



Republic v Machakos County Government; County Chief Officer, Finance, Machakos County Government & another (Contemnor); ECTA (K) Limited (Exparte) (Judicial Review Miscellaneous Application E186 of 2022) [2025] KEHC 8135 (KLR) (Judicial Review) (11 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8135 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E186 OF 2022
RE ABURILI, J
JUNE 11, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

MACHAKOS COUNTY GOVERNMENT RESPONDENT

AND

COUNTY CHIEF OFFICER, FINANCE, MACHAKOS COUNTY GOVERNMENT CONTEMNOR

COUNT EXECUTIVE COMMITTEE MEMBER, FINANCE AND ECONOMIC PLANNING, MACHAKOS COUNTY GOVERNMENT CONTEMNOR

AND

ECTA (K) LIMITED EXPARTE

RULING

1. By an amended Notice of Motion dated and amended 4th March, 2025, the exparte applicant herein, ECTA (K) Limited seeks the following orders:
 1. Spent.
 2. That the CECM Finance in charge of Finance and Economic Planning and his Chief Officer for Finance be cited for contempt of court order for deliberately and knowingly disobeying the court orders issued on 29th September 2023.



3. That this court do issue summons to the officers herein cited for contempt of court, to appear personally in court to show cause why they should not be committed to civil jail for failing to settle decree for Kshs 13, 942,214.44 with interest at 12% per annum from 13th April, 2022 until payment in full.
4. The applicant also prays for costs of the application.
2. According to the *exparte* applicant, on 29th September 2023, this court issued mandamus order compelling the respondents to settle decree for the sum of Kshs 13, 942,214.44 with interest at 12% per annum from 13th April, 2022 until payment in full. That the said order was served upon the respondents on 11th September 2024 as per the affidavit of service dated 19th September 2024. That the respondents herein are duty bound to settle the said decree but have refused hence the contempt proceedings herein.
3. From the facts of this case, the decree arose from judgment and decree rendered in Nairobi Chief Magistrate's Court Commercial Case No. E061 of 2022 ECTA (KENYA) Limited v Machakos County Government. The claim was by the applicant herein for a sum of Kshs 12,826,911 being balance of purchase price for 4 motor vehicles bought by the 1st Respondent County Government and delivered by the applicant herein on diverse dates in April 2016 together with car servicing costs of Kshs 458,463 incurred by the applicant.
4. Judgment in default of appearance and defence was entered on 13th April 2022 and a decree was issued. A certificate of order against the government was duly issued and all were served upon the respondents herein with a demand for settlement under cover of 21st July 2022 but no payment was made necessitating mandamus proceedings against the respondents compelling them to settle the decree. The interest continues to accrue.
5. The respondents have not contested the claim at any of the stages stated above and neither have they settled any part of the decree despite service upon them of the mandamus order and all the documentation including judgment in the lower court, decree, certificate of order against the government and demands for settlement.
6. Again, in respect of these contempt of court proceedings, the respondents have not filed any response opposing the application for contempt of court. The respondents were ably represented in the matter by their advocate Mr. Erastus Mutua who even conceded to amendment to the initial Notice of motion for contempt of court and he informed the court on 11/3/2025 that the county government is responsible for settlement of the decree. That the CECM Finance had written to the Chief Officer Finance and committed to paying the decree during these financial years by providing a budget. He even asked for time to make part payment by 31/5/2025.
7. On 29th April 2025 when the application subject of this ruling came up for oral hearing only the *exparte* applicant's counsel was present despite the hearing date being taken by consent on 11/3/2025.
8. The law on contempt is clear. Court orders are not mere suggestions. They are binding, and once issued, every party against whom they are directed is duty-bound to obey them unless and until they are lawfully set aside.
9. Public officers may be cited personally for contempt where they willfully disobey court orders issued against the institutions they lead or represent. In this case, it is the accounting officers that the law holds responsible for settling decrees issued by courts of competent jurisdiction. Additionally, disobedience of a court order fundamentally undermines the rule of law, on which the administration of justice is founded.



