



**Waterman Drilling Africa Ltd v Wera & 3 others (Judicial Review  
E002 of 2022) [2024] KEHC 5931 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5931 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
JUDICIAL REVIEW E002 OF 2022**

**KW KIARIE, J**

**MAY 23, 2024**

**BETWEEN**

**WATERMAN DRILLING AFRICA LTD ..... APPLICANT**

**AND**

**ALPHONSE WERA, COUNTY CHIEF OFFICER ..... 1<sup>ST</sup> RESPONDENT**

**SOLOMON OBIERO, COUNTY EXECUTIVE COMMITTEE MEMBER  
RESPONSIBLE FOR FINANCE ..... 2<sup>ND</sup> RESPONDENT**

**BENARD MUOK, COUNTY SECRETARY AND HEAD COUNTY PUBLIC  
SERVICE ..... 3<sup>RD</sup> RESPONDENT**

**COUNTY GOVERNMENT OF HOMA BAY ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The applicant came to court by way of a Notice of Motion dated 11<sup>th</sup> December 2023 under Articles 48, 159 & 160 of the Constitution of Kenya, section 5(1) of the Judicature Act, Rule 39 (4) of the High Court (Organization and Administration) (General) Rules 2016, sections 1A, 1B, 3A, 3B, and 63 of the Civil Procedure Act, sections 21 (3) & (5) of the Government Proceedings Act, and sections 103 & 104 of the Public Finance Management Act. The applicant is seeking to have the respondents cited for contempt of court and subsequently punished with imprisonment.
2. The application is premised on the following grounds:
  - a. This court did, on the the15<sup>th</sup> day of December 2022, issue an order of mandamus as a constitutional remedy, to the Applicant to enable her to realize the fruits of the judgment obtained in her favour way back on 3<sup>rd</sup> November 2021, in Homabay CMCC No.E061 of 2021 and which right had accrued but constitutes being violated and abrogated by the said Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive



Committee Member in charge of Finance, and Prof. Bernard Muok, County Secretary, County Government of Homa Bay, County Government of Homabay by the respondents.

- b. In as much as the order specifically cited the name of Nicholas Obuya Koriko, who at the commencement of the proceedings was the County Executive Committee member then responsible for matters finance, at the county Government of Homa Bay, and who had been sued in his official as opposed to private capacity, he has since ceased to hold office. The decree and order of mandamus calls for compliance and implementation by the current public officials currently in office and holding the finance docket and other responsible positions, not those who have since left office, hence the need to effect amendments.
- c. No prejudice shall be caused as the public officials currently in office owe a public duty to the *Ex-parte* applicant to settle the decree and comply with the order.
- d. The order of mandamus given and dated 15<sup>th</sup> December 2022, as extracted and issued on 15<sup>th</sup> December 2022 was duly endorsed with a penal notice and has been served upon Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homabay, Prof. Bernard Muok, County Secretary, County Government of Homabay and County Government of Homa Bay who continue to willfully, contumeliously and contemptuously disobey the same.
- e. A certificate of Order against the County government of Homa Bay dated 30<sup>th</sup> August 2023 was taken out. It had been served upon the public officers at the County Government of Homa Bay, who are responsible for settling court decrees against the County Government.
- f. Demand for payment in respect of the amount specified in the certificate of Order extracted consequent to the order of mandamus has been made on behalf of the applicant without any success.
- g. the 1<sup>st</sup> respondent County Executive Member for Finance, the 2<sup>nd</sup> respondent, the County Chief Officer for Finance the 3<sup>rd</sup> respondent, the County Secretary, are state and public officers who owe a public duty to the applicant, for and on behalf of the county Government of Homa Bay is the judgment debtor, to settle decrees against the county government but in contempt of court, have declined to do so, hence making these proceedings necessary.
- h. As the accounting officers and head of county Treasury and Head of County Public Service of the county government of Homa Bay, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents as named in these proceedings have been fully aware of the court decree issued on 3<sup>rd</sup> November 2021 by the Subordinate court and the order of mandamus issued in these proceedings dated 15<sup>th</sup> December 2022 requiring them to make payments of the decretal debt as specified in the order of mandamus to the applicant and they continue to willfully and with reckless abandon to disobey the same.
- i. When a superior court, like, in this case, the High Court, issues orders, they do so not as suggestions or pleas to the persons at whom they are directed but as a necessary constitutional imperative to uphold the rule of law and constitutionalism and such orders must be obeyed as of necessity.
- j. Court orders issued ex-cathedral, are compulsive, peremptory and expressly binding, while Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homa Bay, Prof.



