



Mwangangi & Co Advocates v Machakos County (Miscellaneous Civil Application E010 of 2021) [2024] KEHC 2541 (KLR) (13 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2541 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS CIVIL APPLICATION E010 OF 2021**

**FR OLEL, J
MARCH 13, 2024**

BETWEEN

MWANGANGI & CO ADVOCATES APPLICANT

AND

MACHAKOS COUNTY RESPONDENT

RULING

A. Introduction

1. Before court for determination is the Respondent’s notice of motion application dated 19th September 2023, brought pursuant to Article 159(2)(6) of the Constitution of Kenya, Order 52 Rule 1 & Rule 15 of the Civil Procedure Rules 2010, Order 45 Rule 1 of the Civil Procedure Rules Section 1A, 1B,3A & 63€ of eh Civil Procedure Act and all other enabling provisions of law. The Respondent/applicant seeks for orders that;
 - a. Spent
 - b. Spent
 - c. This honorable court be pleased to review and set aside the warrant of arrest issued against the chief executive committee member of Finance & Economic Planning and the Chief Officer for Finance & Economic Planning of the Machakos County Government.
 - d. This Honourable court be pleased to issue any other or further relief as it deems fit and just to grant in the circumstance.
 - e. That costs of this application be provided for.
2. The application is supported by the grounds on the face of the said application and the supporting affidavit of one Collins Adipo, the chief officer Finance & Economic Planning of Machakos County



Government. The Respondent/Applicant did also later file a supplementary Affidavit sworn by one Julius Kasanga who disposed that he had just been sworn in to the position of Chief Officer Finance and had taken over from Collins Odipo. The said supplementary Affidavit was dated 31st October 2023. On the other hand, the Advocate/Respondent did file her comprehensive Replying Affidavit dated 27th September 2023 opposing this application.

B. The Pleadings

3. The Respondent/Applicant deposed that the Ex parte applicant had obtained warrants of arrest against the Chief Executive Committee Member for Finance and Economic Planning and the Chief Officer for Finance & Economic Planning of the Machakos County Government, on ground that the said officers had refused/failed and/or neglected to pay the ex-parte applicant the sum of ksh.138,082,257/= as at 10th April 2023 which position was not correct, as the failure to pay this sum was not as a result of any fault of the said officers or the county government of Machakos, but was due to factors outside the control of the said officers of the County Government of Machakos.
4. The Ethics and Anti-Corruption commission in exercise of its powers and mandate under the law had taken all the documents relating to this matter for purposes of conducting investigations as per its mandate, and therefore the Respondent/ applicant was not in a position to make any payment as that would be in breach of the law and further the affected officer in the finance department would be held personally liable to the said payments, should the investigations hold that they are not due.
5. For the reason's advances, it was in the interest of Justice to have the warrant of arrest issued herein lifted/stayed pending completion of the ongoing investigations. That before the said investigations commenced, the Ex parte applicant had been paid a sum of ksh.30,000,000/= being partial settlement of the outstanding advocate/client outstanding bill and the move by EACC had crippled any further payment hereto. It was thus deposed that it was in the interest of justice to allow the prayers sought.
6. The Applicant-Advocate/respondent did oppose this application through her comprehension replying Affidavit sworn by Florence M. Mwangangi dated 27th September 2023. She deposed that she was an advocate of the High Court of Kenya and was admitted to the Roll of Advocates on 20th September 1990, (Admission Number. P.105/2019/90). From the onset the application as filed was bad in law and was one which ought to be struck out in limine for the reasons that;
 - a. The application seeks to irregularly and lawfully set aside the warrants of arrests herein which emanate from lawful long-standing judicial processes of;
 - i. A ruling of this honorable court dated 16/6/2020 in a taxation reference In Machakos HCC Misc Application no. 50 of 2020 (formerly Machakos H.C Misc 17 of 2020) assessing the costs in an Advocate/client bill of costs filed against the Respondent/Applicant by the ex-parte applicant/respondent in Machakos H.C Misc Civil application no. 197 of 2014 ('the bill of costs').
 - ii. A Court's certificate of Taxation dated 2/7/2020 issued upon the said Ruling dated 16/6/2020 in the said taxation reference.
 - iii. A judgment of the Court dated 19/11/2020 in the said Machakos HCC Misc Civil Application no. 50 of 2020 for the costs certified in the said certificate of taxation dated 2/7/2020.
 - iv. A decree issued by the court on 18/12/2020 on the said judgment dated 19/11/2020.



