



**Republic v County Secretary, County Government of Garissa; Paul Mwangi & Company Advocates (Exparte Applicant) (Miscellaneous Civil Cause 11 of 2019) [2024] KEHC 4475 (KLR) (3 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4475 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CIVIL CAUSE 11 OF 2019**

**JN ONYIEGO, J**

**MAY 3, 2024**

**IN THE MATTER OF AN APPLICATION BY PAUL MWANGI &  
COMPANY ADVOCATES FOR A JUDICIAL REVIEW ORDER OF  
MANDAMUS**

**AND**

**IN THE MATTER OF SECTION 51 OF THE JUDICATURE ACT, CAP 8  
LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE CIVIL PROCEDURE RULES OF ENGLAND  
1899 PART 81.12 - 14**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY SECRETARY, COUNTY GOVERNMENT OF  
GARISSA ..... RESPONDENT**

**AND**

**PAUL MWANGI & COMPANY ADVOCATES ..... EXPARTE APPLICANT**

**RULING**

1. The application before this Court is a Notice of Motion dated 03.10.2023 brought under Section 5(1) of the *Judicature Act*, Cap 8 Laws of Kenya, Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act*,



Section 8(2) and 9 of the Law Reform Act, Civil Procedure Rules of England Part 81.12 – 14 and all enabling provisions of the law seeking orders as hereunder: -

- i. That this Honourable Court do find the County Secretary to the County Government of Garissa, in contempt of the court order made on 10.03.2020.
  - ii. That the county secretary in the county government of Garissa be committed to jail for six months or such other period as the Honourable Court may deem fit for contempt and defiance of the court order made on 10.03.2020.
  - iii. That such other or further orders as this Honourable court deems fit for the end of justice to be met.
  - iv. That the cost of this application be borne by the respondent.
2. The application is anchored on the grounds set out in the statutory statement and verifying affidavit filed on 22.04.2021 wherein it was stated that the respondent has openly disobeyed the court's order made on 10.03.2020 despite being served. That in the interest of justice, the respondent be cited for contempt to ensure compliance and to uphold the dignity and authority of the court.
  3. The crux of the matter is that this Honourable Court issued an order directed to the respondent to pay the applicant a sum of Kes. 9,178,565.88/- together with interest at 12% p.a. with effect from 23.08.2023 till payment in full. That the respondent and their advocates were duly served with the said order on 17.04.2020. That despite the said service, the respondent has not fully complied with the said order.
  4. That via a consent agreement signed between the parties on 17.03.2022, the respondent committed that it would pay the decretal sum in four equal instalments as provided on the face of the said agreement with effect from 05.02.2022 up to June,2022. That as a condition to honouring the said consent, the applicant agreed to waive the accrued interest. Of importance to note is the fact that the respondent only honoured the said agreement by paying Kes. 1,100,000/-.
  5. The court directed that the application be canvassed by way of written submissions whereby the ex parte applicant via his submissions dated 18.01.2024, contended that the respondent is in contempt of the court order made on 10.03.2020. The applicant relied on the cases of Econet Wireless Kenya Limited vs Minister for Information and Communication of Kenya [2005] eKLR and MNM vs JMM [2022] eKLR where the respective courts held that it is essential for the maintenance of the rule of law and order that the authority and the dignity of the courts are upheld...and that in order to find a person guilty of contempt, there must be proof of willful and intentional disobedience of a court order respectively.
  6. It was contended that, a copy of the said court order was served on the respondent and acknowledged by affixing their official stamp dated 17.04.2020 which showed that the respondent was made aware of the terms of the order herein. Additionally, on 03.03.3021, the respondent was served with a notice of motion on penal consequences notifying him that any disobedience or contravention of the terms of the said order would result to penal consequences in which they would be liable for contempt of court.
  7. It was averred that the respondent has remained in disobedience and defiance of the court order since the same was served upon them on 17.04.2020 and has shown no remorse for the defiance. This court was therefore urged to find the respondent in contempt.
  8. The respondent did not participate in the hearing of the application herein despite being served.



