



Leopard Rock Mico Limited v Chief Officer Finance, County Government of Meru & 2 others (Judicial Review E003 of 2021) [2023] KEHC 20452 (KLR) (20 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20452 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
JUDICIAL REVIEW E003 OF 2021
TW CHERERE, J
JULY 20, 2023**

BETWEEN

LEOPARD ROCK MICO LIMITED APPLICANT

AND

**CHIEF OFFICER FINANCE, COUNTY GOVERNMENT OF
MERU 1ST RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF MERU 2ND
RESPONDENT**

**COUNTY EXECUTIVE MEMBER FOR FINANCE, COUNTY GOVERNMENT
OF MERU 3RD RESPONDENT**

RULING

Background

1. By an order dated June 23, 2022, this court made the following orders as against the Respondents:
 1. An order of *mandamus* be and is hereby issued directing and compelling the Chief Officer responsible for financial matters of the County Government of Meru, County Secretary of the County Government of Meru and County Executive Committee Member responsible for financial matters of the County Government of Meru to pay the applicant within 30 days the sums contained in:
 - a. The decree dated June 18, 2021 comprised in the certificate of order against the Government dated June 24, 2021 compelling the respondents to comply with the certificate of order against the Government issued in Misc Applic No 1 of 2021, Leopard Rock Mico Limited vs County Government of Meru



- b. Certificate of order for costs against the Government dated May 11, 2021 issued in Meru Misc Cause No 11B of 2020, Leopard Rock Mico Limited vs County Government of Meru
 - c. Certificate of order for costs against the Government dated May 11, 2021 issued in Meru Misc Cause No E005 of 2021, Leopard Rock Mico Limited vs County Government of Meru
 2. Costs shall be borne by the Respondents
2. By notice of motion dated August 31, 2022, applicant seeks the following orders:
 1. That the honourable court be pleased to imprison the Chief Officer Finance, County Secretary and County Executive Committee Member for Finance of the County Government of Meru for being in contempt with the orders issued on June 23, 2022 for a period of 6 months or such other period as the court will determine until satisfaction of :
 - a. The decree dated June 18, 2021 comprised in the Certificate of Order against the Government dated June 24, 2021 compelling the Respondents to comply with the Certificate of Order against the Government issued in Misc Applic No 1 of 2021, Leopard Rock Mico Limited vs County Government of Meru
 - b. Certificate of Order for Costs against the Government dated May 11, 2021 issued in Meru Misc Cause No 11B of 2020, Leopard Rock Mico Limited vs County Government of Meru
 - c. Certificate of Order for Costs against the Government dated May 11, 2021 issued in Meru Misc Cause No E005 of 2021, Leopard Rock Mico Limited vs County Government of Meru
 3. Costs shall be borne by the Respondents
3. By an order dated January 26, 2023, this court granted the following order among other that:
 1. Summons are hereby issued requiring the Respondents to appear before the court to show cause why they should not be imprisoned for a period of 6 months or such other period as the court will determine until satisfaction of the aforementioned decrees and Certificate
4. On April 25, 2023, Monica Kathiorui Kathoni, who is the 2nd Respondent appeared for examination and stated that she became aware of the decree in favour of the Applicant sometimes in March, 2023. She stated that she did not know how much was owed to the Applicant, that Applicant's claim was not approved in the supplementary budget and is likely to be paid in the next financial year.
5. I have considered the application in the light of the affidavits on record and the examination of the 2nd Respondent.
6. Contempt of court is that conduct or action that defies or disrespects authority of court. *Black's Law Dictionary* 9th Edition, defines contempt as: The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.
7. Properly put, contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the *Judicature Act* confers jurisdiction on the superior courts to punish for contempt.



8. The defence of non-allocation of funds by Parliament that was raised by the 2nd Respondent in replying affidavit. Githua J in her ruling in *Republic vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza* [2012] eKLR extensively dealt with the defence of lack of budgetary allocation and stated as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on the Hon Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.”

9. This position was appreciated by this court in *Wachira Nderitu, Ngugi & Co Advocates vs The Town Clerk, City Council of Nairobi* Miscellaneous Application No 354 of 2012 in which this Court pronounced itself that:

“.....financial difficulty is only a consideration when it comes to determining the mode of settlement of a decree but is not a basis for declining to compel the Respondent to settle a sum decreed by the Court to be due from it.

10. Whereas the 2nd Respondent stated that the 3rd Respondent is willing to settle the decree, 2nd Respondent did not avail any evidence that any attempts had been made to commence the process of allocation for payment of the monies due to the Applicant given that these recovery proceedings started in 2021.
11. Having satisfied myself that the 2nd Respondent has been aware of the decree and of Order for Costs against the Government issued in this matter in favour of the Applicant from around November, 2022, and steps not having been taken to satisfy the decretal sum due to the Applicant as compelled in the said orders, 2nd Respondent is at fault for disobeying the same said orders and is in contempt of court. The Applicant’s Notice of Motion dated August 31, 2022 is thus merited.



12. After examination of the 2nd Respondent, Mr Ashaba counsel for Respondents informed the court that the Respondents had proposed to pay the Applicant Kes 50 million by July, 2023 and urged that the ruling be deferred which application Mr Wanyama, counsel for the Applicant strongly opposed.
13. End of July, 2023 is only 11 days away. Given the respondent's request to be given till end of July, 2023 to effect payments, this court is inclined to grant the 2nd respondent the opportunity to purge the contempt, and as a way of mitigating the sentence. I accordingly order as follows:
 1. The 2nd Respondent's sentencing for contempt of court is suspended
 2. 2nd Respondent is granted up to July 31, 2023 to purge the contempt
 3. Sentence on September 21, 2023 if the contempt will not have been purged
 4. Costs of the notice of motion dated August 31, 2022 shall be borne by the respondents

DATED IN MERU THIS 20TH DAY OF JULY 2023

WAMAE. T.W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Applicant - Mr. Wanyama for Manyonge Wanyama & Associates LLP

For Respondents - Mr. Ashaba for Mutuma & Gichuru Associate Advocates

