



Equilab Technologies Limited v County Secretary, Nairobi City County Government & 2 others (Environment and Land Case Judicial Review Application 45 of 2017) [2025] KEELC 3722 (KLR) (13 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3722 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE JUDICIAL REVIEW APPLICATION 45 OF 2017
CA OCHIENG, J
MAY 13, 2025**

BETWEEN

EQUILAB TECHNOLOGIES LIMITED APPLICANT

AND

THE COUNTY SECRETARY, NAIROBI CITY COUNTY GOVERNMENT 1ST RESPONDENT

CHIEF FINANCE OFFICER NAIROBI COUNTY GOVERNMENT 2ND RESPONDENT

NAIROBI CITY COUNTY GOVERNMENT 3RD RESPONDENT

RULING

1. What are before Court for determination is the Applicant’s Notice of Motion applications seeking for the Respondents to be cited for contempt of Court. In the Notice of Motion application dated the 6th March 2019, the Applicant seeks the following Orders:
 1. Spent.
 2. That this court issues summons to the following persons to attend court and show cause why they should not be punished for contempt of court and punished in accordance with Section 29 of the *Environment and Land Court Act* for failing to obey the terms of the order given on 21st June 2018;
 - a. The County Secretary Nairobi County Government.
 - b. The Chief finance officer Nairobi County Government.



3. The Court Bailiff with assistance of the police be ordered to arrest the County Secretary and the Chief Finance Officer of Nairobi County Government and who should be produced to court forthwith.
 4. In the event that the contempt is not purged, the court do convict the county Secretary and the Chief Finance Officer of Nairobi County Government to a fine not exceeding kshs.1,000,000/= and imprisonment for a term not exceeding 2 years.
 5. The 3rd Respondent be ordered to forthwith pay the Applicant's advocates the sum of kshs.6,801,643.84 and kshs.1,300,774.51 in respect of the decretal amount and costs.
 6. The costs of this application be borne by the Respondents in any event and be assessed by the court forthwith.
2. The application is premised on grounds on its face and on the supporting affidavit sworn by the Applicant's director, one Manoj Keshavlal Shah. He avers that on 21st June 2018, this Court issued an order of Mandamus to the County Secretary, Nairobi City County and the Chief Officer, Finance/ County Treasurer, Nairobi City County requiring that they pay the Plaintiff within twenty one (21) days of the Court order, the sum of Kshs.5,000,000/= together with interest at court rates from 26th February 2016 until payment in full and costs of Kshs.1,064,392/= together with interest at 14% per annum from 27th July 2017 until payment in full being the decretal sum in respect of ELC No. 252 of 2015 Equilab Technologies Limited v The Hon. Attorney General & Others. Further, that the Court ordered that in default, Notice to Show Cause do issue against the said persons to show cause as to why they should not be cited for contempt of court.
 3. He asserts that the Applicant is entitled to fruits of litigation and the brazen refusal by the Respondents to pay the Applicant, is a blatant affront to Article 10 and Chapter 6 of *the Constitution*.
 4. The application is not opposed by the Respondents.
 5. In the second application dated the 4th April 2024, the Applicant seeks the following Orders:
 1. Spent.
 2. Abandoned.
 3. In the event the decretal amount is not paid forthwith, the court do order the 3rd Respondent to forthwith freeze the salaries, benefits and allowances of the 1st and 2nd Respondents for contempt of the court order dated 21st June 2018 and the same to remain frozen until the decretal amount is paid in full.
 4. The 1st- 3rd Respondents be barred from opposing the application until the contempt of court is purged and the 1st and 2nd Respondents personally appear in court to show cause why they should not be committed to civil jail for contempt of court.
 5. Abandoned.
 6. The decretal sum to continue to accrue interest as follows until payment in full:
 - a. Kshs. 9,865,753.42 with interest at 12 % per annum from 4th April 2024 until payment in full.
 - b. Kshs. 2,061,771.05 with interest at 14 % per annum from 4th April 2024 until payment in full.