- v A judgment of this honourable court dated 13/6/220 granting the ex-parte applicant the judicial review orders of mandamus in the judicial review herein to enforce the said decree issued by the court on 18/12/2020 on the said judgment dated 19/11/2020 in the said taxation reference in the said Machakos HCC Misc Civil Application no. 50 of 2020 without seeking to set aside and said Ruling on the Taxation reference, the said certificate of taxation on the assessed costs on the bill of costs, the said judgment and decree thereon for the costs assessed on the certificate of taxation and the judgment for the judicial review of mandamus herein.
- b. The Respondent/applicant was fully involved at each stage of the aforestated judicial process as filed and submitted orally and in writing as and when it deemed fit to do so.
- c. The Respondent/applicant never challenged the said Ruling, certificate of costs, judgment and decree as and when by law stipulated.
- d. The application now seeks to irregularly and illegally terminate the said judicial process by merely seeking to vacate the warrants of arrest herein.
- e. The prayers sought in the application are untenable in law in that they are final in nature yet they are sought in the interim.
- f. The application which in its nature seeks equitable orders, is an afterthought and brought in bad faith with dirty hands as;
- i. The Respondent/applicant has deliberately withheld material facts from this honourable court that is has for a long while been aware of the matter of the costs herein and the various orders, judgments and decree of this honourable court which it was to settle but refused to comply with the same despite having variously promised to settle the costs;
- ii. The Respondent/Applicant has not disclosed to the court that it was served with all the court processes on the long judicial process enumerated above in relation to the costs herein and filed papers in response thereto and was involved in the hearings hence making it appear thereto and was involved in the hearings hence making it appear in the application as not having participated therein;
- iii. Further, the Respondent/applicant as withheld material information from the court that it was also served with the notice to show cause application leading to the issuance of the warrants of arrest herein and that it did not file a response thereto but made appearance in court in the proceedings;
- iv. The Respondent/applicant is seeking equitable reliefs from this honourable court without itself doing equity by failing for a long period of time to comply with the decree issued by this honourable court on 18/12/2020 on the said judgment dated 19/11/2020 in the said taxation reference in Machakos HCC Misc Civil application no.50 of 2020.
- g. The Respondent/applicant is guilty of laches with regard to compliance with the decree herein.
- h. The application offends the mandatory provisions of Order 9 rule 9 of the [Civil procedure rules](#) as the firm of M/S Mutua Nyongesa has purported to file a notice of change of advocates from the firm of Ms B.M Mungata after judgment had been entered herein without leave of the court or filing of a consent thereof.



