



MFI Documents Solutions Ltd v County Government of Taita Taveta & 2 others (Judicial Review E001 of 2024) [2025] KEHC 13519 (KLR) (29 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13519 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
JUDICIAL REVIEW E001 OF 2024
AN ONGERI, J
SEPTEMBER 29, 2025**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO
INSTITUTE JUDICIAL REVIEW PROCEEDINGS FOR ORDERS
OF MANDAMUS BY MFI DOCUMENTS SOLUTIONS LIMITED**

AND

**IN THE MATTER OF: THE LAW REFORM ACT, SECTIONS 8 AND 9 (CAP 26)
LAWS OF KENYA**

AND

IN THE MATTER OF: ARTICLE 47 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE PUBLIC FINANCE ACT, 2012

AND

IN THE MATTER OF: SECTIONS 44 AND 55 OF THE COUNTY GOVERNMENTS ACT, 2012

AND

**IN THE MATTER OF: THE GOVERNMENT
PROCEEDINGS ACT, CAP 40 OF THE LAWS OF KENYA**

BETWEEN

MFI DOCUMENTS SOLUTIONS LTD APPLICANT

AND

COUNTY GOVERNMENT OF TAITA TAVETA 1ST RESPONDENT

**COUNTY EXECUTIVE MEMBER FOR FINANCE, COUNTY GOVERNMENT
OF TAITA TAVETA 2ND RESPONDENT**



RULING

1. The application coming for consideration in this Ruling is the one dated 7th March 2025 brought under Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B, 3A and 63 of the Civil Procedure Act, Cap 21 Section 5(1) of the Judicature Act, Articles 10 and 159 of the Constitution of Kenya and all other enabling provisions of the law seeking the following orders:-
 - i. This application be certified urgent.
 - ii. This application be heard ex-parte and service be dispensed with in the first instance.
 - iii. The Honorable Court be pleased to order Mr. Friday Mwafuga, County Secretary, Taita Taveta County and Mr. Dawson Katuu Mzenge, Chief Executive Committee Member Finance, Finance, Taita Taveta County to be committed to civil jail for contempt of court order issued on 12th February 2025.
 - iv. In the alternative and without prejudice to prayer 3 above, the Honorable Court be pleased to order the properties of Mr. Friday Mwafuga, County Secretary, Taita Taveta County and Mr. Dawson Katuu Mzenge, Chief Executive Committee Member Finance, Taita Taveta County be attached and sold to satisfy the decretal sum accrued interest and costs in HCJRMISC APP NO. E001 of 2024, VOI.
 - v. The costs of the application be provided by Mr. Friday Mwafuga, County Secretary, Taita Taveta County and Mr. Dawson Katuu Mzenge, Chief Executive Committee Member Finance, Taita Taveta County.
 - vi. The Honorable Court to issue any other orders it deems fit.
2. The application is based on the following grounds:-
 - i. The Applicant was awarded a sum of Kshs. 2,228,811.46/- (Kenya Shillings Two Million Two Hundred and Twenty Eight Thousand Eight Hundred and Eleven, Fifty Cents only) with interest from the date of filing suit against the 1st Respondent vide a Judgment of the Chief Magistrate's Court in MCCC/E016 of 2021 MFI Document Solutions Ltd v County Government of Taita Taveta.
 - ii. The Applicant subsequently moved the High Court for these judicial review proceedings against the Respondent. On 10th July 2024, the High Court at Voi delivered its Ruling allowing the application as prayed with costs. In particular, the court issued the following orders:
 - a. The application is allowed as prayed.
 - b. Judicial review orders of mandamus do issue directed to compel the Respondents to pay the ex parte Applicant the decretal sum together with interest thereon of Kshs. 2,228,811.46/= which is due to date on account of judgment entered in MCCC E016 of 2021 MFI Document Solutions v. County Government of taita taveta against the Respondents herein.