Bernard Muok, County Secretary, County Government of Homabay the respondents herein continue to disobey the said orders issued herein with reckless abandon.

- k. It is not for any party, be he high or low, weak or mighty and regardless of his status or standing in society, to decide whether or not to obey' to choose which to obey and which to ignore or to negotiate the manner of his compliance, while the said Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homa Bay, Prof. Bernard Muok, County Secretary, County Government of Homa Bay respondents herein appear to have made the orders of this court toothless and ineffectual.
- l. The orders the court made herein appear to be worthless unless obeyed, and since there is total disobedience on the part of the said Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homabay, Prof. Bernard Muok, County Secretary, County Government of Homabay and County Government of Homa Bay this court ought to now enforce them.
- m. This court, as must all courts, ought to deal firmly and decisively with any party who deigns to obey court orders, not only to preserve its authority and dignity but also to ensure and demonstrate that the constitutional edicts of equality under the law, and the upholding of the rule of law are not mere platitudes but present realities.
- n. The said Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homabay, Prof. Bernard Muok, County Secretary, County Government of Homabay respondents having breached, disobeyed or violated court orders should not be given an audience before the court until they first purge contempt by making the payments under the order.
- o. It is the unqualified obligation of every person against, or in respect of whom an order had been made by a court of competent jurisdiction, to obey it unless and until that order was discharged, and therefore Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homabay, Prof. Bernard Muok, County Secretary, County Government of Homa Bay and County Government of Homa Bay ought to be so reminded.
- p. In as much as disobedience to an order of the court is not of itself a bar to one being heard, however, the disobedience herein by the said Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homa Bay, Prof. Bernard Muok, County Secretary, County Government of Homa Bay and County Government of Homabay is such that, so long as it continues, it impedes the course of justice in the cause.
- q. The present case was a good example of a case where the disobedience of the said Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homabay, Prof. Bernard Muok, County Secretary, County Government of Homabay and County Government of Homabay, respondents impedes the course of justice.
- r. In this case, for a period since 3<sup>rd</sup> November 2021 when the decree of the subordinate court was passed, and about one year since the order of mandamus was passed, Alphonse



Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homa Bay, Prof. Bernard Muok, County Secretary, County Government of Homa Bay and County Government of Homabay, the respondents have exhibited a brazen disregard for the rule of law, and have shown contempt for the orders of the High Court of this country and are making a mockery of the administration of justice.