7. The court case for which costs had been taxed emanated from instructions given to her law firm on 14.12.1998 by the then Municipality council of Machakos which was the constitutional predecessor of the Respondent/applicant to conduct their defense, In Nairobi HCC No. 2765/1998 Danson Mutuku Muema and others v County council of Machakos and others which was later transferred to Machakos and registered as Machakos HCC No. 255 of 2019. In the said suit, the plaintiffs had claimed ownership of L.R NO. 1491/Machakos township measuring approximately 3,769 acres on which parcel of land existed (and still do exist) several public institutions managed by the central government & Municipality council of Machakos/Machakos county government.
8. As at 2013, when the Respondent/Applicant became operational pursuant to the 'devolution chapter' under 2010 constitution, the trial court had partly heard the plaintiff's evidence and the county government newly installed instructed the her firm to continue the handle the pending matter as it was the only available public land to allow for the expansion of Machakos town, establishment of the County Headquarters and development of other 'new Machakos city' infrastructure. Eventually they had to part ways with the devolved government on account of 'non-payment of legal fees' by the county government and proceeded to filed their advocate/client bill of costs dated December 15, 2014 for taxation. The said bill of costs was subject of litigation and eventually taxed by the taxing master on November 14, 2016.
9. Being dissatisfied with the taxed amount, the Applicant-Advocate/respondent did file a reference being Machakos Hcc No. Misc Appl no. 318 of 2016 and vide its Ruling dated November 14, 2016 the High Court (Justice Pauline Nyamweya) did find that the taxing master had committed an error and ordered for fresh re-taxation of item 1 of the Advocate/client bill of costs. The re-taxation was done again and a ruling rendered on March 12, 2020 but dated March 5, 2020. Again being dissatisfied by the taxing masters findings the Advocate/Respondent once again moved to high court by filing the 2nd reference being Machakos Misc civil Appl. No. 50/2020 where on June 16, 2020 Hon. Justice D.K Kemei did rule that the Advocate/Respondent was entitled to Ksh.71,095,942/= and subsequently a certificate costs issued by the court on 02.07.2020.
10. The Respondent/applicant did not appeal as against this ruling and subsequently they did file an application dated 03.08.2020 under Section 53(2) of the *advocates Act* to enter judgment against the Respondent/Applicant herein. The said application was opposed by the Respondent/Applicant herein by filing a response thereto, Hon. Justice G.V Odunga, upon considering the said application on merit did deliver his Ruling on November 19, 2020 allowing judgment in the sum of Ksh.128,825,847/= compromising of taxed costs and interest thereon.
11. The advocate/respondent further did write to the Respondent /Applicant attaching the decree, but no payment was made to settle the decree, yet the Respondent/applicant was statutorily, constitutional and equitably obligated to pay the decretal sum but deliberately failed to do so. This necessitated the advocate/respondent to file this judicial review proceedings which was heard on merit and vide a judgment delivered on June 13, 2022 In the presence of both parties, the court did issue a writ of mandamus compelling the applicant herein to pay its then advocate/respondent a sum of kshs. 110,049,244.40/= being the balance of the decretal sum and accrued interest as at 13th September 2021 arising from the decree dated 18th December 2020 issued in Machakos Misc civil Application No. 50 of 2020.
12. Subsequently the advocate/respondent wrote several letters to the Respondent/applicant seeking settlement of the sums due but no progress was made in settling the same. As a result, they had begun execution proceedings (by filing the NTSC) and on June 14, 2023 in the presence of both parties this



- court did issue committal orders. As against the Respondent/Applicant officers for failing to comply with the judgment issued in the judicial review proceedings where orders of Mandamus were granted.
13. The issue of investigation by EACC was an afterthought as during the long litigations process leading to the warrant of arrest, the issue of investigations by EACC never arise. It was a red herring raised to distract court from enforcing the judgment herein. Further and without prejudice to the foregoing the Respondent/applicant had not annexed any proof that it acted on the said letter (from EACC) and what actions they took thereon. Also it was to be noted that the said letter of EACC referred to the procurement for the period financial year 2020/2021 and financial year 2021/2022 which was well outside the 1998 – 2014, when she received instructions to act for the Respondent/Applicant in the primary matter.
 14. This application was filed with ill motive and was tailored for the purpose of frustrating execution of a decree lawfully and regularly issued by this honourable court pursuant to lawfully instituted proceedings on the advocate/client costs taxed. Retainer in this matter had ever been disputed and the reason advanced were therefore untenable and ought not to be granted. There was need to close this litigation and any further delay would greatly prejudice the advocate/respondent and cause her injustice and irreparable harm. The court was therefore urged to dismiss this application with costs to the advocate/respondent.
 15. The Respondent/Applicant did file their supplementary affidavit dated October 31, 2023 sworn by the new chief officer of finance and economic planning, one Julius Kisange. He deposed that this application did not seek to challenge the history of this matter or facts herein. The county government of Machakos had not refused to pay the ex-parte applicant the costs awarded by the court and had only sought to set aside the warrant of arrest issued against its Chief Officer Finance and County Executive Committee Member for finance and have them lifted on grounds enumerated in the application under consideration by this court. They had partially paid the assessed costs of ksh.30,000,000/= and therefore it would not be said that they had completely disobeyed the orders issued by this honourable court.
 16. The EACC was an independent commission establish under Article 79 of *Constitution of Kenya* and had an independent mandate which they could not interfere with. The investigations being carried out were not fabrications nor had they present fake letters on behalf of other government agencies and presented them in court. It would therefore be prejudicial to arrest the said officers and punish them for circumstances beyond their control and the ends of justice would be better met by lifting the warrants of arrest and allowing time for the EACC investigations to be complete.

