



Norgen Enterprises Limited v County Secretary, County Government of Vihiga & 2 others (Judicial Review 14 of 2019) [2024] KEHC 7121 (KLR) (5 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7121 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW 14 OF 2019
RE ABURILI, J
JUNE 5, 2024**

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF CONTEMPT AGAINST THE COUNTY SECRETARY, COUNTY EXECUTIVE MEMBER OF FINANCE ARISING FROM THE ORDERS OF THIS HONOURABLE COURT DATED 10TH MARCH 2020

BETWEEN

NORGEN ENTERPRISES LIMITED APPLICANT

AND

THE COUNTY SECRETARY, COUNTY GOVERNMENT OF VIHIGA 1ST RESPONDENT

THE COUNTY EXECUTIVE MEMBER FOR FINANCE, COUNTY GOVERNMENT OF VIHIGA 2ND RESPONDENT

THE COUNTY GOVERNMENT OF VIHIGA 3RD RESPONDENT

RULING

1. On 10th March 2022, this court issued an order of Mandamus compelling the Respondents herein to settle decree in the sum of Kshs.11,975,250 together with interest at court rates of 14% p.a from date of filing suit until payment in full and costs of Kshs.334,855.90 in Kisumu CMCC No. 68 of 2017 between the *Exparte* Applicant and County Government of Vihiga.
2. The *Exparte* Applicant was also awarded costs of the application.
3. A certificate of order against the Government was issued on 14th April 2023 pursuant to Order 29 Rule 3 of the [Civil Procedure Rules](#) and Section 21 of the [Government Proceedings Act](#), Cap 40 Laws of Kenya.
4. Costs of the Judicial Review proceedings were assessed at Kshs.424,575.00 and a certificate of costs issued on 8th December 2022.



5. By letter of 19th April 2023, the *Exparte* Applicant's counsel wrote to the Respondents herein demanding for settlement of decree and costs as assessed and annexing all documents including the certificate of order against the Government stated above and certificate of assessed costs and copying to the County's Legal Department.
6. To date, the Respondents have not settled any party of that decree or costs as assessed.
7. It is that failure to settle decree as compelled by this court that has prompted this application dated 9th February 2024 seeking to cite the Respondents to be in contempt of this court's Judicial Review order of mandamus.
8. The Respondents are the persons legally responsible for settling the decrees against the County Governments. They were served with the application for contempt. They did not file any response thereto.
9. The application was heard *inter partes* on 8th May 2024 by way of oral submissions. The Respondents' counsel Ms. Shijenje was present. She stated that she had nothing to say.
10. Earlier on, on the hearing date, the Respondents' counsel informed the court that they were seeking for one month to hopefully settle as they were in talks with the CEC member and that they would probably come up with a payment plan.
11. The judgment in the original suit Kisumu CMCC No. 68 of 2017 was entered and decree issued on 20th March 2017.
12. The decree holder now *Exparte* Applicant has tried all means to have the Respondents settle the decree in vain. They have remained with a barren decree for over seven years and are still counting. The question is, what is it that is ailing the Respondents and therefore disabling them from settling decree of the court issued seven years ago, even if it was settling by instalment of Kshs. One Million per year?
13. I find that the Respondents have defied the authority of the court for the last seven years by blatantly refusing to settle decree issued on 20th March 2017 in Kisumu CMCC No. 68 of 2017 and even after Judicial Review Order of Mandamus were issued against them, they ignored to settle.
14. Decrees and court orders are not mere suggestions. They are intended to be executed and given effect. There is no evidence placed on record that the Respondents have, for the last 7 years, included the decretal sum herein stated, in any of its annual estimates for settlement. The conclusion I reach is that the Respondents are not interested in satisfying decree of the court even after the order of mandamus was issued on 15th October 2020 which is nearly four (4) years ago.
15. Punishing for contempt of court orders is a legitimate jurisdiction of this court, which acts as the guardian of the Rule of Law and the public interest.
16. The Respondents have by their inaction demonstrated that they have wilfully, failed, refused and neglected to obey court orders compelling them to settle decree of a court of competent jurisdiction, a decree which they never challenged its legitimacy.
17. The disobedience of court orders by refusing to settle decree of the court in this case has not been shown to be inadvertent or accidental. It is openly intentional and therefore justifies the holding of the Respondents for contempt of court.
18. Accordingly, I find the *Exparte* Applicant's Notice of Motion dated 9th February 2024 to be merited. It is hereby allowed.



19. The County Secretary of Vihiga County Government, and the County Executive Committee Member for Finance are hereby found to be in contempt of Judicial Review Orders of Mandamus issued on 15th October 2020 and for non settlement of decree and certificate of order against the Government issued on 14th February, 2023 and duly served upon them.
20. The holders of the 1st and 2nd Respondent offices are accordingly found Guilty of contempt of court orders and are hereby convicted accordingly.
21. The Exparte Applicant shall serve the contemnors with copy of this Ruling and order.
22. The Exparte Applicant shall have costs of Kshs.50,000 of this application dated 9th February, 2024.
23. Mitigation and sentencing shall be on 26th September 2024. The contemnors to attend court personally.
24. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 5TH DAY OF JUNE, 2024

R. E. ABURILI

JUDGE