- s. To allow Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homa Bay, Prof. Bernard Muok, County Secretary, County Government of Homabay and County Government of Homa Bay audience in the face of their refusal to obey the order of mandamus issued herein, would be to countenance that conduct and to bring the administration of justice into disrepute.
- t. This court ought to set its face firmly against allowing its orders to be disobeyed and by granting contemnors audience before and until and unless they first purge their contempt.
- u. Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homa Bay, Prof. Bernard Muok, County Secretary, County Government of Homa Bay and County Government of Homabay, the respondents herein continue to show and depict both to the applicant and to the court a headstrong contumaciousness proceeding against the rule of law, having started from bold impunity, open defiance or cynical disregard for the authority of the court and the integrity of the judicial system.
- v. Pernicious conduct as exhibited by the said Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homa Bay, Prof. Bernard Muok, County Secretary, County Government of Homabay and County Government of Homabay, the respondents ought not to be countenanced, and those hell-bent on it find neither help nor refuge under convenient and self-serving contemptuous conduct which impudent conduct threatens the very foundation of the rule of law.
- w. The said Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homa Bay, Prof. Bernard Muok, County Secretary, County Government of Homa Bay and County Government of Homabay, the respondents continue to decline refuse and disobey the lawful orders of the court issued in the proceedings requiring them to make payments to the *ex-parte* applicant, in contempt of the orders of the court.
- x. The applicant has no other mode of recovering the amounts due to her, and the said Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homabay, Prof. Bernard Muok, County Secretary, County Government of Homabay and County Government of Homabay the respondents owe to her a due to act by settling the amounts due under the decree.
- y. The actions of Alphonse Wera, County Chief Officer responsible for Finance, Solomon Obiero, County Executive Committee Member in charge of Finance, County Government of Homabay, Prof. Bernard Muok, County Secretary, County Government of Homabay and County Government of Homa Bay are in contempt of court and offends the provisions of Article 47 of the [Constitution](#) of Kenya.



- z. Unless the orders sought are granted, the applicant will remain without a remedy, and the court order, which continues being disobeyed with reckless abandon, would be worthless, while orders of the court are never issued in vain.
  - aa. The justice of the matters raised dictates that the orders be granted so as to meet the ends of justice and to prevent the continued violation of the applicant's rights under the decree in the primary proceeding and the order of mandamus, which has crystallized.
  - ab. The court has jurisdiction to adopt such a procedure, as under in these proceedings, as would effectually give meaningful relief to the applicant as a party aggrieved, in the exercise of the inherent powers granted to the court by section 3A of the *Civil Procedure Act* to grant such orders that meet the ends of justice and stop further disobedience of the lawful order of this court.
3. The respondent opposed the application on the following grounds:
- a. There was no demonstration of willful disobedience of the court order.
  - b. That the 2<sup>nd</sup> and the 3<sup>rd</sup> respondents have been erroneously enjoined.
  - c. That it is unconstitutional for a public officer to be imprisoned for a public debt.
4. On November 3<sup>rd</sup>, 2021, he obtained a judgment in his favour, which was reinforced on December 15<sup>th</sup>, 2022, when I allowed the application dated March 15<sup>th</sup>, 2022.
- The *ex parte* applicant has demonstrated that he has given the respondents reasonable time to comply with and satisfy the decree. However, the respondents have failed to comply. I am satisfied that the applicant has met all eight conditions. I, therefore, grant the orders sought.
5. The applicant has justification for feeling frustrated.
6. In order for a party to be cited for contempt of the court, it must be demonstrated that there is wilful disobedience of the court's order. In *East African Engineering Consultants vs Municipal Council of Kisumu & Another* [2007] eKLR, Nyamu J stated:
- There is only one way of enforcing orders where they are disobeyed, i.e., through contempt proceedings. The applicant should, therefore, have enforced the mandamus order using this method.
- There is only one rider—an officer can only be committed where the public body he serves has funds, where he deliberately refuses to pay, or where a statute has earmarked funds for payment. An officer does not incur personal liability.
7. The applicant has not demonstrated wilful refusal by the respondents to pay him.
8. The 2<sup>nd</sup> and the 3<sup>rd</sup> respondents were not party to the proceedings. There was a need, therefore, to seek either for substitution or demonstrate that as the new office bearers, they had been served with the orders of the court but refused to act.
9. Whereas the County Government has a duty to pay debts that have been incurred, the applicant has a duty to cite the officers who ought to have implemented the orders and also demonstrate wilful disobedience of the court orders.
10. The orders sought cannot, therefore, be granted. Each party is to bear its costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 23<sup>RD</sup> DAY OF MAY 2024.**



**KIARIE WAWERU KIARIE  
JUDGE.**