C. Submissions

The Client/Applicant submissions

17. The Respondent/applicant did file their submissions dated 7th November 2023, where they did rehash and reiterate the factual basis of their application. The warrant of arrest issued were premature at this stage as there was an independent constitutional & legal process that was ongoing and had to be finalized before further proceedings could be undertaken herein. Effecting the Warrant of Arrest would only inflict pain on the personal bodies of the effected officers who could not possibly under the circumstances defend themselves due to circumstances beyond their personal conduct as they could not direct EACC on how to undertake their duty. There was therefore no deliberate disobedience of the orders of this court and therefore punishment/arrest order was premature. Reliance was placed on the case of *Republic v County government of Kitui ex-parte, Fair plan systems limited* (2022)eKLR,



where it was held that the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, almost but not exactly beyond reasonable doubt.

18. The Respondent/Applicant further placed emphasis in the case of *Republic v Principal Secretary Ministry of Defence ex-parte Geroge Kariuki Waitheka* (2019)eKLR where the court noted that the burden of proving willful disobedience can only be discharged if it is shown that there exists means of fulfilling the decree but the officer in charge failed to do so. In the current proceedings there was no means of settling the decree as the entire file relating to the ex-parte applicant taxed costs had been taken over by the EACC and they had no means to comply with the court orders while investigations were still ongoing.
19. The Respondent/Applicant therefore prayed that this court finds that their application had merit and proceed to set aside the warrant of arrest earlier issued.

(ii). Applicant- client /Respondent Written submissions

20. The Applicant-Client /Respondent did file their submissions dated 1st December 2023, wherein she too rehashed the facts as pleaded in her Replying Affidavit. The parties herein had through long drawn litigations process litigated and finally the advocate/client costs had been taxed in Machakos High court Misc Application No. 197 of 2014 and judgment entered therein. The Respondent/applicant through their appointed advocate was fully involved in the whole judicial process and submitted orally and in writing as and when they deemed fit. This application was therefore filed as an afterthought and in bad faith. The Respondent/applicant should have filed an appeal against the judgment issued by Hon. Justice G.V Odunga on 19th November 2020 but opted not to do so. They therefore could not be heard to complain about the process undertaken yet they had not settled the decree issued.
21. The issue of EACC investigating this matter, was a red herring raised by the applicants to avoid meeting their obligations and was tailor made for the purpose of frustrating execution of the decree lawfully and regularly issued by this honourable court. In any event, the applicant had not even annexed any proof that it acted on the said letter and the execution process herein could not be defeated by an alleged on-going parallel process. This court was thus urged to stamp its authority and allow execution to proceed.
22. The Advocate/respondent further submitted that the firm of Mutua Ntongesa Muthoka Advocates were not properly on record as they had filed a notice of change of advocated dated 19th September 2023 contrary to provision of order 9 Rule 9 of the *Civil Procedure Rules*. There was judgment which had been delivered herein on 19th November 2020 and before filing its pleadings the said firm had to seek leave of the court and/or get a consent from the previous firm on record for the respondent/applicant. Reliance was placed on the case of *Violet Wanjiru Kanyira v Kuku Foods Limited* (2022)eKLR where it was held that non-compliance with Order 9 Rule 9 of the *Civil Procedure Rules* was fatal and pleading filed by such a party would be struck out. The same finding was also held in *Stephen Mwandwere Nighila v Steelmakers Limited* (2022) eKLR and *Speedwell building Technologies limited v the county government of Migori* (2018)eKLR.
23. It was to be noted that the Respondent/Applicant concedes that the decree was partially settled and the balance ought to have been settled. Even if true that EACC was undertaking investigations, the same could not be a bar to satisfaction of a valid court order which had not been appealed against and/or set aside. Further there no order obtained by EACC barring the Respondent/applicant from settling the decree herein. Reliance was further placed on the case of *Sunsand construction limited v Raiya Construction Limited* (2021) eKLR where it was held that where the applicant had not demonstrated substantive loss no orders of stay of execution could be granted.



