



Republic v Nairobi County Government; Jaribu Credit Traders Limited (Ex parte Applicant) (Judicial Review Miscellaneous Application 89 of 2017) [2025] KEHC 10259 (KLR) (Judicial Review) (11 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10259 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 89 OF 2017**

**JM CHIGITI, J
JULY 11, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

NAIROBI COUNTY GOVERNMENT RESPONDENT

AND

JARIBU CREDIT TRADERS LIMITED EX PARTE APPLICANT

RULING

1. The Application before this court for determination is the one dated 21st February 2025 wherein the Applicant prays for the following orders;
 - a. That the name of the contemnor, Mr. Patrick Analo, be substituted with Mr. Godfrey Akumali, the Acting County Secretary, as the contemnor in these contempt of court proceedings.
 - b. That the cost of this application be in the cause.

Brief background

2. The matter arises following the failure of the respondent to honour the decree of the court from the Judgement herein in Milimani CMCC No. 655 of 2013, that awarded the Applicant Kshs. 1,212,077.15 with interest at 12% interest from 12.9.2001 together with costs which was delivered by Hon. D.W Mburu (Mr) Principal Magistrate on 29th February, 2016 and a Certificate of Order against the Government which was subsequently issued on 17th August, 2016.



3. On 8th March, 2018, the Honourable Lady Justice Aburili issued a Mandamus order for judicial review by way of mandamus compelling the County Secretary and the Head of County Public Service as the Accounting Officer of the County Government to make payment of the sum of Kshs. 3,637,385.20 with interest on Kshs. 3,316,508.75 at the rate of 12% per annum from 1st August 2016 until payment in full.
4. It has been seven years running and the Respondent has failed to factor in this debt anywhere in its books and honour the decree by the Magistrate's Court and the order of Mandamus by the High Court, Acting County Secretary, Patrick Analo and Asha Abdi the County Chief Officer, Finance & Economic Planning though served with the court order has ignored and/or refused to settle the debt thereby disobeying and ignoring the orders of this honourable court which necessitates this application for contempt.
5. It was required of him by the orders of 21.2.2024 to appear before court and explain to the satisfaction of the court why he declined to obey the Court's Judgement dated 8th March, 2018. It is the Exparte Applicant's submission that the Contemnor has not approached this court for discharge.
6. The ex-parte applicants argue that the issue is whether a party who has not filed any application seeking substitution can be held to account.
7. Some of the questions posed include whether Mr. Godfrey Akumali is aware of the proceedings herein and whether culpability already found against Mr. Patrick Analo could be transferred to him?
8. The letter by the Respondent indicates Mr. Patrick Analo is still an officer of the Respondent, and moreover the proposed substitute is in acting capacity. It is therefore the ex-parte applicant's argument that the proposed party cannot be said to be in contempt, having not been served with Court's Judgement dated 8th March, 2018.
9. The Exparte Applicant then prays that the person against whom the orders of this honourable court on 21.2.2024 found to have been in contempt and has not presented himself before court for discharge be called upon to appear before this honourable Court for mitigation and sentencing.

Respondent's case

10. The respondent' argue that Mr. Patrick Analo no longer holds the position of Acting County Secretary. He has since reverted to his position as the Chief Officer for Urban Development and Planning, as per the official communications from the County Government.
11. The position of Acting County Secretary is now held by Mr. Godfrey Akumali, who has been duly appointed and is currently acting in that capacity.
12. The Respondent submits that the rule of law demands that the correct individual be held responsible for the enforcement of the Court's orders, particularly in contempt proceedings. The substitution of Mr. Analo with Mr. Akumali is consistent with the principles of accountability and justice under Kenyan law.
13. Order 1 Rule 10(2) of the Civil Procedure Rules provides that:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, or whose presence before the court



is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit, be added.”

14. Section IA and 1B of the *Civil Procedure Act* are instructive in guiding the Court to promote the fair, efficient, and just determination of cases. These sections emphasize that the overriding objective of the Court is to deal with cases in a manner that ensures fair treatment of all parties, promotes justice, and minimizes delay in the process.
15. The Respondent is of the view that it is within the discretion of the Court and should be done where it is necessary to reflect the current position of affairs in the matter. Substitution is a routine procedural remedy to ensure that justice is not hindered by technicalities.
16. The Respondent submits that the substitution of Mr. Analo with Mr. Akumali is necessary for the proper administration of justice. Mr. Analo no longer holds the position of Acting County Secretary and cannot, therefore, be held responsible for ensuring compliance with the Court's orders. Mr. Akumali, who currently occupies the position of Acting County Secretary, is the appropriate person who should be held accountable in these contempt proceedings.
17. Reliance is placed in the case of *Deported Asians Custodian Board vs. Jaffer Brothers Ltd* [1999] 1 E.A. 55 (SCU) as well as *Civicon Limited vs. Kivuwatt Limited and 2 Others* [2015] eKLR in which the court observed as follows:-