- c. Judicial Review Orders of Mandamus do issue to compel the Respondents to pay the decretal sums of Kshs. 2,405,306.46/- awarded in MCCC E016 of 2021 MFI document solutions v. county government of Taita Taveta as per the Certificate of Order against the Government issued on 8th December 2023.
 - d. The Respondents be and hereby ordered to comply by satisfying the decree, costs and interest in MCCC E016 of 2021 MFI Document Solutions Versus County Government of Taita Taveta within 14 days from the date of service of the order of Mandamus.
- iii. The Applicant thereafter filed a bill of costs dated 29th August 2024. The Deputy Registrar taxed the bill of costs on 16th October 2024 at Kshs. 144,330/=
 - iv. The Respondent is therefore liable to settle the decretal sum of Kshs. 2,405,306.45/= plus Kshs. 144,330.00/= making a total of Kshs. 2,549,636.46/=
 - v. Despite the decree with the penal notice having been extracted and served upon the Chief Officer Finance and the County Secretary, County Government of Taita Taveta, they have disobeyed the order.
 - vi. It is for this reason that the Applicant is seeking an order to find the two officers of the County Government of Taita Taveta to be in contempt of court.
 - vii. Therefore, they ought to show cause why they should not be committed to civil jail on such terms as this Honourable Court may deem fit unless the contempt is purged.
3. The application is supported by the affidavit of Sachin Mittal sworn on 7th March 2025 as follows:-
- i. I am the Applicant's Finance Director and I thus have full knowledge of this matter and I am therefore competent to swear this affidavit.
 - ii. The Applicant was awarded a sum of Kshs. 2,228,811.46/= (Kenya Shillings Two Million Two Hundred and Twenty-Eight Hundred and Eleven, Fifty Cents only) vide with interest from the date of filing suit against the 1st Respondent vide a Judgment of the Chief Magistrate's Court in MCCC/E016 of 2021 MFI Document Solutions Ltd v County Government of Taita Taveta.
 - iii. The Applicant subsequently moved the High Court for these judicial review proceedings against the Respondent. On 10th July 2024 the High Court at Voi delivered its Ruling allowing the application as prayed with costs.
 - iv. The Applicant thereafter filed a bill of costs dated 29th August 2024. The Deputy Registrar taxed the bill of costs on 16th October 2024 at Kshs. 144,330/= making the total decretal sum Kshs. 2,549,636.46/=
 - v. Through a letter dated 13th February 2025 the Applicant reminded the Respondent and its officers to settle the decretal sum but the letter has not elicited any response whatsoever.
 - vi. Despite the decree with the penal notice having been extracted and served upon the Chief Officer Finance and the County Secretary, County Government of Taita Taveta, they have disobeyed the order.
 - vii. It is for this reason that the Applicant is seeking an order to find the two officers of the County Government of Taita Taveta to be in contempt of court.



- viii. Therefore they ought to show cause why they should not be committed to civil jail on such terms as this Honourable Court may deem fit unless the contempt is purged.
- ix. For the above reasons this application deserves to be heard urgently and orders issued immediately as we continue to suffer and accrue debts yet we have a judgment against the Respondents.
4. The Respondents filed a Replying Affidavit sworn by Friday Mwafuga as follows:-
- i. That I am the 3rd Respondent herein. In my position aforesaid, I am well seized of the facts deposed herein and being duly authorized. I am competent to depose to this affidavit on the Respondent's behalf.
 - ii. That the facts contained herein are unless otherwise stated or indicated by the context, within my own knowledge and to the best of my belief, true and correct. Where I make legal submissions I do so on the basis of the advice of the Respondent's Counsel on record, Messrs. John Bwire & Associates Advocates.
 - iii. That I swear this affidavit in opposition to the application dated 7th March 2025.
 - iv. That from the onset I wish to state that the alleged contemnors are not the proper parties against whom execution proceedings against the County Government of Taita Taveta should lie, and as such we are unsuited in this application. I am not an accounting officer and therefore not a necessary party to these proceedings.
 - v. That additionally, the prayers sought against Dawson Katuu Mzenge cannot issue because he no longer occupies the office of the 2nd Respondent having been re-assigned to the Department of Agriculture, livestock, irrigation, co-operative development and blue economy on 7th November 2024.
 - vi. That in the matter before this honourable court, the Applicant has not obtained a Certificate of satisfaction of Order against the Government and served the same upon the Respondents.
 - vii. That I am advised by the Respondent's Counsel on record that non-compliance of the provision of Section 21 of the [Government Proceedings Act](#) as demonstrated herein above, renders these proceedings legally incompetent and premature.
 - viii. That furthermore the Applicant herein failed to effect personal service of the Decree, Penal notice and/or Certificate of Order upon the cited Contemnors and hence this application is filed contrary to the law and mandatory procedure on contempt applications. There are no affidavits of service on record evidencing personal service.
 - ix. That additionally, the Applicant is not in compliance with the mandatory provisions of Section 5(1) of the [Judicature Act](#).
 - x. That it is a necessary and mandatory condition for the enforcement of a decree by way of sequestration or committal, that the copy of the decree served should have the requisite penal notice endorsed thereon. The court order of 12th February 2025 is not compliant with these legal provisions.
 - xi. That as far as Section 63 of the [Civil Procedure Act](#), which the Applicant has invoked in this application is concerned, it does not apply to contempt of court proceedings against government officers.



