



Republic v Wajir County Government CECM Finance and Economic & 3 others; Galeyr Trading Company Limited (Ex parte Applicant) (Miscellaneous Application 5 of 2022) [2025] KEHC 10249 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10249 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS APPLICATION 5 OF 2022**

JN ONYIEGO, J

JULY 17, 2025

IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW ORDERS OF MANDAMUS

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT

IN THE MATTER OF SECTION 21 OF THE GOVERNMENT PROCEEDINGS ACT

BETWEEN

REPUBLIC APPLICANT

AND

THE WAJIR COUNTY GOVERNMENT CECM FINANCE AND ECONOMIC 1ST RESPONDENT

WAJIR COUNTY GOVERNMENT 2ND RESPONDENT

CHIEF OFFICER FINANCE AND ECONOMIC PLANNING WAJIR COUNTY 3RD RESPONDENT

THE COUNTY SECRETARY WAJIR COUNTY GOVERNMENT 4TH RESPONDENT

AND

GALEYR TRADING COMPANY LIMITED EX PARTE APPLICANT

RULING

1. The matter falling due for determination before me is an application dated 04.12.2024 seeking for orders that:



- i. Spent.
 - ii. This Honourable Court be pleased to find the 1st, 2nd and 3rd respondents herein to be in contempt of the decree and court orders issued on 13.06.2024.
 - iii. Upon grant of Order (2) above, this Honourable Court be pleased to issue an order to commit the 1st, 2nd and 3rd respondents to civil jail for a period not exceeding six months for contempt and disobedience of the 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.
2. The application is based on the particulars on the face of it and further amplified by the content contained in the supporting affidavit sworn by Abdullahi Mahat Aden.
 3. The crux of the matter herein is that on 11.10.2018 the County Government of Wajir, the respondent herein engaged the applicant vide Tender No. WCG/QT/W/103/2018 – 2019 for the supply and delivery of collapsible water tanks of capacity of 10,000litres to the department of water for a consideration of Kes. 1,976,000.00/-.
 4. That the applicant duly performed its contractual obligations but the respondent has declined to honour its part of the bargain. It was stated that despite the consent judgment being entered, the respondents are yet to pay the decretal sum which prompted the applicant to commence judicial review proceedings in HCJR No. E005 of 2022 for orders of *mandamus* against the respondents.
 5. That Vide a ruling delivered on 21.12.2023 and decree issued on 13.06.2024, the court granted the orders of *mandamus* against the respondents. That the respondents have continually refused and or declined to settle the amount due.
 6. It was urged that it was the said non-compliance that prompted the applicant to write to the controller of budget vide a letter dated 23.06.2023 bringing to her attention the non – payment of the interest on the principal amount and costs of the suit by the County Government of Wajir and seeking her intervention on the same. That in response, the controller of budget wrote to the CECM Finance and Economic Planning, Wajir County Government, Mr. Salah Adan Abdi vide a letter dated 26.06.2023 demanding a response on whether the pending bills had been paid and if not, give an explanation as to why they had not settled the same noting that the financial year was about to end. However, the said letter did not elicit any response or action from the respondents to date.
 7. It was further averred that the applicant’s counsel did a letter dated 7.06.2024 to the firm of Garane & Somane Advocates who in response wrote a letter dated 19.06.2024 to the applicant’s advocates informing them that they had communicated the content of the letter dated 07.06.2024 to their clients who were allegedly in the process of consolidating the actual accounts and record and that they were to revert back aptly. That to date, there has been no response from the respondents hence the institution of the suit herein.
 8. The respondents filed a replying affidavit sworn on 13th March 2025 by Naemo Somo the county Attorney of the 1st respondent contending that from their record, the subject debt amounting to kes 1,858,620.70 was paid on 21-12-2018. That this particular information was not readily available when the case primary suit was filed before the magistrates’ court. She averred that the applicant was being insincere by seeking double payment yet they have received the decretal sum in full. She attached a



central bank of Kenya statement showing payment of kes 1,858,620.70 made on 21-12-2018 to the applicant