“Again, the power given under the Rules is discretionary which discretion must be exercised judicially, the objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”
18. In regard to the issue of prejudice to the parties, the Respondent submits that granting the substitution will not result in any prejudice to any party. The *Ex parte* Applicant, Jaribu Credit Traders Limited, remains the same, and the contempt proceedings will continue as they would have if Mr. Analo were still the Acting County Secretary. The only change is the substitution of the person responsible for ensuring compliance with the Court's orders. The said substitution is appropriate as it is in the interest of justice and does not affect the substance of the dispute. It does not affect the core of the proceedings, but only ensures that the correct individual is held accountable for compliance.
19. On the Interest of Justice matter, the Respondent submits that the interest of justice demands that the correct party be substituted in the contempt proceedings. Justice cannot be served if the person who is no longer in office is held responsible for compliance with Court orders. This would undermine the integrity of the judicial process and could potentially delay the resolution of the matter.



20. The Respondent submits that the Court's role in contempt proceedings is not only to punish for disobedience but also to compel the correct party to comply with its orders. Thus, contempt proceedings must be conducted with the utmost regard for the law and fairness, which necessitates the identification and substitution of the correct individual for enforcement purposes.

Analysis and Determination

The issue for determination in the suit is whether the contemnor should be substituted.

21. The Civil Procedure Code 2010 which provides as follows;

10. Substitution and addition of parties [Order 1, rule 10]

- (1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.
- (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.
- (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto
- (4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.

11. Government proceedings [Order 1, rule 11]

In respect of civil proceedings by or against the Government, this Order shall have effect subject to section 12 of the [Government Proceedings Act](#) (which relates to parties to such proceedings).

22. The [Government Proceedings Act](#) in its section 12 has the following to say;

- “(1) Subject to the provisions of any other written law, civil proceedings by or against the Government shall be instituted by or against the Office of the Attorney-General, as the case may be.
- (2) No proceedings instituted in accordance with this Part of this Act by or against the Office of the Attorney-General shall abate or be affected by any change in the person holding the Office of the Attorney-General.”



23. In *Njenga Mwangi Wachira & Partners v County Secretary, City County of Nairobi* [2018] eKLR the court in determining a similar matter opined in this way that;

“It is true that the County Executive in Charge of Finance is the one under obligation to pay funds, in the capacity as the accounting officer. It must always be remembered that a judicial review application is neither a criminal case nor a civil suit hence the application ought to be brought against the person who is bound to comply with the orders sought therein. In this case the Respondent ought to have been the Accounting Officer.

20. However, as this is merely a misjoinder the same ought not to be fatal to the application though the Court, may in exercise of its discretion, deny the applicant, even if successful, costs of the application. An issue as to the effect of misjoinder in judicial review proceedings was the subject of determination in *Republic Ex Parte the Minister for Finance & The Commissioner of Insurance as Licensing and Regulating Officers vs. Charles Lutta Kasamani T/ A Kasamani & Co. Advocate & Another Civil Appeal (Application) No. Nai. 281 of 2005* in which the Court of Appeal stated: “Suffice it to say that a defect in form in the title or heading of an appeal, or a misjoinder or non-joinder of parties are irregularities that do not go to the substance of the appeal and are curable by amendment...Is the form of title to the appeal as adopted by the Attorney General in this matter defective or irregular? We think not, as we find that it substantially complies with the guidelines set out by this Court”. [Emphasis added].
21. This was the position adopted in *Consolata Kihara & 21 Others vs. The Director of Kenya Trypanosomiasis Research Institute Nairobi H.C. Misc. Appl. No. 594 of 2002* [2003] KLR 582, where it was held that issues of joinder and misjoinder of parties are not of significance where no miscarriage of justice or any form of injustice is alleged as a result of the choosing of parties to the litigation. This position is even more relevant to proceedings in the nature of judicial review which are neither criminal nor civil and particularly in application for mandamus where what is sought is the enforcement of a decree against the respondent not in his personal capacity but in his official capacity. In such circumstances, the respondent is simply being compelled to facilitate the payment as opposed to imposing personal liability.
22. It is therefore my view that whereas misjoinder or non-joinder may lead to denial of costs in the event that the party in default succeeds in the application or even being penalised in costs, that blunder is not incurably defective and ought not, on its own, to be the basis upon which an otherwise competent application is to be dismissed where the substance of the reliefs sought can still be realised notwithstanding the irregularity.
23. Article 159(2)(d) of *the Constitution* enjoins this Court to administer justice without undue regard to technicalities of procedure, as long as the rules of natural justice are adhered to. At the end of the day the entity which is bound to settle the decree is the County Government and not the said officer in his personal capacity. Misjoinder of parties in County Governments was also