- xii. That without prejudice to the averments above, I am aware that the County Government has various competing interests catered for in the budget. Therefore, this Honourable Court ought to allow the Applicant's claim to be factored in (upon verification) the forthcoming budget to be approved by the County Assembly since the county executive cannot expend money not approved in the budget. It will amount to an illegality.
 - xiii. That the Respondents are not in willful disobedience or breach. The alleged contemnors are government officials and are prohibited in law under Sections 196 and 197 of the Public Finance Management Act (2012) from paying funds without any prior authorization or approval for it would be an offence to spend any public funds in that manner.
 - xiv. That the application is filed contrary to the provisions of Section 21(4) of the Government Proceedings act which provides that government officers are not personally liable for government debts.
 - xv. That in the application for mandamus, the Respondents were simply being compelled to facilitate the payment as opposed to imposing personal liability. In such circumstances, the alleged contemnors Friday Mwafuga and Dawson Katuu Mzenge cannot be held liable in their personal capacities but only on official capacities. Consequently, committing us to civil jail or attaching our private properties to satisfy a government debt would be unjust, unfair and unconstitutional.
 - xvi. That it is in the best interest of the justice that the application be dismissed.
5. The parties filed written submissions as follows:-
 6. The applicant submitted that the County Government of Taita Taveta and its officials are in contempt of court for willfully disobeying a court order to pay a decretal sum.
 7. That the core of their argument is that the respondents' knowledge of the order is sufficient to prove contempt, even if personal service of the order is not demonstrated.
 8. The applicant refuted the respondents' defenses by asserting that the order did contain a required penal notice and that the respondents' own affidavit confirms their awareness of the obligation.
 9. The applicant characterizes the respondents' conduct as a deliberate challenge to the court's authority and the rule of law.
 10. Consequently, the applicant urged the court to impose sanctions, specifically a six-month prison sentence, a fine, or both, to uphold the dignity and integrity of the judiciary.
 11. The Respondents submitted that the application is fundamentally flawed and should be dismissed.
 12. Firstly, they argued that the two individuals cited for contempt, Mr. Dawson Katuu Mzenge and Mr. Friday Mwafuga, are not the proper parties against whom such orders can issue.
 13. They state that Mr. Mzenge is no longer the County Executive Member for Finance, having been reassigned to a different department in November 2024, as evidenced by a gazette notice.
 14. Consequently, he is not the accounting officer obligated to satisfy the decree. Similarly, they argue that a County Secretary, the office held by Mr. Mwafuga, has no role or obligation in managing county finances under the Public Finance Management Act and the County Governments Act, and is therefore not a necessary party to these proceedings.



15. Secondly, the Respondents submitted that the application failed on technical and procedural grounds. They asserted that the court order allegedly disobeyed, issued on 12th February 2025, did not contain the requisite penal notice endorsing the consequences of disobedience, rendering any contempt proceedings incompetent.
16. Furthermore, they argued the application is premature as the Applicant failed to first obtain and serve a "Certificate of Order Against the Government" as mandatorily required by Section 21 of the [Government Proceedings Act](#) and Order 29 of the Civil Procedure Rules before attempting to execute a decree against a government entity.
17. Thirdly, the Respondents challenged the validity of the service of the order. They stated that the Applicant failed to effect personal service of the decree and penal notice upon the cited individuals, which is a mandatory requirement for committal proceedings.
18. Further that the absence of affidavits of service proving personal knowledge of the order is a fatal flaw in the application.
19. Finally, on the substance of the alleged contempt, the Respondents deny any wilful disobedience.
20. They argued that as government officials, the alleged contemnors are prohibited by the [Public Finance Management Act](#) from spending public funds without proper authorization and can only act in their official capacities.
21. They maintained that holding them personally liable, including committing them to jail or attaching their private property for a government debt, would be unjust, unfair, and unconstitutional.
22. The Respondents concluded that the Applicant has not met the high standard of proof required for contempt, which is almost beyond reasonable doubt, and pray for the application to be dismissed with costs.
23. The issues for determination in the application dated 7th March 2025 are as follows:-
 - i. Whether the application is procedurally competent, specifically concerning the requirements for personal service of the order and penal notice upon the alleged contemnors.
 - ii. Whether the Respondents have demonstrated a valid defense or justification for the non-payment of the decretal sum.
 - iii. Whether the Applicant has proved, to the required standard, that the alleged contemnors are in contempt of the court order issued on 12th February 2025.
24. The jurisdiction of the court to punish for contempt of Court is a vital tool for upholding the authority and dignity of the Court.
25. It is not a power exercised lightly, but rather one that is invoked to protect the administration of justice and the rule of law.
26. The standard of proof in contempt proceedings is high, akin to the standard in criminal cases; it must be proved beyond reasonable doubt that the contemnor had knowledge of the order and willfully disobeyed it.
27. On the first issue regarding procedural competency, the law sets out clear prerequisites for an application for committal.