7. Abandoned.
 8. The costs of this application be borne by the Respondents in any event and be assessed by the court forthwith.
6. The application is premised on grounds on its face and on the supporting affidavit sworn by Manoj Keshavlal Shah, a director of the Applicant. He reiterates that no payment has been made by the Respondents to date in satisfaction of this Court's Orders issued on 21st June 2018 in ELC No. 252 of 2015 Equilab Technologies Limited v The Hon. Attorney General & Others. Further, that there have been events that demonstrate willful disregard of this Court's Orders by the Respondents. He points out that warrants of arrest issued to the Court bailiff dated the 9th May 2023 and 26th October 2023 respectively, expired on account of inability to arrest the 1st and 2nd Respondents. Further, that the Applicant's letter dated the 14th June 2023 demanding payment from the 3rd Respondent's Advocates did not elicit a response and that there is an affidavit of service evidencing service of summons to show cause upon the Respondents yet no payment has been made to date.
 7. The Applicant filed submissions dated the 22nd November 2021 and 7th February 2025. It contends that the Respondents filed Grounds of Opposition dated 14th February 2025. However, the said pleading is neither available on the CTS platform nor in the Court file. The Applicant submits that Court Orders are valid unless set aside. Further, that the Respondents had knowledge of the Court Orders issued herein but they have failed/refused to comply with the terms. It is pointed out that this suit was filed after the Respondents refused to obey court orders issued in ELC No. 252 of 2015 and that they have also refused to comply with this court's Order of Mandamus issued on 21st June 2018.
 8. It is submitted that Section 29 of the *Environment and Land Court Act* makes it an offence punishable with a fine of kshs.2 million and imprisonment not exceeding two (2) years for disobedience of Court orders and that the Rule of Law requires that Court Orders ought to be complied with. It also submitted that the delay in payment is in violation of the principles of the public finance set out under Article 210 of *the Constitution* of Kenya and that the only way the Court can assert its authority is to freeze the 1st and 2nd Respondents salaries as they are in breach of Chapter 6 of *the Constitution*.
 9. To buttress its averments, the Applicant relied on the following decisions: Republic v County Secretary, Nairobi City County & Another; Ex parte Applicant: Mohamed Tariq Khan [2021] eKLR Republic v Attorney General & 2 Others Ex parte Mountain Slopes Commercial Services Limited & Another [2016] eKLR, County Government of Laikipia v Kenya Medical Pharmacists & Dentists Practitioners Union & Another [2019] eKLR, Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County Ex Parte Stanley Muturi [2018] eKLR, Republic v Cabinet Secretary for Transport & Infrastructure Principle Secretary & 5 Others Ex Parte Kenya County Bus Owners Association & 8 Others [2014] eKLR and Republic v Cabinet Secretary for Transport & Infrastructure Principle Secretary & 5 Others exparte Kenya Country Bus Owners Association & 8 Others [2014] eKLR.

Analysis and Determination

10. Upon consideration of the two instant applications including the supporting affidavits and submissions, the only issue for determination is whether Respondents should be cited for contempt of Court and if the 1st and 2nd Respondents salaries should be freed by the 3rd Respondent pending settlement of the decretal amount.
11. The Applicant claims that the Respondents have failed to comply with this Court's Order on Mandamus issued on the 21st June 2018 compelling them to satisfy the award issued in ELC No.



252 of 2015, being a decretal sum of kshs.5,000,000/= together with interest at court rates from 26th February 2016 until payment in full and costs of ksh.1,064,392/= together with interest at 14% per annum from 27th July 2017.

12. The Respondents did not oppose the instant application.

13. Black's Law Dictionary (Tenth Edition) defines contempt of court as follows:

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

14. While Section 29 of the *Environment and Land Court Act* states that:

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”

15. Further, section 4(1) (a) of the *Contempt of Court Act* defines civil contempt as follows:

“willful disobedience of any judgement, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court”.

16. In the case of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi* (2016) eKLR, Justice Mativo (as he then was) provided parameters on civil contempt and stated inter alia:

“Writing on proving the elements of civil contempt, learned authors of the book *Contempt in Modern New*

Zealand have authoritatively stated as follows:-

“There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases -

SUBPARA (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant; (b) the defendant had knowledge of or proper notice of the terms of the order; (c) the defendant has acted in breach of the terms of the order; and (d) the defendant's conduct was deliberate.”

17. While in *Wildlife Lodges Limited v Narok County Council & 3 Others* [2011] eKLR the Court of Appeal stated:

“It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it until that order was discharged, and disobedience of such an order would, as a general rule, result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt. A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it.....”



18. Further, in *Mutitika v Baharini Farm Ltd* [1985] eKLR, the Court of Appeal held as follows:

“In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases.”

19. In this instance, it is not in dispute that the Applicant is a Decree holder in ELC No. 252 of 2015. Further, that the Decretal amount is yet to be settled. It is also not disputed that the Applicant obtained an Order of Mandamus and this in essence demonstrates that it adhered to the proper legal procedures on execution of a Decree against a government entity. It has emerged that despite service, even though the Respondents are fully aware of the Judgement in ELC No. 252 of 2015, they have declined to settle the Decree sum and failed to provide explanations to that effect. In my view, the Applicant is entitled to enjoy the fruits of its judgment.

20. Based on the facts as presented while relying on the legal provisions cited and associating myself with the decisions quoted, I find that the Respondents are indeed in contempt of the Court Order issued on 21st June 2018. I however note that the Applicant has sought for freezing of the 1st and 2nd Respondents' salaries until settlement of the Decretal sum but I opine that the Decree is not against them personally as employees of the 3rd Respondent, but only against the 3rd Respondent. I will hence decline to grant this prayer.

21. In the circumstances, I find the instant Notice of Motion applications merited but will allow them in the following terms:

a. The 3rd Respondent be and is hereby ordered to forthwith pay the Applicant's Advocates the sum of Kshs. 9,865,753.42 with interest at 12 % per annum from 4th April 2024 until payment in full and Kshs. 2,061,771.05 with interest at 14 % per annum from 4th April 2024 until payment in full.

b. Summons be and are hereby issued to the County Secretary and the Chief Finance Officer, Nairobi County Government to show cause why they should not be punished for contempt of court and punished in accordance with Section 29 of the *Environment and Land Court Act* for failing to obey the terms of the order given on 21st June 2018.

c. The Costs of the two applications is awarded and assessed at Kshs. 50,000 to be borne by the 3rd Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF MAY 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Otieno for Gichuhi SC for Applicant/Decree Holder

Court Assistant: Susan

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