



**Republic v Nairobi City County & 3 others; Waweru t/a Mooreland
Mercantile Company Limited (Exparte) (Judicial Review E054 of 2022)
[2024] KEHC 14910 (KLR) (Judicial Review) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 14910 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E054 OF 2022
JM CHIGITI, J
OCTOBER 11, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

NAIROBI CITY COUNTY 1ST RESPONDENT

**COUNTY EXECUTIVE COMMITTEE MEMBER FINANCE, NAIROBI CITY
COUNTY 2ND RESPONDENT**

CHIEF OFFICER FINANCE, NAIROBI CITY COUNTY 3RD RESPONDENT

SECRETARY, NAIROBI CITY COUNTY 4TH RESPONDENT

AND

**JOSEPH NDIRANGU WAWERU T/A MOORELAND MERCANTILE
COMPANY LIMITED EXPARTE**

RULING

1. The application that is before this court for determination is the one dated 2nd May 2024 wherein the applicant is seeking for ORDERS: -
 1. That this Honourable Court be pleased to order that the warrants of arrest issued by this Honourable court on 8th March, 2024 against Charles Kerich-County Executive Committee Member Finance and Economic Affairs, Nairobi City County and Asha Abdi- Chief Officer finance, Nairobi City County be implemented by the OCS-Central Police station, Nairobi.



2. That this Honourable Court be pleased to order the OCS-Central police station, Nairobi to implement the warrants of arrest issued on 8th March,2024 by this Honourable court against Charles Kerich-County Executive Committee Member Finance and Economic Affairs, Nairobi City County and Asha Abdi-Chief Officer finance, Nairobi City County.
3. THAT cost of this application be in the cause.
2. The application is supported by the affidavit of the Exparte Applicant.
3. A warrant of arrest was issued on 8th March, 2024 against CHARLES KERICH-County Executive Committee Member Finance and Economic Affairs, Nairobi City County and Asha Abdi-Chief Officer finance, Nairobi City County.
4. It is his case that the said warrants of arrests did not specify the person or authority to implement it making it hard to implement the said warrants.
5. He has tried court bailiffs and also the services of the OCS- Central police station to have the said warrants of implemented by arresting the CHARLES KERICH-County Executive Committee Member Finance and Economic Affairs, Nairobi City County and Asha Abdi- Chief Officer finance, Nairobi City County.
6. The OCS-Central of police station was clear that they only implement warrants specifically addressed to them as seen in the letter addressed to the OCS-Central Police station, Nairobi.
7. The warrants of arrests have remained unimplemented to date denying the applicant the opportunity to enjoy the fruits of the judgment.
8. It is his case that granting the orders will help force the Respondents to purge their contempt of the clear court orders issued by this Honourable Court on 10th November, 2022.
9. He argues that it is fair, just and in the interest of justice and Rule of law that this application is allowed.

Respondents case;

10. It is their case that the Ex-parte Applicant has not placed any evidence before this Honorable Court to show that it has had difficulties trying to implement the warrants of arrest.
11. They urge this Honourable Court not to exercise its discretion to grant the Orders sought in the said Application as the Applicant has not produced any evidence to show that it has even tried to implement the said warrants.
12. They argue that it is not the Respondent's duty to specify the person and/or authority to implement the warrants of arrests.
13. It is their case that the Respondent has been wrongly enjoined in the application as it is not involved in implementing warrants of arrest.
14. According to the Respondents a person who fails to satisfy a monetary decree may, if the conditions stipulated in Section 38 of the [Civil Procedure Act](#) are satisfied, be committed to jail.
15. Committal to jail in such circumstances is exceptional in the sense that a person's liberty is curtailed not at the instance of the State but at the instance of a private individual though the person detained, in the circumstances, is placed in the custody of the state. Committal to civil jail is not a means of satisfaction of a decree but a means by which compliance is sought to be enforced, it does not in itself amount to a satisfaction of a decree.