10. The 1st Respondent herein, through its accounting officer, the Chief officer in charge of Finance as appointed by the CECM Finance and Economic Planning under section 103 of the *Public Finance Management Act*, (PFMA) was duly served with all the court processes and no evidence has been tendered to show compliance or intention to comply.
11. Neither have the Respondents sought a stay or appealed the said decisions. The conduct of the said officers amounts to deliberate, reckless and unlawful disobedience of a court order, yet the County Government received valuable multivehicle purchased by the applicant from his own resources and it is now a while. The shilling depreciates everyday while the interest accruing is a burden on the taxpayer.
12. The law places the duty to settle decrees on the accounting officers. This is what section 21 of the *Government Proceedings Act* provide and there is no contrary evidence that the Chief officer, Finance is designated by the CECM Finance to be the accounting officer under the PFMA, 2012.
13. It is true that the County Executive in Charge of Finance is the one under obligation to designate the Accounting Officer who is duty bound to settle decrees and in the absence of such designation, the CECM Finance would be the accounting officer to settle decrees.
14. The Respondents have not made any payments and this being a decree of the court, the only remedy that the applicant has is mandamus, which was issued by this court. Disobedience means being in contempt of court.
15. In *Teachers Service Commission V Kenya National Union of Teachers & 2 others* (2013) eKLR, the court observed as follows:

“The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the Judiciary or the court or even the personal ego of the presiding Judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”
16. In *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR the Court of Appeal considered the following on knowledge of existence of a court order:

“Kenya’s growing jurisprudence right from the High Court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings, for instance, Lenaola J in the case of *Basil Criticos v Attorney General and 8 Others* [2012] eKLR 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.”
17. The alleged contemnors herein have not disputed knowledge of the order of mandamus and neither have they challenged these proceedings from the beginning.
18. I find the alleged contemnors, County Executive Committee Member and the Chief Officer, Finance and Economic Planning, County Government of Machakos, to be in contempt of court order of mandamus issued on 29th September, 2023, and convict them accordingly, for their brazen defiance of court orders of 29th September, 2023, for failing to settle decree for Kshs13, 942,214.44 with interest at



12% per annum from 13th April, 2022 until payment in full, arising from Nairobi Chief Magistrate's Court Commercial Case No. E061 of 2022 ECTA (Kenya) Limited v Machakos County Government.

19. Before I conclude this ruling, it is important to highlight the problem identified in these cases involving public entities procuring goods and services so easily yet payment becomes a nightmare.
20. It is with deep concern that I highlight a grave and ongoing injustice witnessed and faced by many suppliers across our counties, a matter that strikes at the very core of ethical governance and public accountability. I find it both immoral and criminal for county governments to procure goods and services from suppliers, who commit resources and incur significant costs in good faith, only to be met with silence, endless delays or outright refusal to pay. This practice not only violates contractual obligations, but also erodes public trust and inflicts severe financial and emotional hardship on individuals and businesses alike.
21. No county government or any public institution should ever undertake procurement without verifying the existence of a valid budget and the availability of funds. To do otherwise is to knowingly deceive suppliers and risk paralyzing enterprises that often depend on timely payments to stay afloat. Such negligence is not just poor financial management; it is a direct abuse of public office and a betrayal of the principles of transparency, fairness, and justice.
22. It is for that reason that all relevant accounting officers are under an urgent public duty to take immediate and decisive action to clear all verified and legitimate pending bills without further delay; to institute strict internal controls to ensure procurement aligns with available budgets; and to hold accountable any officials found culpable of frustrating suppliers or mismanaging public funds.
23. Suppliers are not beggars. They should therefore not be reduced into scroungers. They are partners in service delivery and they deserve to be treated with the dignity and respect that reflects the rule of law.
24. Only then can we restore integrity to our public procurement processes and protect the livelihoods of those who invest their trust and resources in public service delivery.
25. Having said that, I hereby direct that the now contemnors do appear before this Court on 30th September, 2025 to mitigate and show cause why they cannot be punished for contempt of court and in accordance with the law.
26. The Exparte Applicant shall have costs of Kshs.50,000 of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF JUNE, 2025

R.E. ABURILI

JUDGE