considered in Council of Governors & Others vs. The Senate Petition No. 413 of 2014 where it was held that:

“...the role of the Governor under Section 30(3) (f) of the County Governments Act is critical in fiscal management at the County level. He is the Chief Executive Officer and the buck stops with him in the management of county resources. It is critical that such a provision exists so as to ensure responsibility of public resources which would ultimately enhance the national values as provided for under Article 10 of the Constitution as well as the spirit and tenor of constitution.”

24. In High Court Judicial Review Miscellaneous Application No. 44 of 2012 between the Republic vs. The Attorney General & Another ex parte James Alfred Koroso, I expressed myself as hereunder:

“...the present case the ex parte applicant has no other option of realising the fruits of his judgement since he is barred from executing against the Government. Apart from mandamus, he has no option of ensuring that the judgement that he has been awarded is realised. Unless something is done he will forever be left baby-sitting his barren decree. This state of affairs cannot be allowed to prevail under our current Constitutional dispensation in light of the provisions of Article 48 of the Constitution which enjoins the State to ensure access to justice for all persons. Access to justice cannot be said to have been ensured when persons in whose favour judgements have been decreed by courts of competent jurisdiction cannot enjoy the fruits of their judgement due to roadblocks placed on their paths by actions or inactions of public officers. Public offices, it must be remembered are held in trust for the people of Kenya and Public Officers must carry out their duties for the benefit of the people of the Republic of Kenya. To deny a citizen his/her lawful rights which have been decreed by a Court of competent jurisdiction is, in my view, unacceptable in a democratic society. Public officers must remember that under Article 129 of the Constitution executive authority derives from the people of Kenya and is to be exercised in accordance with the Constitution in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit.....The institution of judicial review proceedings in the nature of mandamus cannot be equated with execution proceedings. In seeking an order for mandamus the applicant is seeking, not relief against the Government, but to compel a Government official to do what the Government, through Parliament, has directed him to do. The relief sought is not “execution or attachment or process in the nature thereof”. It is not sought to make any person “individually liable for any order for any payment” but merely to oblige a Government officer to pay, out of the funds provided by Parliament, a debt held to be due by the High Court, in accordance with a duty cast upon him by Parliament. The fact that the Accounting Officer is not distinct from the State



of which he is a servant does not necessarily mean that he cannot owe a duty to a subject as well as to the Government which he serves. Whereas it is true that he represents the Government, it does not follow that his duty is therefore confined to his Government employer. In mandamus cases it is recognised that when statutory duty is cast upon a Public Officer in his official capacity and the duty is owed not to the State but to the public any person having a sufficient legal interest in the performance of the duty may apply to the Courts for an order of mandamus to enforce it. In other words, mandamus is a remedy through which a public officer is compelled to do a duty imposed upon him by the law. It is in fact the State, the Republic, on whose behalf he undertakes his duties, that is compelling him, a servant, to do what he is under a duty, obliged to perform. Where therefore a public officer declines to perform the duty after the issuance of an order of mandamus, his/her action amounts to insubordination and contempt of Court hence an action may perfectly be commenced to have him cited for such. Such contempt proceedings are no longer execution proceedings but are meant to show the Court's displeasure at the failure by a servant of the state to comply with the directive of the Court given at the instance of the Republic, the employer of the concerned public officer and to uphold the dignity and authority of the court.”

26. As regards the existence of the competing interests, Githua, J in Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security *Exparte* Fredrick Manoah Egunza [2012] eKLR expressed herself as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the *Government Proceedings Act*. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the *Government Proceedings Act* (hereinafter referred to



as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.” [Emphasis mine].

In the premises I hereby direct that a Notice to Show Cause do issue to the Respondent and/or the County Executive in Charge of Finance to show cause why contempt of court proceedings cannot be commenced against them. The said Notice is to be served on the Attorney General as well.”