24. Finally, it was submitted that the Respondent/applicant had not met the conditions presented as provided under Order 45 Rule 1 of the Civil Procedure rules to enable the court exercise discretion in its favour. They were also seeking substantial and final orders in the said application and such final reliefs could not be granted unless special circumstances existed. Reliance was placed on Oksana Investment supplies Limited v Alice Wanjiru Wamwea (2019)eKLRx, Olivia Mwihaki Mugenda and ano v Okiya Omtata & 4 others (2016)eKLR, Dr. Ashok Kumar Bajpal v Dr. (smt) Ranjama Baipal AIR 2004, All 107,2004(1)AWC 88 & Republic v Advocates Disciplinary Tribunal (2019) eKLR.
25. The Advocate/respondent submitted that this application was therefore not merited and prayed that the same be dismissed with costs.

D. Analysis & Determination

26. I have considered the application as filed, the affidavit's filed in support and in opposition to the said application and both set of submissions filed by both parties and find that the issues which arise for determination are;
- a. whether the firm of M/S Mutua Nyongesa Muthoka Advocates are properly on record for the Respondent/Applicant.
 - b. Whether proper and valid grounds have been advanced to have the orders of warrants of Arrest reviewed and/or set aside.
 - c. Who should bear costs of this Application?

Issue (I) whether the firm of M/S Mutua Nyongesa Muthoka Advocates are properly on record for the Respondent/Applicant.

27. The Advocate/respondent to this application did raise a preliminary issue of law in her pleading that Judgement had already been issued in this judicial review proceedings on 19th November 2020 and the Respondent/Applicant had been represented by the firm of M/S B.M Mung'ata & co Advocates. The current firm on record M/S Mutua, Nyongesa Muthoka advocate's had un-procedurally filed their notice of change of advocates without leave of court and/or filing a consent signed by the previous law firm allowing them to come on record. The pleading thus filed were all irregular and prayed that the same be struck out. The respondent did not deny this fact, which is also confirmed by the pleadings filed.
28. Order 9 Rule 9 of the Civil Procedure Rules, 2010 provides for change of Advocates to be effected by order of Court or consent of parties to wit:
- When there is a change of Advocate, or when a party decides to act in person having previously engaged an Advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court —
- a. upon an application with notice to all the parties; or
 - b. upon a consent filed between the outgoing Advocate and the proposed incoming Advocate or party intending to act in person as the case may be”
29. Clearly the provisions of Order 9 Rule 9 of the Civil Procedure Rules make it mandatory that for any change of Advocates after judgment has been entered to be effected, then there must be an order of the Court upon application with notice to all parties and/or upon a consent filed between the outgoing Advocate and the proposed incoming Advocate. The reasoning behind the provision was



well articulated in the case of *S. K. Tarwadi v Veronica Mueblmann* [2019] eKLR where the judge observed as follows:

“...In my view, the essence of the Order 9 Rule 9 of the *CPR* was to protect advocates from the mischievous clients who will wait until a judgment is delivered and then sack the advocate and either replace him....”

30. In the case of *Lalji Bhimji Shangani Builders & Contractors v City Council of Nairobi* [2012] eKLR the Court held as follows:

“A party who without any justification decides not to follow the procedure laid down for orderly conduct of litigation cannot be allowed to fall back on the said objective for assistance and where no explanation has been offered for failure to observe the Rules of procedure the court may well be entitled to conclude that failure to comply therewith was deliberate.”

