



**Njagi Wanjeru & Co Advocates v County Secretary, Nairobi City County  
& another (Judicial Review Miscellaneous Application 605 of 2016)  
[2023] KEHC 765 (KLR) (Judicial Review) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 765 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 605 OF 2016  
AK NDUNG'U, J  
FEBRUARY 9, 2023**

**BETWEEN**

**NJAGI WANJERU & CO ADVOCATES ..... APPLICANT**

**AND**

**COUNTY SECRETARY, NAIROBI CITY COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY TREASURER, NAIROBI CITY COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application before this court is the notice of motion application dated December 7, 2018 seeking the following orders;
  - a. That an order of committal to prison do issue against the respondents, namely, the county secretary, Nairobi city county and the treasurer, Nairobi city county for six months or such period as this honourable court may deem fit and just for disobeying the decree herein dated February 14, 2017 as well as the consent order dated September 13, 2018.
2. The brief background to the application is that the applicant is a holder of a valid decree against the Nairobi county government. Efforts to obtain payment bore no fruit necessitating an application for an order of mandamus against the respondents herein to compel them to settle the decretal. The application was allowed by Odunga J (as he then was) on February 14, 2017. Many days later and after many summons to attend court served on the respondents to show cause, the parties appeared before court on September 13, 2018 and a consent was entered in the following terms;
  - a. A payment of Ksh 5000, 000 was to be made by way of RTGS on the same day.
  - b. Ksh 15,000000 was to be paid on or before October 15, 2018.



- c. The matter be mentioned on October 15, 2018 when the respondents would provide a schedule for the payment of the balance of the decretal sum.
3. The consent was not honoured and the applicant approached the court *vide* this application. What followed is a litany of applications between the county government and its lawyers over representation with numerous change of advocates effected. In the ensuing cacophony, this application was ignored and it elicited no response from the respondents.
  4. The applicant's case is that the respondents have ignored the orders of court dated February 14, 2017 as well as the follow up court orders resting with the consent order of September 13, 2018. It is urged that the long suffering applicant has no other means of enforcing the decree herein.
  5. The facts as laid out by the applicant are readily borne out of the record. There are valid orders of court which are within the knowledge of the respondents which have been disobeyed.
  6. The need to obey court orders cannot be gainsaid. The obligation of every person to obey court orders was summed up in the case of *Hadkinson v Hadkinson* (1952) 2 ALL ER56 as follows;

“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 unless and until it 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.”

7. It is trite that if the courts failed to make sure that court orders were followed, the rule of law would be seriously jeopardized. Without enforcement of court orders through the imposition of penalties for contempt of court, court orders would remain mere rhetoric, not worth the paper they are printed on. In my opinion, a judge who fails to impose sanctions on individuals who disregard his orders is unfit to preside over the next trial. After all, of what use are judicial processes if the results are in vain? The words of the court in *Trusted Society of Human Rights Alliance v Cabinet Secretary for Devolution and Planning and 3 others* [2017] eKLR ring true. The court stated;

“rule of law makes it incumbent for all persons, without exception to respect court orders at all times. The whole purpose of litigation as a process of judicial administration is lost if court orders are not complied with. A party 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 suitors or their solicitors could themselves judge whether an order was null or valid; whether it was regular or irregular. There is need to emphasize that the principle of law is that the whole essence of litigation as a process of judicial administration is lost if orders issued by court through the set judicial process in the normal functioning of courts are not complied with in full by those targeted and / or called upon to give due compliance/effect. A state organ or agency or person legally and duty bound to give due compliance must do so. Court orders cannot be issued in vain.”

8. This position is buttressed by the court in *Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County ex parte Stanley Muturi* where it was held as follows;

“Court orders are not meant for cosmetic purposes. They are serious decisions that are meant to be and ought to be complied with strictly. As was held in *Teacher's Service Commission v Kenya National Union of Teachers & 2 others* petition No 23 of 2013:



"The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt of court proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law.

Defiance is not an option."

9. The ingredients to be proved in a contempt application are well settled. The court in *Felicity Mutete Mutula v Nairobi County Government* [2021] eKLR laid down the requirements thus;

"From the foregoing rules, I would say that some of the salient features in an application for contempt of court are as follows:

1. disobedience of a court order or judgment is a foundation for contempt of court proceedings against the contemnor.
2. Where the contemnor is a company or other corporation, the committal order may be made against any director or other officer of that company.
3. The judgment or order in question must be served on the person required to do or not to do the act in question unless the court expressly dispense with personal service.
4. Where the person required to do or not to do an act is a company or other corporation, a copy of the judgment or order must also be served on the alleged contemnor.
5. Judgments and orders must be served personally.
6. The court may, however, dispense with personal service if it is satisfied that the contemnor had notice of the judgment or order;
  - a. By being present when the judgment or order was given or made;  
or
  - b. By being notified of its terms by telephone, email or otherwise.
7. The court may also dispense with personal service if it thinks it is just to do so or may make an order in respect of service by an alternative method or an alternative place.
8. There shall be permanently displayed on the front copy of the judgment or order served a warning to the person required to do or not to do the act in question that disobedience to the order would be contempt of court punishable by imprisonment, a fine or sequestration of assets. Without this



display the judgment or order may not be enforced unless it is an undertaking contained in a judgment or order.

9. The contempt of court application shall be made by an application notice in the same proceedings in which the judgment or order was made.
10. The application notice must set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and must also be supported by one or more affidavits containing all the evidence relied upon.
11. The application notice and the evidence in support must be served personally on the respondent although the court may dispense with service under paragraph (10) if it considers it just to do so: or may make an order in respect of service by an alternative method or at an alternative place. "

10. These ingredients are summed up in the book *Contempt in Modern New Zealand* 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) that: -

- 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.

11. In the present suit, am persuaded that the applicant has proved all the ingredients necessary to establish that the respondents are in contempt of court. Both are found guilty of contempt of the court orders decreeing payment of the sums due as per the decree herein. I make the following orders;

1. The respondents to purge the contempt within 14 days and report to court.
2. In default of order 1 above, the respondents to appear in court on March 8, 2023 for sentencing.
3. In default of such appearance, warrants of arrest to issue.
4. Mention on March 8, 2023 for further orders as may be appropriate.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF FEBRUARY 2023**

**A. K. NDUNG’U**

**JUDGE**