9. This court has considered the application herein which is not opposed. In my view the only issue for determination is whether in the obtaining circumstances, the respondent is in contempt of the obtaining court order.
10. It is not in dispute that an order of mandamus was issued on 16.04.2020 but the respondent ignored and/or neglected to satisfy the decretal amounts as had been ordered by this court. This is what the ex parte applicants describes in his application as disobedience of the said court order that has brought about this application.
11. This court has independently perused the record herein and finds that via a consent agreement signed between the parties on 17.03.2022, the respondent committed that it would pay the decretal sum in four equal instalments as provided on the face of the said agreement with effect from 05.02.2022 up to June,2022. That as a condition to honouring the said consent, the applicant agreed to waive the accrued interest. Of importance to note is the fact that the respondent only honoured the said agreement by paying Kes. 1,100,000/-.
12. The *Contempt of Court Act* is, however, no longer operational as from the date of the judgment declaring it unconstitutional in *Kenya Human Rights Commission vs Attorney General & Another* [2018] eKLR. I am therefore obliged to revert to the provisions of the law that operated before the enactment of the *Contempt of Court Act* to avoid a lacuna in the enforcement of Court orders. It was in this respect observed in *Republic vs Returning Officer of Kamkunji Constituency & The Electoral Commission of Kenya HCMCA No. 13 of 2008*, that the High Court has the responsibility for the maintenance of the rule of law, hence there cannot be a gap in the application of the rule of law.
13. The Court of Appeal in *Christine Wangari Gachege vs Elizabeth Wanjiru Evans & 11 Others*, [2014] eKLR found that the English law on committal for contempt of court under Rule 81.4 of the English Civil Procedure Rules, which deals with breach of judgment, order or undertakings, was applied by virtue of Section 5(1) of the *Judicature Act* which provides that:

“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 that power shall extend to upholding the authority and dignity of subordinate courts.”
14. In *Katsuri Limited v Kapurchand Depor Shah* [2016] eKLR, citing *Kristen Carla Burchell vs Barry Grant Burchell* (Eastern Cape Division Case No. 364 of 2005) 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 those terms by the Respondent,
  - iii. Willful failure by the Respondent to comply with the terms of the order.
15. Upon proof of these requirements, the presence of willfulness and bad faith on the part of the respondent would normally be inferred, although the respondent could rebut this inference by contrary proof on a balance of probabilities.
16. In this case, the court orders were outright and unambiguous. I say so for the reason that the respondent was directed to pay the ex parte applicant the total amount owed which the respondent honoured partially by paying Kes. 1,100,000/- only. Therefore, it cannot be said that the same could not be understood or be interpreted to make out what was desired to happen. I will then proceed to determine whether the respondent was aware of the material order, ordering him to pay the amount in question; and secondly, whether he acted in disobedience of the order without justifiable cause.



17. It is trite that unless the court dispenses with service, a judgment or order may not be enforced by way of an order for contempt unless a copy of it has been served on the person required to do or not do the act in question. Rule 81.6 of the English Civil Procedure Rules specifically provides that the method of service shall be personal service, which is effected by leaving the order with the person to be served.
18. It is also the position, and it has been held in several judicial decisions that if personal awareness of the court orders by the alleged contemnor is demonstrated, he will be found culpable of contempt even though he had not been personally served with the orders and penal notice. [See Court of Appeal decision in Shimmers Plaza Limited vs National Bank of Kenya Limited [2015] eKLR].
19. In the instant case, the amount of money sought are for services that were rendered to the respondent in various legal matters. That in as much as the application is ex parte in nature, the court directed that the respondent be served. It was averred that the respondent has remained in disobedience and defiance of the court order since the same was served upon them on 17.04.2020 and has shown no remorse for his defiance.
20. It is now established that the mental element for liability for contempt arising out of disobedience of a court order is simply that the disobeying party either intended to disobey or made no reasonable attempt to comply with the order. [See Canadian Metal Co. Ltd vs Canadian Broadcasting Corp (No.2) 48 D.L.R. (30)].
21. It is essential for the maintenance of the Rule of Law and Order that the authority and the dignity of courts is upheld at all times. The court will neither condone deliberate disobedience of its orders nor shy away from its responsibility to deal firmly with proved contemnors.
22. In this case, the said orders made by this court have not been appealed against nor set aside. It therefore follows that therein lies a plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that 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 an order believes it to be irregular or void. [See Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828 Ibrahim, J (as he then was)].
23. Considering the circumstances of this case and the material placed before this court, I find and hold that the application has merits and it is hereby allowed in the following terms: -
  - i. The County Secretary to the County Government of Garissa, is held to be in contempt of the court order made on 10.03.2020.
  - ii. The respondent(contemnor) to comply with the court order made on 10.03.2020 within 30 days failure to which the court shall pronounce the appropriate punishment.
  - iii. The matter shall be mentioned on 4-06-24 when the contemnor shall personally appear to confirm compliance with the orders above.
  - iv. Costs of the application are awarded to the ex parte applicants.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 3<sup>RD</sup> DAY MAY 2024**

**J. N. ONYIEGO**

**JUDGE**

