



**Republic v County Government of Mandera & 3 others; Ahmed (Ex parte Applicant) (Judicial Review Application E002 of 2022) [2025] KEHC 10340 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10340 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
JUDICIAL REVIEW APPLICATION E002 OF 2022**

**JN ONYIEGO, J  
JULY 17, 2025**

**IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW ORDERS  
OF MANDAMUS UNDER ORDERS 53 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF SECTION 21 OF THE GOVERNMENT PROCEDURE ACT**

**AND**

**IN THE MATTER OF ORDER 29 OF THE CIVIL PROCEDURE RULES, 2010**

**AND**

**IN THE MATTER OF UNSATISFIED DECRETAL DEBT AGAINST THE COUNTY  
GOVERNMENT OF MANDERA AND THE CECM FOR ROADS, PUBLIC WORKS AND  
TRANSPORT, MANDERA COUNTY IN THE SUM OF KES. 4,864,250 ARISING FROM  
THE RULING OF THE HON. P.W. WASIKE (S.R.M.) AT MANDERA LAW COURTS IN  
MANDERA DELIVERED ON 22.10.2020 AND THE SUBSEQUENT FINAL DECREE  
AND CERTIFICATE OF ORDER AGAINST THE GOVERNMENT ISSUED THEREON**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY GOVERNMENT OF MANDERA ..... 1<sup>ST</sup> RESPONDENT**

**THE CECM FOR ROADS, PUBLIC WORKS & TRANSPORT MANDERA  
COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**THE CECM FOR FINANCE, MANDERA COUNTY ..... 3<sup>RD</sup> RESPONDENT**



**CHIEF OFFICER FINANCE MANDERA COUNTY GOVERNMENT .... 4<sup>TH</sup>  
RESPONDENT**

**AND**

**ABDULLAHI SHEIKH AHMED ..... EX PARTE APPLICANT**

**RULING**

1. The application falling due for determination before me is the one dated 17.02.2025 in which the ex parte applicant is seeking orders that:
  - i. Spent.
  - ii. Mr. Ibrahim Mohamed Adan, the 1<sup>st</sup> respondent's county executive committee member for finance, ministry of finance and economic planning, Mr. Billow Issack Hassan the county secretary of the 1<sup>st</sup> respondent and Mr. Ahmedsalim Ali Osman the chief officer finance of the 1<sup>st</sup> respondent do appear before this Honourable Court and show cause why they should not be cited for contempt of court for failing to pay to the ex parte applicant Kes. 4,864,250.00 /- arising from the decree of Hon. P.M. Wasike at Mandera Law Courts in Civil Case No. 12 of 2020 delivered on 22.10.2020 as per the order of this court issued on 23.09.2023.
  - iii. This Honourable Court be pleased to find and hold that Mr. Ibrahim Mohamed Adan, the 1<sup>st</sup> respondent's County Executive Committee Member for Finance, Ministry of Finance and Economic Planning, Mr. Billow Issack Hassan, the County Secretary of the 1<sup>st</sup> respondent and Mr. Ahmedsalim Ali Osman the Chief Officer Finance of the 1<sup>st</sup> respondent are in contempt and have disobeyed the order of this Honourable Court issued on 23.09.2023.
  - iv. Mr. Ibrahim Mohamed Adan, Mr. Billow Issack Hassan and Mr. Ahmedsalim Ali Osman be punished for contempt of court and be committed to civil jail for a period not exceeding six months.
  - v. Costs of this application be borne by the respondents.
2. The application was supported by an affidavit sworn by Abdullahi Sheikh Ahmed, the applicant herein who averred that by an order of this court issued on 29.09.2023, this Honourable court granted the applicant a mandamus order directing the first respondent to honour the subject decree in this case. That the effect of the court order was to compel the respondents to pay the ex parte applicant the decretal sum of Kes. 4,864,250.00/- arising from the decree of Hon. P.M. Wasike delivered on 22.10.2020.
3. He averred that during the hearing, the respondents were represented by an Advocate who was served a copy of the said order and therefore, the respondents cannot deny knowledge of the same. It was alleged that despite service and several requests to pay the amount owed, the respondents have disregarded and/or ignored to comply with the court order issued by this court on 29.09.2023. Counsel urged that there is need to stop the respondents from further disobeying the court orders by allowing the prayers sought herein.
4. Amina Ahmed Hassan, the County Executive Committee member ministry of roads and public works on behalf of the 1<sup>st</sup> respondent swore a replying affidavit on 26.03.2025 deponing that indeed, on 29.09.2023, this court issued an order of mandamus directing the County Government of Mandera



