



County Government of Vihiga & 2 others v Onkunya, SRM, Kisumu Chief Magistrate’s Court & 2 others (Petition E016 of 2024) [2025] KEHC 12625 (KLR) (17 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12625 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
PETITION E016 OF 2024
A MABEYA, J
SEPTEMBER 17, 2025**

BETWEEN

**COUNTY GOVERNMENT OF VIHIGA 1ST PETITIONER
COUNTY SECRETARY, COUNTY GOVERNMENT OF VIHIGA 2ND
PETITIONER
COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE
& ECONOMIC PLANNING, COUNTY GOVERNMENT OF
VIHIGA 3RD PETITIONER**

AND

**W. K. ONKUNYA, SRM, KISUMU CHIEF MAGISTRATE’S
COURT 1ST RESPONDENT
THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT
NORGEN ENTERPRISES LIMITED 3RD RESPONDENT**

RULING

1. By a plaint dated 14/2/2017, the 3rd Respondent lodged a claim against the 1st Petitioner for recovery of Kshs. 11,975,250 being the balance of the amount owed to it by the 1st Petitioner for cleaning services provided at Vihiga County Referral Hospital for the period between June 2014 and November 2016.
2. That upon issuance of summons, the same were served upon the Petitioners. The Petitioners failed to enter appearance whereby the 3rd Respondent proceeded to request for Judgment which was endorsed on 20/3/2017. The Subsequently, a decree dated 20/3/2017 was extracted and a Certificate of Costs dated 10/5/2017 issued.
3. The 3rd Respondent then followed the execution process by way of Notice of Motion dated 9/2/2024 to cite the Petitioners for contempt of court. By an order made by Aburili J on the 11/7/2024, the



Petitioners were found to be in contempt of court and required to attend court on the 26/9/2024 for mitigation and sentencing.

4. It is noteworthy that at no point during the aforementioned process did the Petitioners attempt to participate in the said process or did they attempt to either set aside the aforesaid proceedings.
5. By a petition dated 18/9/2024, the Petitioners have alleged a myriad of constitutional violations and prayed for several declarations including the following, that: -
 - a. This Honourable Court do find and declares that the limit of jurisdiction of a Senior Resident Magistrate which position the 1st Respondent held on the 20/3/2017 when he entered judgement for the 3rd Respondent in Kisumu CM Civil Suit No. 68 of 2017 was and still is fixed at Kshs. 7 million
 - b. This Honourable Court do find and declares that in entering the subject judgement for the 3rd Respondent on the 20/7/2017 in the sum of Kshs. 11,975,250 as he did, the 1st Respondent acted outside the limit of his jurisdiction and in his violation of Article 169 (1) (a) & (2) of the Constitution and Section 7 (1) (d) of the Magistrates Courts Act.
 - c. This Honourable Court do hereby find and declares that in filing the Civil Suit No. 68 of 2017 in Kisumu Chief Magistrates Court in Kisumu County away from Vihiga County which is where the Petitioners are resident and where the alleged cause of action arose, the 3rd Respondent acted in abuse of court process and violated Article 169 (1) (a) & (2) of the Constitution.
 - d. This Honourable Court do hereby find and declares that in failing to state their respective identities on the signed decree and certificate of costs arising from the judgement in Kisumu CM Civil Suit No. 68 of 2017, the Resident Magistrate and Executive Officer violated Article 10 (2) (e) of the Constitution and exercised judicial authority contrary to Article 159 (1) and 2 (e) of the Constitution.
 - e. The Honourable Court do find and hereby declares that as a result of the violation of the various provisions of the Constitution on pecuniary and territorial jurisdiction by the 1st and 3rd Respondents, the judgement of the Senior Resident Magistrates dated 20/7/2017 in Kisumu Civil Suit No. 68 of 2017 together with the decrees and certificate of costs arising therefrom are, to the extent of the said violation hereby declared null and void and of no legal effect.
 - f. The Honourable Court do recall all its orders issued in Judicial Review Cause No. 14 of 2019 and reviews the orders and vacates or set them aside.
 - g. The Honourable Court in exercise of the powers conferred by Article 165 (6) and (7) of the Constitution do hereby call for the record of the subordinate court in Kisumu Civil Suit No. 68 of 2017 for the purpose of declaring the entire proceedings null and void, striking the entire suit out for want of pecuniary and territorial jurisdiction and the costs of the aforementioned proceedings as well as in this petition recovered from the 3rd Respondent.
6. The Petitioners contended that Article 10 of the Constitution required that the 3rd Respondent ought to have instituted Civil Suit No. 68 of 2017 in Hamisi or Vihiga Courts that were vested with the requisite territorial and pecuniary jurisdiction.
7. That the concealment of the identities of the respective officers who signed the decree and certificate of costs violates Article 10 of the Constitution on good governance, integrity, transparency and accountability.



