



Daima Energy Services Limited v County Government of Taita Taveta (Miscellaneous Application E023 of 2022) [2023] KEHC 768 (KLR) (2 February 2023) (Ruling)

Neutral citation: [2023] KEHC 768 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS APPLICATION E023 OF 2022**

A. ONG'INJO, J

FEBRUARY 2, 2023

BETWEEN

DAIMA ENERGY SERVICES LIMITED APPLICANT

AND

COUNTY GOVERNMENT OF TAITA TAVETA RESPONDENT

RULING

1. Vide a Notice of Motion application dated August 31, 2022 and filed on September 2, 2022 brought under Certificate of Urgency together with the supporting affidavit sworn on August 31, 2022 by Julius Oenge, the Advocate, and brought under sections 1(A), 1(B), 3(A) of the [Civil Procedure Act](#), section 5 of the [Judicature Act](#), section 14 of the [Contempt of Court Act](#), 1981 of England, cap 49 Laws of England and Rules (81.8)(81.10) Part 81 of the [Civil Procedure \(Amendment No. 2\) Rules, 2012](#) England and Wales, article 159 Kenya [Constitution](#) together with all other enabling provisions of the law, the Applicant prays for the following orders: -
 1. That this application be certified urgent and a date for inter-parties hearing be given on a priority basis.
 2. That the honourable court be pleased to declare and hold that Mr. Liverson Mghendi the County Secretary, County Government of Taita Taveta being aware of this court's order given on June 10, 2022 is in contempt of court taking the form of willful disobedience of the order and disregard of the authority/dignity of the court.
 3. That Mr. Liverson Mghendi being the Accounting Officer and Secretary, County Government of Taita Taveta be committed to civil jail for a period of six (6) months and with such other sanctions in protecting the administration of justice and dignity of the court.
 4. That costs of this application be provided for.



2. The application was premised on grounds that the respondent, Mr. Liverson Mghendi, is in contempt of court orders issued on June 10, 2022. The respondent had been compelled through an order of Mandamus to honour the judgment decree entered vide Voi CMCC No. 3 of 2020 by paying the outstanding sum of Kshs. 10,360,953 together with interest at 12% per annum from the date the judgment/decreed was entered in favour of the exparte applicant within 45 days, together with costs of the suit.
3. That the order issued by court on June 10, 2022 was served upon the respondent on June 14, 2022. That thereafter, a letter was sent to the respondent electronically through email on June 16, 2022 and other reminder letters emailed to the Respondent on July 8, 2022 and July 21, 2022 requesting for payment in compliance with the court order.
4. In submissions dated January 12, 2023 and filed on the same day, the applicant relied on the cases of *Sheila Cassat Issenberg & another v Anthony Machatha Kinyanjui* (2021) eKLR, in which it was held that courts punish for contempt to uphold the dignity of the court to ensure compliance with directions of the court, observance and respect of due process of the law, preserve an effective and impartial system of justice and maintain public confidence in the administration of justice by the court.
5. The applicants referred the court to section 38 of the *Civil Procedure Act* which provides for powers of the court to enforce execution of court orders.
6. The applicant also relied on the case of *Katsuri Limited v Kapurchand Depor Shah* (2016) eKLR which cited the holding in *Kristen Carla Burchell v Barry Grant Burchell* where elements required to prove contempt were outlined mainly the terms of the order, knowledge of the terms by the respondent and failure of the respondent to comply with terms of the order.
7. The applicant argued that the respondent had earlier on been represented by the same advocate in Voi CMCC No. 3 of 2020 and Voi High Court Judicial Review No. E001 of 2020. That the advocate for the respondent on November 14, 2022 indicated that the claims were being verified prior to payment and this confirmed that they had knowledge of the terms of the order and that they had failed to obey the same. The Applicant argues that the blatant and deliberate disobedience of the court order degrades the authority of this court and the rule of law and urged that the court should ensure that its orders are obeyed.
8. The holdings *In Re: Vinay Chandra Mishra* (1995) 2 SCC584, *Republic v Attorney General & another exparte Mike Maina Kamau* and *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* (2005) KLR 828 all support the proposition that court orders are not issued in vain and must be obeyed.
9. The Supreme Court of India in *T. N. Gadavarman Thiru Mulpad v Ashok Khot and another* (2006) 5 SCC also emphasized on the dangers of disobeying court orders.
10. This court was urged to find the respondent in contempt of court orders issued on June 10, 2022 and commit Mr. Liverson Mghendi, County Secretary, County Government of Taita Taveta to civil jail for disobedience of court order.
11. After considering the application dated August 31, 2022, the Applicant's submissions thereto and the orders issued in Judicial Review Case No. 1 of 2021, this court finds that the Respondents were given 45 days to honour the judgment and decree in Voi CMCC No. 3 of 2022 by paying the outstanding sum of Kshs. 10,360,953 together with interest at 12% per annum from date of judgment. 45 days from June 10, 2022 was supposed to have lapsed on July 26, 2022.



12. The application herein was filed on September 2, 2022 when the respondents failed to comply with the orders that were issued on June 10, 2022. The respondents did not challenge the decree of the trial court in Voi CMCC No. 3 of 2020 by appeal or review. When the ex-parte applicant in Judicial Review No. 1 of 2021 moved the court to issue orders of mandamus, the Respondents failed to respond to the application or even file submissions as agreed by the parties on November 12, 2021. There was no attendance in court by the Respondent on January 25, 2022 when the matter came up for highlighting.
13. When the application herein came up November 8, 2022, the respondent was represented by Mr. Odunga Advocate, they were granted 14 days to respond to the application dated August 31, 2022. Subsequently, the applicant was to file submission within 7 days followed by the respondent who was also to file submissions within 7 days.
14. On November 8, 2022, Mr. Odunga Advocate said from the bar that the Applicant was required to appear before the department of finance and to produce the relevant documents to verify the bill but the Applicant had not complied. He sought for 21 days to respond to the application for contempt.
15. In consideration of the chronology of events stated above, it is apparent that the respondents have blatantly and deliberately disobeyed court orders made on June 10, 2022 and as held by Mativo, J. in the case of *Samuel M. N. Mweru & others v National Land Commission & 2 others* [2020] eKLR citing the case of *Fakie NO v CCII Systems (Pty) Ltd.* (653/04) [2006] ZASCA 52; 2006 (4) SA 326 (SCA) (31 March 2006): -

“Contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest.”

16. The cause of action herein appears to have arisen way back in 2017 and the respondent having had the opportunity to defend the suit against them in the Magistrates Court have a duty to ensure that the applicant enjoys the fruit of their judgment. The application by the applicant has merit, the same is allowed and the County Secretary – County Government of Taita Taveta is found to be in contempt of court orders. A warrant of arrest is hereby issued against Mr. Liverson Mghendi to be executed by the County Police Commandant to show cause why he should not be committed to civil jail for disobeying orders of 10.6.2022.
17. Costs of the application to be borne by the respondent.
Mention on February 9, 2023 before duty judge in Voi.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 2ND DAY OF FEBRUARY 2023**

**HON. LADY JUSTICE A. ONG'INJO
JUDGE**

In the presence of: -

Otolo- Court Assistant

Ms. Ochieng' Advocate holding brief for Mr. Orenge Advocate for the Applicant



Mr. Odunga Advocate holding brief for Mr. Bwire Advocate for the Respondent – No appearance