- to pay the applicant a decretal sum of Kes. 4,864,250.00/-. That the respondent had plans to settle the amount however it has been experiencing challenges as the president declined to sign the Finance Bill 2024 – 2025 that resulted to the respondent losing Kes. 400,000,000.00/- in Equitable appropriation.
5. It was averred that in as much as the settlement of the amount has been delayed, the respondent is willing to make good the debt. This court was urged to consider the fact that the respondent was committed to pay subject to compliance with the provisions of the *Public Finance Management Act*. That procedures and disbursement of funds must be done in the prescribed budgetary manner. She deposed that the respondent has since factored the amount into the budget and initiated the legal procedures for fund release in accordance with the law and therefore, any delay is procedural rather than intentional.
  6. She urged that the applicant did not demonstrate that the respondents are likely to abscond or leave the jurisdiction of the court and as such, justification to committal to civil jail should not arise. It was contended that no public officer is deemed to be in contempt of court if acting in good faith in compliance with statutory requirements. She therefore urged this court to grant the respondents the last opportunity to settle the matter before the end of the calendar year.
  7. In his supplementary affidavit sworn on 26.03.2025, the applicant deposed that the replying affidavit by the respondent ought to be struck out for being misconceived and a clear abuse of the court process. That there has not been any meaningful engagement by the respondent. Further, that the allegation of drought is unfounded as the county is possessed of the County Emergency Fund that caters for such incidents. It was argued that the respondents have made a clear admission for contempt and as such, the prayers herein ought to be allowed.
  8. The application was canvassed by way of written submissions.
  9. The applicant filed submissions dated 08.04.2025 urging that the issues falling due for determination are as follows:
    - i. Whether the application has met the threshold for grant of the orders sought?
    - ii. Which remedy is the applicant entitled to?
    - iii. Who bears the costs of this application?
  10. Learned counsel submitted that it is the duty of every Kenyan to obey a lawful court order. To buttress that fact, counsel relied on the case of Samuel M. N. Mweru & Others vs National Land Commission & 2 Others [2020] eKLR where Mativo J. (as he was then) stated that:

“It is established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove: the terms of the order, knowledge of these terms by the respondents, failure by the respondent to comply with the terms of the order. Upon proof of these requirements, the presence of wilfulness and bad faith on the part of the respondents would normally be inferred”.
  11. On the first issue, counsel urged that it was not in dispute that the terms of the orders of 21.09.2023 issued in court against the respondent were clear. On whether the respondent had the knowledge of the terms, counsel urged that the orders by the court were not ambiguous and the same were well known to the respondent. That the respondents were in court when the orders were issued and further, that the applicants equally served the said orders upon the respondents which fact was readily recognised in the respondent’s replying affidavit.



12. On whether there was failure to comply with the said orders, counsel restated that clearly that's why this court has been moved. It was urged that the respondent has not only ignored but also deliberately declined to pay the applicant the decretal sum.
13. To emphasize on the significance of obeying court orders, counsel referred to the case of Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another [2005] KLR 828, where Ibrahim J as he then was stated that:

“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 the 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”.
14. This court was therefore urged to allow the prayers sought as the respondent had disregarded the lawful orders of the court.
15. On costs, counsel relied on the case of Stanley Kaunga Nkarichi vs Meru Teachers college & Another [2016] eKLR where the court held that costs follow the event and that the successful party will have them unless a good reason has been given by the court. In the end, counsel urged this court to allow the prayers as sought in the application.
16. The respondent filed submissions dated 22.04.2025 addressing three issues to wit:
  - i. Whether the respondents' contempt is intentional?
  - ii. Whether the applicant has met the requisite threshold for the grant of the orders sought.
  - iii. Who bears the cost of the application?
17. On the first issue, counsel urged that no public officer is deemed to be in contempt of court if acting in good faith in compliance with statutory requirements. That the decretal amount has been factored into the budget and the legal procedures necessary, have been initiated for funds release. That the delay is procedural rather than intentional. It was reiterated that the county was fully committed to paying the applicant the amount owed.
18. In support of the averment that the delay was not deliberate, reliance was placed on the case of Samuel M.N. Mweru & Others vs National Land Commission & 2 Others [supra] where it was held that:

“It is established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove to the required standard that the defendant's conduct was deliberate”.
19. Counsel argued that the applicant did not demonstrate to this court that the respondents had deliberately disobeyed the court's orders. Equally, that the court must observe that in enforcing compliance it must adopt procedures which are fair, reasonable and that a full opportunity is given to an alleged contemnor to defend himself or herself. To that end, support was drawn from the case of Bar Association vs Union of India & Another [1998] 4 SCC 409 where the court held that no act of parliament can take away the inherent jurisdiction of the court of record to punish for contempt.