31. The court went further to quote with approval the holding by Hon. Sitati Judge, in *Monica Moraa v Kenindia Assurance Co. Ltd.* [2010] eKLR where the court held as follows:

“.....there is no doubt in my mind that the issue of representation is critical especially in case such as this one where the applicant’s advocates intent to come on record after delivery of judgment. There are specific provisions governing such change of advocate. In my view the firm of M/S Kibichiy & Co. Advocate should have sought this court’s leave to come on record as acting for the applicant. The firm of M/S Kibichiy & Co. has not complied with the Rules and instead just gone ahead and filed Notice of Appointment without following the laid down procedures. The issue of representation is vital component of the civil practice and the courts cannot turn a blind eye to situations where the Rules are flagrantly breached.....”

32. The procedure provided for as stated above carries a mandatory requirement. Undoubtedly the applicant did not comply. The applicant may want to fall back on provisions of Article 159(2) of the *Constitution* of Kenya. However this court concurs with the finding of Justice Kiage in Nairobi COA Application No 228 of 2013 *Nicholas kiptoo Arap korir salat v Independent electoral & Boundaries commission & 6 others* (2013) eKLR, where he held that

“I am not persuaded that Article 159 of the *Constitution* and the oxygen principles which both command courts to seek to do substantial justice in an efficient, proportionate and cost effective manner and to eschew defeatist technicalities were ever meant to aid in the overthrow or destruction of rules of procedure and to create an anarchical free for all in the administration of justice. This court, indeed all courts, must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just certain and even handed. Courts cannot aid in the bending or circumventing of rules and shifting of goal posts for, while it may seem to aid one side, it unfairly harms an innocent party who strives to abide by the rules.

33. Having found that the procedure prescribed under Order 9 Rule 9 of the *Civil Procedure Rules*, were not followed by M/S Mutua, Nyongesa Muthoka Advocates, I do hold the said firm is not properly on record, and has no legal standing to move the Court on behalf of the Applicant and therefore all pleadings filed by it ought to be struck out. Consequently, and in the absence of such leave of court as



provided by the law, the application by Notice of motion under certificate of urgency dated the 13th September 2023 filed by the firm of M/S Mutua , Nyongesa Muthoka Advocates is hereby struck out with costs to the Respondent.

34. Ideally this issue should have been adequate to dispose off this application, but that will still leave room for a similar application to be refiled and a determination sought as to whether the this court should review and set aside the warrants of arrest issues as against the chief Executive committee member for finance and Economic planning and the chief officer for finance and economic planning of Machakos county Government. It would therefore be just/expedient and in the interest of both parties that this issue too is put to rest.

Issue (II) Whether proper and valid grounds have been advanced to have the orders of warrants of Arrest reviewed and/or set aside.

35. The circumstances under which a court sets aside its default orders was set out in *Shah v Mbogo* (1967) EA 166 in which the Court stated that:

“this discretion to set aside an ex-parte judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but is not designed to assist the person who has deliberately sought whether by evasion or otherwise to obstruct or delay the cause of justice.”

36. The Court has unlimited discretion to set aside or vary its order upon such terms as are just in the light of all facts and circumstances of the case, both prior and subsequent and also based on the respective merits of the application, See; *Philip Kiptoo Chemwolo and Mumias Sugar Company Ltd v Augustine Kubede* (1982-1988) KAR. This discretion is also intended to be exercised to avoid injustice or hardship but not to assist a person guilty of deliberate conduct intended to obstruct or delay the course of justice. See *Rayat Trading Co. Limited v Bank of Baroda & Tetezi House Ltd* [2018] eKLR. In the exercise of this discretion the Court will consider inter alia if the applicant has a real prospect of successfully defending the claim; or It appears to the court that there is some other good reason why the judgment/ its orders should be set aside or varied.
37. The reasons, the basis upon which the Respondent/applicants is seeking to have the orders of this court dated 26th July 2023 set aside and/or varied, which orders were to the effect of issuing warrants of arrest as against chief Executive committee member for finance and Economic planning and the chief officer for finance and economic planning of Machakos county Government, are not valid and are clearly raised as an afterthought with the sole aim of delaying the expeditious conclusion of this matter.
38. The Advocate/respondent did give clear and chronological journey as to how she represented the respondent/Applicant in Nairobi HCC No 2765 of 1998 , which was later transferred to Machakos and a new case number given; Machakos Hcc No 255 of 2019. Her costs were not paid and she embarked on her long journey to tax her advocate/client bill of costs and on two occasions had to file a reference to the high court challenging the award of the taxing master. Upon hearing of the second reference being Machakos High court Misc case No 50 of 2020, the high court found merit in the said reference and finally taxed her advocate/client bill of costs at Kshs 71,095,942/=, which sum was later converted into judgment on November 19, 2020 and subsequently a decree issued on 18.12. 2020 for ksh.128,825,847/= compromising of taxed costs and interest thereon.
39. The Respondent/applicant failed to pay the taxed costs and she did file this Judicial review proceedings and obtained a writ of mandamus on 13.06.2022 compelling the respondent’s chief Executive committee member for finance and Economic planning and the chief officer for finance and economic