16. In addition to this, it argues that the Orders that the ex-parte Applicants are seeking consist of a mode of execution that is mala fides and may well have been intended to intimidate and harass the Respondents as the police have no role in the execution of civil process. That role is simply restricted to overseeing that peace, law and order is maintained during the process of execution which process is to be undertaken by a duly authorized court officer.
17. Reliance is placed in *George Arab Muli Mwalabu v Senior Resident Magistrate Kangundo & 2 others; Festus Mbai Mbonve (Interested Party)/2019/eKLR*, the trial Judge cited the case of *Kamau Mucuhays. The Ripples Ltd. Civil Application No. Nai.186 of 1992 11990-19941 EA 388: J19931 KLR 35*. where Kwach, JA expressed himself as follows:

“The only valid criticism of the order of the Judge as of now, but which does not swing the scale one way or the other in this application is the direction that the assistance of the police should be enlisted to secure compliance by the applicant. The police should never be involved in securing compliance with court orders.”
18. Further, such exceptional order ought to be granted only where there is satisfactory evidence of the likelihood of a resistance to the execution of the said decisions and ought not to be dishd as a matter of course or simply for the asking.

Analysis and determination;

19. In *Central Bank of Kenya & Another vs. Ratilal Automobiles Limited & Others Civil Application No. Nai.247 of 2006*, the Court of Appeal held that Judicial power in Kenya vests in the Courts and other tribunals established under *the Constitution* and that it is a fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.
20. The Court of Appeal in *A.B. & Another v R.B.*, Civil Application No. 4 of 2016 [2016] eKLR cited with approval the Constitutional Court of South Africa's decision in *Burchell v. Burchell Case No.364 of 2005* where it was held:

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. *The Constitution* states that the rule of law and supremacy of *the Constitution* are foundational values of our society. It vests the judicial authority of the state in the court and requires other organs of the state to assist and protect the court. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively have the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”
21. Similarly, in the case of *Republic v County Chief Officer. Finance & Economic Planning, Nairobi City County (Ex Parte David Mugo Mwangi) [2018] eKLR*, the Court made the following observations;

“It must however be remembered that Court orders are not made in vain and are meant to be complied with. If for any reason a party has difficulty in complying therewith, the honorable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. Once a Court order is made in a suit the same is valid unless set



aside on review or on appeal. In *Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another* [2005] 1 KLR 828, Ibrahim, J (as he then was) stated:

"It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void".

22. This court is in agreement with the respondent to the extent that it is not the Respondents' duty to specify the person and/or authority to implement the warrants of arrests. It is this court holding that the Respondents are aware of the court orders, and they are simply and casually refusing to comply with them.
23. Court orders must be obeyed at all times so as to promote the rule of law and democracy. Whenever court orders are issued there is always a legitimate expectation, that is instantly placed in the hands of the decree holder that they will access the fruits of the judgment.
24. After *the Constitution* 2010 legitimate expectation became part of what the Fair administrative action under Article 47 that is realizable through the legislative framework of the *Fair Administrative Action Act* and in particular the special judicial review mechanisms of Mandamus. This accords and compliments the robust execution mechanisms under the *Civil Procedure Act*.
25. Once a decree is issued by the court it becomes an actionable right and a property for the decree holder. Legitimate expectation is realized and completed when the person who is directed to comply with the decree obeys the command therein. This explains why decrees have a penal Notice appended to them leading to sanctions by the court in the event of contempt.
26. On 1st March, 2024 the court issued warrants of arrest against CHARLES KERICH- the County Executive Committee Member Finance AND Economic Affairs, Nairobi City County and Asha Abdi-Chief Officer Finance, Nairobi City County. This remains unimplemented.
27. The Respondents' arguments that the police cannot assist in the execution of warrants emanating from the judicial review court is misplaced. The police have a duty to ensure that there is law and order under the police Act at all times.
28. Section 11(2)(c) of the *Fair Administrative Action Act* stipulates that in proceedings for judicial review relating to failure to take an administrative action, the court may grant any order that is just and equitable, including an order- directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties.
29. This court is satisfied that there is a need to issue the orders as sought which this court finds and considers necessary so as to do justice between the parties herein. The Respondents are misguided in that they seem to reason that an arrest of a contemnor is the same as committal to civil jail.
30. The purpose of the arrest of a contemnor is to bring him to court where they are given an opportunity to show cause why they should not be committed to civil jail through a fair trial framework that is guided by Article 50 of *The Constitution*. There is a justification in issuing the orders sought.



Disposition;

31. The applicant has made out a case for the grant of the orders sought.

Order;

1. The Warrants of arrest that were issued on 8th March, 2024 against Charles Kerich - County Executive Committee Member Finance and Economic Affairs, Nairobi City County and Asha Abdi- Chief Officer finance, Nairobi City County shall be implemented by the OCS - Central Police station, Nairobi.
2. Costs on the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF OCTOBER, 2024.

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J. M. CHIGITI (SC)

JUDGE

