



**Raindrops Limited v County Government of Kilifi (Civil Case
9 of 2015) [2025] KEHC 12963 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12963 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL CASE 9 OF 2015
M THANDE, J
SEPTEMBER 19, 2025**

BETWEEN

RAINDROPS LIMITED PLAINTIFF

AND

COUNTY GOVERNMENT OF KILIFI DEFENDANT

RULING

1. Before the Court for determination is an application dated 24.8.23 in which the Plaintiff seeks the following orders:
 1. Spent;
 2. That the Governor Kilifi County Government GIDEON M. MNGARO, County Attorney Kilifi County Government KAZUNGU LUGANJE, and the Kilifi County Secretary MARTIN M. MWARO be all cited for contempt of this Honourable Court and be committed to civil jail for 6 months for defying and being in flagrant and contemptuous breach of the Honourable Court's Order dated 17th of January 2022 as issued by the Honourable Court.
 3. That the Contemnors be summoned to appear before this Honourable Court to show cause why they should not be committed to civil jail for disobeying the Orders.
 4. That the Governor Kilifi County Government Gideon M. Mngaro, County Attorney Kilifi County Government Kazungu Luganje, and the Kilifi County Secretary Martin M. Mwaro be condemned to personally pay the costs of this application.
2. The Plaintiff's case as set out in the Application and the supporting affidavit of its director Shaib Hamisi Mtuwa, is that this Court issued an order dated 17.1.22, pursuant to the Plaintiff's application of even date restraining the Defendant, its servants, agents or employees from taking over collection points or collecting of cess and parking revenue, pending the inter partes hearing and determination



of the application. The orders were duly served on the Defendant, County Attorney and County Secretary. Additionally, that then County Attorney Bibi Fondo was present in court when the orders were extended. The Plaintiff contends that the 3 persons have disobeyed the said orders by advertising and inviting the public to make bids in relation to collection of all revenue in the county, including cess and parking fees and issued cess and parking revenue collection contract, contrary to the said orders. The matter is now under investigation by the Ethics and Anti- Corruption Commission (EACC). The Plaintiff contends that the disobedience of the said orders is intentional, malicious and contemptuous. The Plaintiff urged the Court to commit the contemnors to civil jail so as to send a clear message to the wider public that the Court has powers to punish contemnors and to uphold the rule of law.

3. The Defendant opposed the Application vide a replying affidavit sworn by Kazungu Lughanje, the County Attorney on 18.10.23 on his own behalf and that of the County Governor and County Secretary (the “contemnors”). He denied the allegations of disobedience of the orders in question. He averred that by a letter dated 16.2.17, the County Government terminated the Amended Agreement for Cess and Revenue Collection dated 4.7.14 (the Amended Agreement). Further that in its amended plaint dated 18.10.17 and filed in Court on 3.11.17, the Plaintiff sought a permanent injunction restraining the County Government from terminating the Amended Agreement. It was further averred that in its judgment dated 13.7.21, this Court declined to grant the permanent injunction, awarded significant general and special damages and in effect upheld the termination of the Amended Agreement.
4. The “contemnors” contend that with effect from the date of the judgment, the Amended Agreement no longer exists and the Plaintiff has no basis for insisting on continuing to collect cess and parking fees revenues on behalf of the County Government. Further that this was communicated to the Plaintiff vide a letter dated 10.8.21 from County Government’s lawyers. The County Government then took over the collection of the said revenues. Further that when the Plaintiff attempted to forcefully take back the collection of the said revenues, the County Government reported the matter to the police and its employees were charged in court. Additionally, that as at 17.1.22 when the orders in question were issued, the Plaintiff had stopped collecting the said revenues as far back as 31.12.21 and had withdrawn their staff from all collection points and closed its offices in Malindi. The “contemnors” thus contend that the Application is an abuse of the court process and brought in bad faith. They urged that the same be dismissed with costs.
5. In a rejoinder vide a further affidavit sworn by Shaib Hamisi Mtuwa on 3.11.23, it was averred that the “contemnors” did not address the orders of 17.1.22 post facto the partial judgment of 13.7.21 and the hearing of the suit. It was further averred that the illegal award of the tender was shrouded in secrecy and is being investigated by the EACC for fraud and corruption. It was asserted that the Plaintiff was entitled to 30% of the collected revenue and was to set up weigh bridges, lease property and construct car parks while the new entity is done none of this while being paid 25% of the collected revenue. Further that the rates in Mombasa County are 5% while the current percentage offered is 25%.
6. The jurisdiction of this Court to punish for contempt of Court is contained in Section 5 of the *Judicature Act* which provides:
 - (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.
7. A party who seeks orders for punishment for contempt of a court order, must bring his application within the threshold required, namely that an applicant must demonstrate the terms of the order in question, knowledge of the terms by the respondent and disobedience by the respondent of the said



order. In the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR Mativo, J. restated what an applicant was required to prove in contempt proceedings, as follows:

“It is an established principle of law that^[45] 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. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.”

8. In order to establish whether the Plaintiff has demonstrated the 3 elements set out above, it is necessary to determine whether the order in question exists in the first place.
9. I must at the outset state that the judgment dated 13.7.21 relied on by the “contemnors” is irrelevant as it was superseded by the subsequent orders of 17.1.22.
10. The orders of 17.1.22 were given by Githinji, J. and are reproduced below:
 1. That the Application be and is certified urgent.
 2. That an interlocutory injunction restraining the County Government of Kilifi and or any other third parties by themselves and or their servants and or agents and or employees and or howsoever from taking over the collection points and or collection of Cess and Parking Revenue, pending the hearing and determination of the Application inter-partes.”
 3. That the Application be served for directions on 24.1.22.
11. The record shows that after hearing the application dated 17.1.22 and 2 others all filed by the Plaintiff. Githinji, J. delivered a ruling dated 26.1.22. In the ruling, the learned Judge stated that he did not find sufficient reasons to warrant vacation of the interim orders issued on 17.1.22 and made the following orders:
 - a. That the interim orders in place are extended until 3rd February, 2022 when the matter shall be placed before Hon Justice Nyakundi for directions.
 - b. The matter be placed before Hon. Justice Nyakundi virtually on 3rd February, 2022 for further directions.
12. It can be seen that the interim orders were extended until 3.2.22. Nothing has however been placed before Court to show that there was further extension of the orders. The interim injunctive orders thus no longer subsist. It follows therefore that the “contemnors” cannot be said to be in contempt of orders that do not exist.
13. In light of the foregoing, the inevitable conclusion I draw, is that the Application dated 24.8.23 lacks merit and the same is hereby dismissed with costs to the Defendant.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 19TH DAY OF SEPTEMBER, 2025

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M. THANDE



JUDGE

