



**Associated Automobile Distributors (K) Ltd v Mombasa County Government (Formerly  
Municipal Council of Mombasa); Oanda, Mombas County Executive Committee  
Member Finance & another (Contemnor) (Judicial Review Miscellaneous Application  
53 of 2006) [2025] KEHC 8001 (KLR) (Judicial Review) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8001 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 53 OF 2006  
RE ABURILI, J  
JUNE 9, 2025**

**BETWEEN**

**ASSOCIATED AUTOMOBILE DISTRIBUTORS (K) LTD ..... APPLICANT**

**AND**

**MOMBASA COUNTY GOVERNMENT (FORMERLY MUNICIPAL COUNCIL  
OF MOMBASA) ..... RESPONDENT**

**AND**

**EVANS OANDA, MOMBAS COUNTY EXECUTIVE COMMITTEE MEMBER  
FINANCE ..... CONTEMNOR**

**GLORIA MWASI CHIEF OFFICER (FINANCE) MOMBASA COUNTY  
GOVERNMENT ..... CONTEMNOR**

**RULING**

1. The decree of this court is an old one. It is against the County Government of Mombasa, the successor in title of the Municipal Council of Mombasa. The matter has a long chequered history.
2. At one time in 2021, the court was asked to issue notice to show cause against the Inspector General of Police, Mr. Hillary Mutyambai and the Director of Criminal Investigations among others, why they should not be committed to civil jail for failing to arrest Maryam Abdillahi, Mbaruk, the County Executive Committee Member Finance following the orders of 19/12/2018.
3. The 1<sup>st</sup> Respondent Contemnor herein Mr. Evans Oanda is the successor office holder of Maryam Abdillahi Mbaruk, the person responsible for the County Treasury at Mombasa City County



Government. Contempt of court proceedings were procedurally conducted and concluded against the office holder for non-settlement of decree of this court, which has been pending for long. 2006 is only a few months away to reaching 20 years. Still, that is only when mandamus was issued. The original decree dates back to 10<sup>th</sup> March, 2004 through a consent judgment in HCC 1311 of 2000 for Kshs 13,541,815. The interest on the decretal sum continues to accrue while the Kenya Shillings has continued to depreciate meaning, the decree holder does not benefit from the delay while the taxpayer and resident of Mombasa County is subjected to hardship of paying more than they bargained for.

4. The mandamus decretal sum was Kshs.14,369,625.25 as decreed by Nyamu J as he then was, on 22/9/2006 and on 4/4/2008, parties consented to a payment plan of Kshs.1,000,000 per month commencing 15<sup>th</sup> May, 2008. That consent, among other consents mentioned by Mr. Murage in his address to this court this afternoon, were never complied with.
5. In other words, no part of the decree was settled by the County Government of Mombasa, evidence of impunity of the highest order by those entrusted with public office and mandated by law to act in the public interest and settle decrees of the court.
6. It is the duty of the contemnor herein, on behalf of the County Government of Mombasa, the judgment debtor, to settle decree of the court and do so without condition. As stated by Odunga J in R vs. Chief Officer, Finance & Economic Planning, Nairobi City County *exparte* Mugo Mwangi, [2018] eKLR, a party facing financial constraints is at liberty to move to court for appropriate orders which would enable it to settle its obligations while staying afloat.
7. That however, is not a reason for one to evade their responsibility to settle such obligations. In other words, financial difficulty is only a consideration when it comes to determining the mode of settlement of a decree but is not a basis for declining to compel the Respondent to settle a sum decreed by the court to be due from it.
8. I reiterate what courts have stated on behalf of the people of Kenya, in exercise of Judicial authority, that court orders are not made in vain and are not mere suggestions. They are made to be complied with and if for any reason a party has challenges in complying therewith, they are at liberty to come to court and explain the difficulties faced by the need to comply with the order. No party against whom the order is made should ignore or choose how and when to comply with court orders which have not been set aside and which are lawful and issued with jurisdiction.
9. There are consequences for non-compliance with court orders and these consequences are penal in nature. They include sequestration of personal property of the contemnor, fines and or both such fines and committal to civil jail for periods up to six months. Loss of liberty is not light, and only those who have undergone such liberty know how painful and traumatic it can be. However, as it is one of the lawful means by which courts punish for civil contempt, no court of law should hesitate to order for committal to civil jail when called upon to do so and as appropriate.
10. The rider is that committal to civil jail should not be used for ulterior motive or be vindictive. See *Mbugua vs Mbugua* [1992] KLR 448. The 1<sup>st</sup> contemnor herein acknowledges that he has a statutory duty to comply with court orders. He also acknowledges that he is in default in that official capacity. He however did not inform the court of the difficulties that he had settling the decree, following the orders of 23/8/2024. There is however evidence that there was compliance until March 2025 when the default took place with an underpayment for September 2024 and from April 2025 to date, no payment has been made.



11. The 1<sup>st</sup> contemnor has asked for 21 days to pay up the arrears of instalments and the underpayment as he awaits the approval from the Controller of Budget and the supplementary budget which was approved late by the County Assembly.
12. There are issues raised in the affidavit which he swore and filed in court. However, without delving into that affidavit, reasons being that there is no legal requirement that notice to show cause must be by way of a sworn affidavit, the court appreciates that the 1<sup>st</sup> contemnor did travel from Mombasa to this court, with his advocate, to explain why he has not settled the due instalments and the underpayment. He raises issues of budgeting which was delayed and the fact of the County Government having paid the instalment from other votes.
13. Further, that the said votes have been exhausted and therefore the approval from the Controller of Budget has been sought, now that the supplementary budget has been passed by the County Assembly. He asks for 21 days which is not a long time. Mr. Oanda has in my humble view, at this point in time, demonstrated that he has not deliberately failed to settle the instalments. The court is also aware that this is the last month of the Government financial year and that public institutions are now operating on supplementary budgets.
14. It is therefore expected that the 1<sup>st</sup> contemnor, on behalf of the County Government of Mombasa, will comply with the orders of 23/8/2024 given the 21 days.
15. Mr. Murage Counsel for the applicant prays that the whole outstanding amount be recalled and settled and in default, the other penal consequences follow. That is an order that this court is capable of issuing especially where the contemnor shows disrespect for court orders in a brazen manner including refusing to attend court as and when called upon to do so.
16. In the instant case, the 1<sup>st</sup> contemnor is aware of the consequences of the default and has asked for 21 days to settle the arrears instalments in compliance with this court's order of 23/8/2024. The court shall accord him the opportunity to action the payment and in default, the court shall recall the entire balance of the decretal sum to be settled at once or committal to civil jail shall take effect.
17. Accordingly, this matter shall be mentioned before Chigiti J (SC) on 7/7/2025 to confirm payment as this court shall be away on leave. I so order.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF JUNE, 2025**

**R.E. ABURILI**

**JUDGE**

