500/- together with interest and costs. As such, it is clear that the order by the court was not only outright but also unambiguous.
  13. On whether the respondents acted in disobedience of the order without justifiable cause, 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 case of *Basil Criticos v Attorney General and 8 Others* [2012] eKLR Lenaola J. (as he then was) pronounced himself as follows:

“... the law has changed and as it stands today knowledge supersedes personal service ..... where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary.”
  14. In this case, the respondents have during the pendency of the proceedings herein been represented by the firm of Garane & Somane Advocates and the record before the court equally show the same. The affidavit of service sworn on 14.10.2024 by Mr. Evanson Mwangi and filed before the court also supports the applicant’s allegation that indeed the respondents were served the orders of this court.
  15. In the same breadth, there are several correspondences as exhibited between the applicant’s counsel and the respondent’s counsel in reference to non-payment of the outstanding amount herein. In that regard, it is evident that the respondents were not only duly served but were equally aware of the same orders, which was a command they were expected to heed to or comply with.
  16. For the applicant to file this matter seeking for the prayers herein, it is clear that the respondents have declined and/or neglected to comply with the orders of the court. The foregoing notwithstanding, it is trite that the mental element for liability for contempt arising out of disobedience of a court order is simply that the disobeying party either intended to disobey or made no reasonable attempt to comply with the order. The Canadian court in the case of *Canadian Metal Co. Ltd vs Canadian Broadcasting Corp* (No.2) 48 D.L.R. (30), stated that:

“To allow court orders to be disobeyed would be to tread the road to anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn....if the remedies that the courts grant to correct....wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the courts will quickly result into the destruction of our society.”



17. In the same breadth, the Supreme Court of India in the case of T.N. Gadavarman Thiru Mulpad vs Ashok Khot and Another [2005] 5 SCC, stated that it is imperative and invariable that court orders are to be followed and complied with. The foregoing resonates with the applicant's prayer urging this court to find the respondents in contempt of its orders jointly and severally.
18. As already demonstrated herein above, the respondents have jointly and severally willfully disobeyed this court's orders and to ensure that court orders are obeyed at all times, the following orders are commendable to me:
- i. That the respondents are hereby found guilty of contempt of court orders.
  - ii. That the respondents are hereby given a period of 30 days to purge the contempt and in default, a warrant of arrest shall issue and necessary orders including but not limited to committal to civil jail shall follow.
  - iii. The matter shall be mentioned on a date to be fixed by the court to confirm compliance and further orders.

**DATED, SIGNED AND DELIVERED, VIRTUALLY THIS 8<sup>TH</sup> DAY OF MAY 2025**

**J. N. ONYIEGO**

**JUDGE**