20. On the second issue, counsel submitted that the applicant's suit ought to be dismissed as the same lacked merit. That the orders sought are not justifiable as the same do not disclose 'sufficient cause' as required by the law. To that end, this court was urged to dismiss the applicant's suit.
21. I have considered the application, submissions by the parties herein and authorities cited; in my considered view, the issue for determination is whether the respondents should be cited for contempt of court orders.
22. It is not in doubt that this court on 21.09.2023, issued orders of mandamus against the respondents jointly and severally compelling them to pay the applicant the decretal debt herein in the sum of Kes. 4,864,250.00/- arising from the decree of the Hon. P.W. Wasike at Mandera Law Courts in Civil Case No. 12 of 2020 delivered on 22.10.2020.
23. In the High Court of South Africa in the case of Kristen Carla Burchell vs. Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005, the court held that 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,
  - iii. Failure by the Respondent to comply with the terms of the order.
24. On the terms of the order, it is clear that this court on 22.09.2023 delivered a ruling and consequently issued an order directing the respondents that an order of mandamus do issue against the respondents jointly and severally compelling them to pay the applicant the decretal debt herein in the sum of Kes. 4,864,250.00/- delivered on 22.10.2020. In the same breadth, the respondents be condemned to bear the costs of the application. From the foregoing, it is outright that the orders by the court were not only clear but also unambiguous. As such, the respondents cannot be heard to say that the terms of the order were not clear.
25. On whether the respondents had knowledge of the terms of the orders, I would seek refuge in the case of Oilfield Movers Limited vs Zahara Oil and Gas Limited (2020) eKLR where the court held that knowledge of a court order can be inferred from knowledge of the order by an advocate for the party alleged to be in contempt of the order. In the instant case, the applicant urged that the respondents were in court when the said orders were made. In the same breadth, the said orders were served upon the respondents. The foregoing notwithstanding, the respondents in their replying affidavit conceded that they were in the know of the orders save for the fact that initially, the County Government of Mandera lacked money to settle the amount owed. Additionally, that the delay to disburse funds have been as a result of legal and administrative procedures governing the release of public funds.
26. On whether the respondents have failed to comply with the orders, I do seek guidance in the case of Kenya Tea Growers Association vs Francis Atwoli & 5 Others, Petition No.64 of 2010 where the court held as follows;
- “In the case before me, I am more than satisfied that even at the higher level of beyond reasonable doubt, when an individual has been served with and/or has knowledge of a court order but not only ignores it but in fact incites others to do the same, the threshold for contempt has been met. Francis Atwoli in fact went further to arrogate himself the decision to determine when the strike should end despite the fact that the Court Order had stopped it. He went further to interpret it as made without jurisdiction and that only the “Workers Court”, (the Industrial Court) had jurisdiction to determine the matter. He did not do so



once but on a number of occasion as he flew by helicopter from place to place on 18th October 2012. His contempt was obvious and his conduct and words can attract no other finding.”

27. In the instant case, it is clear that the respondents are yet to comply with the court order. This was exhibited in the replying affidavit sworn on 17.03.2025 by Amina Ahmed Hassan, the County Executive Committee member ministry of roads and public works on behalf of the 1<sup>st</sup> respondent. Of importance to note is the fact that despite acknowledging the orders of the court, the respondents have not given any good reason for non-compliance. Instead, it is their position that the debt will be settled in the new calendar year for the reason that the same was not budgeted for. The explanation by the respondent is not tenable noting that the debt herein has existed for the longest time possible. One wonders why the same has never been factored in the subsequent budgets noting that the orders herein were issued on 22.09.2023 leave alone the fact that judgment was entered in October 2020 five years down the line.
28. The explanation given for the delay cannot stand the test of time. The decree has been pending for far too long. The respondents could not explain why the debt has been outstanding since 2020 yet the same was known to exist and no president had declined to sign any finance bill like the one for the 2024-2025.
29. The only reasonable inference that any reasonable person can make in the circumstances is that there has been no good will to pay the debt hence deliberate disobedience of the court order. In view of the foregoing, the court finds that:
  - i. The respondents are found to be in contempt of the obtaining court orders.
  - ii. The respondents are hereby given a period of 45 days to purge their contempt failure to which warrant of arrest to issue for committal to civil jail.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF JULY 2025**

.....

**J. N. ONYIEGO**

**JUDGE**

