



Republic v Principal Secretary, Ministry of Interior and Coordination; WAO (Minor suing through his father JAO) (Exparte Applicant) (Judicial Review Application 60 of 2012) [2024] KEHC 7183 (KLR) (6 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7183 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
JUDICIAL REVIEW APPLICATION 60 OF 2012**

OA SEWE, J

JUNE 6, 2024

**IN THE MATTER OF AN APPLICATION FOR
JUDICIAL REVIEW FOR ORDERS OF MANDAMUS**

AND

**IN THE MATTER OF THE LAW REFORM ACT, CAP 26
AND THE GOVERNMENT PROCEEDINGS ACT, CAP 40**

AND

**N THE MATTER OF AN APPLICATION BY THE EX PARTE APPLICANT
FOR ORDER OF COMMITTAL TO CIVIL JAIL FOR CONTEMPT OF COURT**

BETWEEN

REPUBLIC APPLICANT

AND

**THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND
COORDINATION RESPONDENT**

AND

WAO (MINOR SUING THROUGH HIS FATHER JAO). EXPARTE APPLICANT

RULING

1. The Amended Notice of Motion dated 29th January 2024 seeks orders that the Principal Secretary/Accounting officer for the Ministry of Interior and Coordination of National Government be committed to civil jail and/or appropriately punished for blatantly refusing/neglecting and/or failing to comply with and abide by the decree of this Court dated 19th March 2018 for payment of a decretal



sum of Kshs 3,890,920/10 as of 30th April 2022. The applicant also prayed that costs of the contempt proceedings be borne by the said Accounting Officer.

2. The application was premised on the grounds that an Order of Mandamus was issued against the 1st respondent on 13th March 2018 compelling him to honour the decree of the lower court dated 17th November 2011 in Voi RMCC No 80 of 1998, but that the order is yet to be complied with. The applicant therefore prayed that the Accounting Officer be committed to civil jail for contempt.
3. Directions were given on 6th February 2024 that the application be canvassed by way of written submissions. The respondent filed no response and did not file written submissions either. Neither the respondent nor counsel was in attendance on 8th April 2024 when the matter came up for mention to confirm compliance. The application is consequently unopposed.
4. Needless to say that court orders must be strictly obeyed. As was aptly stated by Romer LJ in *Hadkinson v Hadkinson* [1952] All ER 567:

“It is the 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 even void.

For, a person who knows of an order, whether null or valid, regular or irregular cannot be permitted to disobey it. It would be most dangerous to hold that the suitors or their solicitors could themselves judge whether an order was null or valid. Whether it was regular or irregular, that they should come to the court and not take upon themselves to determine such question. That the course of a party knowing of an order which was null and irregular, and who might be affected by it, was plain, he should apply to court that it might be discharged. As long as it exists, it should not be disobeyed.” (Also see *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828)

5. Hence, it is now settled that in an application of this nature, an applicant must prove the following prerequisites, namely:
 - a) that the terms of the order are clear and unambiguous;
 - b) That the contemnor had knowledge or proper notice of the order;
 - c) That the respondent has deliberately failed to obey the order;(see *Katsuri Limited v Kapurchand Devar Shah* [2016] eKLR)
6. In the light of my findings hereinabove, it should be plain by now that the applicant has satisfied all the conditions aforementioned. He has demonstrated that he obtained a decree in Voi RMCC No 80 of 1998 which remains unpaid to date. He was thereafter granted an order of Mandamus in this suit on 13th March 2018 for the enforcement of the decree. That order is yet to be obeyed by the respondents and no justification has been given for this state of affairs.
7. Section 21 of the *Government Proceedings Act* states:
 - 1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer



of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order: Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

- 2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
 - 3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon: Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.
 - 4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.
8. Accordingly, the expressions of the Court of Appeal in the *[Shimmers Plaza Limited v National Bank of Kenya Limited](#)* [2015] eKLR are apt, namely, that:
- “... court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26th President of the United States of America once said:
- “No man is above the law and no man is below it; nor do we ask any man's permission to obey it. Obedience to the law is demanded as of right; not as a favour.”
- 9) In the result, I am satisfied that the applicant has proved to the requisite standard that the 1st respondent is in contempt of the court order issued herein on 13th March 2018. Consequently, the Notice of Motion dated 29th January 2024 is hereby allowed and orders granted as hereunder:
- a) That summons to attend court be and is hereby issued to the Principal Secretary/Accounting Officer of the Ministry of Interior and Coordination of National Government to attend court for the purpose of showing cause why he should not be appropriately punished for refusing, neglecting and/or failing to comply with the order of this Court dated 13th March 2018.
 - b) That the costs of the contempt proceedings be borne by the respondents.
- It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 6TH DAY OF JUNE 2024
OLGA SEWE



JUDGE

