



**Republic v County Secretary, Narok County Government & another;  
SEC & M Company Limited (Exparte) (Judicial Review E045 of 2021)  
[2023] KEHC 617 (KLR) (Judicial Review) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 617 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW E045 OF 2021  
AK NDUNG'U, J  
FEBRUARY 9, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY SECRETARY, NAROK COUNTY GOVERNMENT .... 1<sup>ST</sup>  
RESPONDENT**

**THE CHIEF OFFICER FINANCE, NAROK COUNTY  
GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**SEC & M COMPANY LIMITED ..... EXPARTE**

**RULING**

1. The application before this Court is the Notice of Motion dated May 17, 2022 filed under Section 5 of the *Judicature Act* and Order 51 rule 1 of the *Civil Procedure Rules*.
2. The motion seeks the following orders:
  - i. That this Honorable court be pleased to find that The County Secretary, Narok County Government and the Chief Officer Finance, Narok County Government are in contempt of court for disobeying and /or willfully disregarding the orders of Mandamus made on February 17, 2022 compelling payment of the decretal sum arising from the decree issued on September 23, 2015 by the High Court of Kenya at Nairobi, Milimani Commercial & Admiralty Division, Miscellaneous Civil Case No 71 of 2014.



- ii. That pursuant to 1 above, The County Secretary, Narok County Government and the Chief Officer Finance, Narok County Government do show cause why they should not be committed to civil jail for disobeying and or willfully disregarding the orders and directions given herein on February 17, 2022.
  - iii. That in default of sufficient cause being shown, this Honorable court be pleased to commit The County Secretary, Narok County Government And The Chief Officer Finance, Narok County Government to civil jail for a period of six months or such other period as the Honorable Court shall deem fit, or in the alternative and / or in addition thereto, that the said person be required to pay a fine of such amount as may be ordered by this Honourable court for the said contempt.
  - iv. That this Honourable Court be pleased to issue such other orders as may seem just and expedient.
  - v. That costs of the application and suit be provided for.'
3. The application is supported by the grounds on its face and a Supporting Affidavit sworn by Humphrey Kaburu Michael who swears to be the Director of the Ex parte Applicant.
  4. A brief summary of the Ex parte applicant's case is that this Honorable Court vide a Judgment delivered on February 17, 2022 issued an order of Mandamus directing the Respondents to settle the decretal sum arising from the decree issued on September 23, 2015 by the High Court of Kenya at Nairobi in Milimani Commercial & Admiralty Division, Miscellaneous Civil Case No 71 of 2014.
  5. It is the deponent's case that the said Decree has been served upon the Respondents on two occasions and that further that the Judgement culminating in the Decree was delivered in the presence of counsel representing the said parties. It is argued that the Respondents are fully aware of the existence of the said Decree which is still in force as the same is yet to be set aside or varied.
  6. I note from the record that there is no response to the application by the Respondents despite this court having granted them an opportunity to respond to the application on two occasion that is on July 4, 2022 and on September 27, 2022 where in the presence of counsel for the Respondent the court stated that the same was the last adjournment.
  7. The issues that arise from the application, the affidavit in support and documents attached therein are as follows:
    - i. Whether the Respondents are guilty of disobeying the orders of court emanating from the Judgment made by this Court on February 17, 2022 thus rendering them in contempt of court?
    - ii. What orders should issue?
    - iii. Who bears the costs of the application?
  8. The obligation of every person to obey court orders was summed up in the case of *Hadkinson v Hadkinson* [1952] 2 ALL ER 56 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.'

9. 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?
10. I am in agreement with the decision 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 vs 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.'

11. 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.'
12. 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.
13. In our instant case I note that the fact that there is a valid subsisting order of this court that is yet to be set aside or varied has not been controverted, and further, that service having been effected on the Respondents they are aware that there is an existing court order that ought to be satisfied. Counsel representing the Respondents was also in court when Judgment was rendered by this court and in subsequent proceedings before this court thereafter. This is enough proof that the Respondents are



aware of the existing order. This court appreciates that any lapse in enforcement of court orders is a sure invite to a total breakdown of law and order and the rule of law as we know it.

14. Having established as much, I find the respondents in contempt of the orders of this court for which they should be punished. Accordingly, I order that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents appear in person before this court on a date to be advised to show cause why they should not be committed to civil jail. In default of appearance, a warrant of arrest is to issue. The Applicant will have the costs of the application.

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

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**A. K. NDUNG'U**

**JUDGE**