24. In similar fashion the court turns to the Court of Appeal Case No. 149 of 1991 JOSEPH OCHIE’NG & 2 OTHERS t/a AQUILINE AGENCIES –VS- FIRST NATIONAL BANK OF CHICAGO on the principles applicable on amendments. Shah J.A summarized the principles thus;

“.....amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule however late the amendment sought to be made should be allowed if made in good faith provided costs can compensate the other side; that exact nature of the proposed amendment sought ought to be formulated and submitted to the other side and the court; that adjournment should be given to the other side if necessary if an amendment is to be allowed; that if the court is not satisfied as to the truth and substantially of the proposed amendment it ought to be disallowed; that the proposed amendment must not be immaterial or useless or merely technical...’ The court’s power to allow amendments is donated under Order VIA, rule 3, 5 & 8. The court can allow amendment at any stage of the proceedings. The only test being whether it was timeously made; whether it is in good faith; and whether costs can compensate the Defendant/Respondent and whether the amendment sought is material and not merely technical.”

25. In agreement with the learned judge so as to ensure the ends of justice are met to fulfill the requirements of article 48 that pushes for access to justice as seen in *the Constitution*, the court takes the position similar to the court in Republic V Principal Secretary, Ministry of Lands And Physical Planning, Exparte: Orbit Chemicals Limited eKLR [2017] the following was

“It was contended by the Respondent that there by the time the Certificate of Order Against the Government was served there no budgetary allocation to settle this claim. Githua, J in Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza [2012] eKLR expressed herself as follows: “In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful



litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the [Government Proceedings Act](#). The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the [Government Proceedings Act](#) (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.” [Emphasis mine]. 19. I associate with the said decision and it is therefore my view that settlement of decretal sum by the Government whether National or County does not necessarily depend on the availability of funds. This position was appreciated by this Court in [Wachira Nderitu, Ngugi & Co. Advocates vs. The Town Clerk, City Council of Nairobi Miscellaneous Application No. 354 of 2012](#) in which this Court pronounced itself as follows: “I have however considered the other issues raised by the respondent with respect to its debt portfolio as against its financial resources. It is neither in the interest of this Court nor that of the ex parte applicant that the respondent should be brought to its knees. The Court appreciates and it is a matter of judicial notice that most of the local authorities are reeling under the weight of the debts accrued by their predecessors and that they are trying to find their footing in the current governmental set up. Accordingly, I am satisfied based on the material on record that the respondent ought to be given some breathing space to arrange its finances and settle the sum due herein.”

26. On the issue of whether Mr. Patrick Analo has purged contempt the court would address itself as follows as seen in Republic V County Secretary, County Government Of Mombasa & Another Ex Parte Epco Builders Limited eKLR[2024] which states as follows;

“It is important to bear in mind that contempt of court is an offence of a quasi-criminal character, therefore an application of this nature requires credible proof beyond the standard applicable to ordinary civil cases to warrant imprisonment of an alleged contemnor. The standard of proof in this regard was well discussed by the Court of Appeal in *Mutitika v Baharini Farm Ltd* [1985] eKLR thus:In, *Re Breamblevale Ltd* [1969] 3 All ER 1062, Lord Denning MR. (as he then was), at page 1063, had this to say,“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt”.With the greatest possible respect to that eminent English judge, that proof is much



too high for an offence “of a criminal character” and, ipso facto, not a criminal offence properly so defined.....In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence which can be said to be quasi-criminal in nature...”

27. The procedure on handling contempt of court proceedings takes the route highlighted in *Akoyo v Permanent Secretary, State Department for Devolution; Attorney General (Interested Party)* (Application 440 of 2018) [2023] KEHC which provides the following;

“Section 5 of the *Judicature Act* remained the statutory basis upon which proceedings for contempt were taken. Section 5 provided that the law to be applied as that applied in England and that a committal order could only be appealed against as if it was a criminal conviction.

The Kenya *Contempt of Court Act* (annulled) was short-lived because it was declared unconstitutional in November 2018 in *Kenya Human Rights Commission versus Attorney General & Another* (2018) eKLR. Apparently, it had been passed without public participation and was also held to be an affront to the independence of the judiciary. Since the law that purported to repeal the was voided, the result was that Kenya reverted to section 5 of the *Judicature Act* on matters contempt. The net effect of annulling the *Contempt of Court Act* was that it was if the never existed. It was void ab initio and no action taken upon it, including the purported repealing of the *Judicature Act* could be said to be valid.