planning of Machakos county Government to settle the decretal sum and accrued interest up to 13th September 2021 in respect of the decree dated 18th December 2020 issued in Machakos Misc Civil Application No 50 of 2020 with costs. The respondent/applicant too was further directed to all pay the advocate/respondent herein the accruing interest on the principal sum at 14% till payment in full.

40. The court does reiterate that the reasons advanced that EACC is investigating this matter and has taken all the original documents, therefore the respondent's/applicants' officers are unable to pay cannot hold and is escapist. The payment directed to be made to the advocate/respondent herein is based on a valid and exhaustive court process and the amount due to the said law firm has been determined by court and is not based on a tender/procurement process pursuant to which the legal fee was agreed upon. This is an eternal fact which will not change.
41. The Applicant-advocate /respondent herein undertook her duty as an advocate for the respondent/applicant from the year 1998 to 2015, and her retainership has never been in issue and is confirmed by the pleadings filed and requisite attendance made on behalf of the county in the said matter. It is therefore too late in the day to allege impropriety on her part warranting an EACC investigations. Further EACC did not direct the respondent/applicant to stop any payments, and in any event, it is an independent body which has the power to sue and be sue. If they have any issue with the award decreed in Machakos Misc Civil Application No 50 of 2020, they are free to move court to point out any irregularity for determination.
42. The respondent officer's too cannot be blamed for settling this decree nor are they in any danger of being held personally liable as the payment due to the advocate/respondent is court directed, which orders must be obeyed by all and sundry. Finally, the decree and pleadings the basis of which payments are made are public document within the reach of the respondent/applicant's advocate. Even if the one's in their file was given to EACC, they can easily access certified copies of the same and proceed to make further payment.
43. As stated in the good book at Roman's 13:7-8 "Pay to all what is owed to them, taxes to whom taxes are due, revenue to whom revenue is owed, respect to whom respect is owed, honour to whom honour is owed, owe no one anything except to love one another." The respondent/applicant therefore has no option but to settle this decree as is also directed in Mathew 5:25, "Agree with your adversary quickly, lest your adversary deliver you to the judge, the judge hand you over to the officer, and you are thrown in jail."

Disposition

44. Enough has been said to show that the application dated 19th September 2023 is without any merit and the same is dismissed with costs to the Applicant-Advocate/respondent.
45. The costs herein are assessed at Kshs 50,000/= all inclusive.
46. The warrants of arrest issued on 26th July 2023, remain in force and for clear measure the Machakos county police commander and Machakos police station in charge (OCS) are directed to effect the same within the next 30 days from the date hereof, failure of which summons to issue for them to personally attend court to show cause why they should not be held to be in contempt of the said order.
47. It is so ordered

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 13TH DAY OF MARCH, 2024.

FRANCIS RAYOLA OLEL



JUDGE

Delivered on the virtual platform, Teams this 13th day of March, 2024.

In the presence of;

No appearance for Applicant/Respondent

No appearance for Respondent/Applicant

Sam Court Assistant