9. In its rejoinder, the applicant filed what is indicated as a supplementary affidavit sworn on 25-03-2025 denying that payment was ever made. It was stated that there was no proof that the payment in question was in relation to LPO No.005498 which is the subject of kes 1,9976,00. That the applicant had several contracts with the 1st respondent hence the payment in question may be referring to a different payment and not the one in question. Four contracts were listed to justify the position that the alleged payment may as well be as a result of another contract
10. It was further stated that the central bank statement was not certified nor did it show the LPO in respect of which the alleged payment was made.
11. The application was canvassed by way of written submissions.
12. The applicant filed submissions dated 26.03.2025 wherein it was submitted that there is no dispute that there is a consent judgment entered on 08.10.2021 and a decree in place arising from the lower court. It was contended that a decree and orders of *mandamus* as issued by this court must be obeyed. To buttress this fact, reliance was placed in the case of *Econet Wireless Kenya Ltd v 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 contempt 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.”
13. While relying the holding in the case of *Sheilla Cassat Issenberg & Another v Antony Machatha Kinyanjui* [2021] KEHC 5692 (KLR)], Counsel submitted that for an application for contempt of court to succeed, the applicant has to prove the following: the terms of the order, knowledge of these terms by the respondent and failure by the respondent to comply with the terms of the order.
14. That in this case, the terms of the court order issued on 21.12.2023 and that of 13.06.2024 were outright and unambiguous and therefore, the respondents cannot be heard to say that the said orders could not be understood. Additionally, that the respondents have had knowledge of the orders noting that on 06.06.2024, the applicant’s advocates served the ruling dated 22.12.2023 upon the respondents’ advocates, Garane and Somane Advocates who are on record for the respondents. Further, that the said ruling was served upon the county attorney on behalf of the respondents and the same was received. Lastly, that the respondents have failed to comply with the said court orders.
15. This court was urged that it is essential for the maintenance of the rule of law and order that the authority and the dignity of this court is upheld at all times. As such, this court was urged to find in favour of the applicant.
16. 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.



17. It is not in dispute that an order of *mandamus* was issued by the court pursuant to a ruling delivered on 21.12.2023 and a decree issued on 13.06.2024 wherein the ex parte applicant was granted the following orders:
- i. That 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. 3,727,357.4/- together with interest and costs as per consent judgment entered and decree issued in Civil Suit No. E003 of 2021 (*Galeyr Trading Company Limited v County Government of Wajir*) subject to amendment of the interest to be calculated in accordance with the judgment order.
 - ii. That each party to bear its own costs.
18. That even after this court issued the order of *mandamus*, the respondents have ignored and/or neglected to satisfy the decretal amounts. On their part, the respondent contended that they have honoured the claim in full. They however do not deny having been served with the *mandamus* order.
19. It is trite that a party seeking grant of an order for contempt to issue, he or she must prove that the alleged order was served; it is lawful; unambiguous; and; deliberately disobeyed. See *Katsuri Limited v Kapurchand Depor Shah* [2016] eKLR, citing *Kristen Carla Burchell v Barry Grant Burchell* (Eastern Cape Division Case No. 364 of 2005) where 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.
- [Also see *Nduvi v Munge & 2 others* (Civil Case E004 of 2021) [2023] KEHC 23060 (KLR) (26 September 2023)].
20. Upon proof of these requirements, the presence of wilfulness and bad faith on the part of the respondents would normally be inferred although the respondents could rebut this inference by contrary proof on a balance of probabilities.
21. In the instant case, the orders of the court were that the respondents jointly and severally pay the applicant decretal award of Kes. 3,727,357.4/- together with interest and costs as per consent judgment entered and decree issued in Civil Suit No. E003 of 2021 (*Galeyr Trading Company Limited v County Government of Wajir*) subject to amendment of the interest to be calculated in accordance with the judgment order. As such, the said order was not only outright but also unambiguous despite the same not being complied with.
22. Whether the respondents were aware of the said orders, counsel for the applicant urged that the same was served upon the respondents through their advocates on record being Garane & Somane Advocates. Additionally, that the same were served upon the county attorney of the respondents who thereafter acknowledged receipt by stamping on the face of the applicant’s copy; an allegation this court has confirmed upon perusal of the said pleadings. The respondents do not deny receipt of the order.
23. The question begging for an answer is whether the payment referred to by the respondent was in respect of the amount in question. It is not in dispute that the applicant had quite a number of contracts with the respondent. Some of the contracts have been paid and others not. I agree with MR. Kinaro that the central bank statement attached by the respondent is a copy not certified hence not authenticated.



24. It is trite law that he who alleges must prove. It was incumbent upon the respondent to attach the LPO and or voucher in respect of which the alleged payment was raised and payment made. It is worth noting that the amount and contract in question is in respect of kes 1,976,00 and not Kes 1,858,620.70. In the absence of those particulars or details, this court cannot for sure find that payment was made.
25. In the absence of any good or convincing explanation that payment has been made, this court has no option but to find that the respondents have disobeyed a lawful court order. See *Hadkinson v Hadkinson* [1952] 2 All ER 567, 575, where s Denning LJ said that:
- “I am of opinion that the fact that a party to a cause has disobeyed an order of the court is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the Court to ascertain the truth or to enforce the orders which it may make, then the Court may in its discretion refuse to hear him until the impediment is removed or good reasons is shown why it should not be removed.”
26. In view of the foregoing, I am persuaded to find that the applicant has proved its case to the required standard hence make the following orders.
- i. The respondents herein have been 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.
 - iii. In the event they produce concrete proof of payment in the course of purging the contempt order, the court shall consider.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF JULY 2025

.....

J. N. ONYIEGO

JUDGE