Section 5 of the *Judicature Act* had nothing much in it in terms of substance and procedure other than the obligation placed upon courts to ascertain, at any given time, the law applicable in England for punishment and, certainly, the procedure for committal for contempt.

The *Contempt of Court Act* 1981 of England and Order 52 of the Supreme Court Rules (Supreme Court of England) would apply to contempt of court proceedings in Kenya but they did so only on the authority of the *Judicature Act*. The procedure for contempt of court proceedings, including commencement, prosecution and punishment for contempt of court was, until 2012, encapsulated in Order 52 Rules 1 to 4 of the Rules of the Supreme Court (RSC); those rules were made under the Supreme Court of *Judicature Act*, 1873, otherwise known as the *Judicature Act*, 1873. The *Judicature Act*, 1873 abolished a cluster of courts in England and Wales dating back to medieval periods, some with overlapping judicial powers, and in their place established the Court of Appeal, the High Court and the Crown Court all together to be known as the Supreme Court of Judicature. The Supreme Court of Judicature shouldn't be confused with the Supreme Court of the United Kingdom which was established only on October 1, 2009 to assume the judicial functions of the House of Lords. The procedure for contempt of court proceedings under Order 52 of the Rules of the Supreme Court Judicature.”



28. In light of the above the court similarly turns to the court in the supreme Court Applications Nos.- E005, E006 and E012 of 2023 *Bia Tosha Distributors Kamahuha Ltd v Cogno Ventures -KBL-UDV-K-LTD-EABL-DIAGEO-PLC* as it decided the following;

“The 6th to 9th respondents having been struck out from the proceedings, leaves the consideration of the prayers against the 1st to 5th respondents. The application is based on section 28(4) and (6) of the *Supreme Court Act*. Section 28(4) of the Act grants this Court the power and authority similar to that bestowed upon the High Court, to punish for contempt. The competence of this Court to punish for contempt was affirmed in our ruling made on 15th March 2019 in *Republic v Ahmad Abolfathi Mohammed & another SC Petition No.39 of 2018 [2019] eKLR* as follows: “[27] We have taken note that the functioning of the reparatory aspect of the *Contempt of Court Act* (s.24A), at the moment, and with regard to the operations of the High Court and the Court of Appeal, admits of uncertainty quite apart from the fact that we are not applying them here but we affirm such not to be the case as regards the Supreme 27 | Page Application No. E005, E006 and E012 of 2023 Court’s competence, which is founded upon the *Supreme Court Act*, 2011 (*Act No. 7 of 2011*), Section 28 (1), (3), (4) and (5)...” [64] The starting point is to first determine whether there was contempt of our Court orders. Our final orders were very specific in so far as we remitted the matter back to the High Court which was directed to deal with consequences of any disobedience of the orders. To rehash, we directed that: “(iv). The High Court orders of 29th June, 2016 be and are hereby reinstated and the Court do consider the consequences of any disobedience of those orders.” In reinstating the orders of 29th June 2016, we were mindful that the High Court contempt application is still pending determination and it is only proper that it be allowed to proceed with it to its logical conclusion. The allegations of non-disclosure, concealment and misrepresentation of facts is best dealt with by the High Court in line with the directive of this Court as it is a question of fact and evidence.”

Disposition;

29. The issue of the contempt should be dealt with after the issue of joinder so as to avoid the loss of the issue of contempt consequences or liability bearer.
30. The claim is not against an individual. It is institutional and the court is satisfied that the Respondent as the institution is aware of the suit as a result of which the officials are aware of the contempt proceedings by didn’t of their being the office bearer.
31. I find that the substitution of Mr. Analo with Mr. Akumali is necessary for the proper administration of justice given that Mr. Analo no longer holds the position of Acting County Secretary and cannot, therefore, be held responsible for ensuring compliance with the Court’s orders.
32. Mr. Akumali, who currently occupies the position of Acting County Secretary, is the appropriate person who should be held accountable in these contempt proceedings. No prejudice will be suffered by the Respondent because of the substitution.
33. Failure to enjoin Mr. Akumali into the proceedings will offend the Applicants claim without any justification at all.

Order:

1. The Application is allowed.



2. The name of Mr. Patrick Analo is hereby substituted with Mr. Godfrey Akumali, the Acting County Secretary.
3. Costs in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF JULY, 2025.

.....

J. CHIGITI (SC)

JUDGE