8. That the Petitioners right to a fair trial under Article 50 (2) (d) were violated as a result of the contempt order made by the High Court against the Petitioners arising out of an impugned judgment delivered by a court without jurisdiction.
9. The 1st and 2nd Respondents did not file any response to the Petition however the 3rd Respondent filed a Replying Affidavit sworn on the 17/1/2025 by one Francis Otieno, its director.
10. The 3rd Respondent deposed that the Petition and reliefs sought is misconceived, frivolous and constitutes both an abuse of the court process and is res judicata as the 1st Petitioner who was the sole Defendant in the subordinate Court was duly served with all the processes and failed to participate. That no attempt has been made to give any explanation as to why no appeal or application for review was lodged against the finding of the subordinate court.
11. I have considered the pleadings herein as well as the submissions filed by both parties. The only issue for determination before this court is whether the petition herein is sustainable.
12. It is well settled that where there is a procedure to challenge any decision the same should be followed. The Court of Appeal in the case of [*Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates*](#) [2013] KECA 208 (KLR) quoted its earlier decision in the case of [*Kimani Wanyoike v Electoral Commission*](#) Civil Appeal No. 213 of 1995 (UR) wherein it had ruled that: -

“Where there is a law prescribed by either a constitution or an act of parliament governing a procedure for the redress of any particular grievance, that procedure should be strictly followed”.
13. In the present case, the impugned judgment was entered *ex-parte* due to the 1st Petitioners failure to participate in the proceedings. There was nothing that precluded it from applying to have the same set aside for any of the reasons either raised now or known reasons for setting aside an interlocutory judgment. It decided to sleep on its rights.
14. Consequently, the 3rd Respondent proceeded to process the decree and certificate of costs and in the process of execution the Petitioners failed to settle the said decretal sum thus were cited for contempt. It is worth noting that the Petitioners have not sought to appeal or review any of the said decisions. They have now sought to challenge the same vide the present Petition.
15. The Petitioners have impugned the signing of the decree dated 20/3/2017 and Certificate of Costs dated 10/5/2017 on account that they were signed by individuals whose identities are unknown, who lacked jurisdiction both pecuniary and territorial to do the same.
16. This assertion by the Petitioners is totally wrong. This is so because when an Judicial Officer in the subordinate court or a Deputy Registrar in the Superior Courts signs an interlocutory judgment, a decree or order, that is undertaken in their administrative capacity and not in exercise of their judicial discretion.
17. Accordingly, the issue of lack of the 1st Respondent’s lack of pecuniary jurisdiction does not arise. Further, it must also be remembered that notwithstanding the various local geographical limitations in jurisdiction imposed by sections 11, 12, 13, 14, and 15 of the [*Civil Procedure Act*](#), the Resident Magistrate’s Court otherwise has jurisdiction throughout Kenya. See section 3(2) of the [*Magistrates’ Courts Act*](#), Cap. 10.



18. Subsection (1) of that section provides that a Resident Magistrate's Court shall be duly constituted when held by a chief magistrate, a principal magistrate, a senior resident magistrate or a resident magistrate.
19. That being the case, it is really a matter of procedure, not jurisdiction, to transfer a case from one Resident Magistrate's Court to another in order to satisfy local geographical limitations, as that court otherwise has jurisdiction throughout Kenya.
20. In the circumstances, it is my finding that this petition is misconceived and an abuse of the court process. It is merely intended to circumvent the orders issued by Aburili J. on the 11/7/2024. The Petitioners have a clear way of challenging the orders or proceedings they are aggrieved with but not by way of a Constitutional Petition before this Court.
21. In this regard, the said Petition is hereby struck out with costs to the 3rd Respondent.
It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 17TH DAY OF SEPTEMBER, 2025.

A. MABEYA, FCI Arb.

JUDGE