28. Order 43 Rule 2 of the Civil Procedure Rules provides that a judgment or order shall not be enforced by committal unless a penal notice is endorsed on the copy of the judgment or order served.
29. Furthermore, personal service of the order, complete with the penal notice, upon the individual against whom committal is sought is mandatory.
30. The rationale is to ensure that the person is made personally aware of the order and the consequences of flouting it.
31. In the present case, the Respondents have vehemently argued that there is no affidavit of service on record to prove that Mr. Friday Mwafuga and Mr. Dawson Katuu Mzenge were personally served with the decree containing the penal notice.
32. The Applicant bears the burden of proving such service. While the Applicant's supporting affidavit deposes that the decree was "served upon the Chief Officer Finance and the County Secretary," this is a mere assertion.
33. The absence of a sworn affidavit from a process server detailing the time, place, and manner of personal service upon the specific individuals is a fatal procedural flaw.
34. Personal service is a cornerstone of natural justice in contempt proceedings. Without strict compliance with this requirement, the court cannot assume jurisdiction to commit a person to jail.
35. Consequently, the application is incompetent on this ground alone.
36. Regarding the second issue, the Respondents have raised substantive defenses to the alleged contempt. They argue that the alleged contemnors are not the proper parties to be held liable.
37. It is conceded that Mr. Dawson Katuu Mzenge was reassigned from the Finance docket in November 2024.
38. A contempt order cannot logically issue against an individual who no longer holds the office and the attendant responsibilities that the court order was directed towards.
39. As for the County Secretary, Mr. Friday Mwafuga, his role as an accounting officer for the purpose of satisfying a decree is not clearly established under the *Public Finance Management Act*.
40. More significantly, the Respondents invoke the provisions of the *Public Finance Management Act, 2012*, arguing that government officials are prohibited from spending public funds without an approved budget.
41. They contend that the non-payment is not an act of willful defiance but a procedural necessity to comply with the law governing the expenditure of public funds.
42. A mandamus order against a government entity compels it to perform its legal duty, but the actual payment must be processed in accordance with the legal framework for public finance.
43. While this does not absolve the County Government of its obligation, it provides a context that may negate the element of "willfulness" required for a finding of personal contempt against individual officers.
44. On the third issue, which is the core of the application, the Applicant has failed to meet the high standard of proof required.



45. For a finding of contempt, the applicant must prove three elements: the terms of the order were clear and unambiguous, the alleged contemnor had knowledge of the order, and the contemnor acted in breach of the order.
46. As already discussed, the proof of personal service is lacking. Furthermore, the defense raised by the Respondents, while not excusing the County Government's overall obligation, introduces a reasonable doubt as to whether the failure to pay constitutes a willful and personal contempt on the part of the named officers, as opposed to an institutional delay constrained by budgetary and statutory processes.
47. Contempt is not about the disobedience per se, but about the deliberate and intentional defiance of a court order.
48. The evidence presented by the Applicant falls short of establishing this level of culpability against the individual officers beyond reasonable doubt.
49. In conclusion, while the Court is acutely aware of the Applicant's frustration in not enjoying the fruits of its judgment, the application for contempt dated 7th March 2025 must fail.
50. It is procedurally defective due to the lack of proof of personal service of the order with a penal notice.
51. On the merits, the Applicant has not discharged the heavy burden of proving beyond reasonable doubt that the named officers are in willful contempt of the court order.
52. The appropriate recourse for the Applicant remains to pursue execution against the County Government of Taita Taveta as a legal entity, in strict compliance with the [Government Proceedings Act](#) and the Civil Procedure Rules. The application is therefore dismissed. Each party shall bear its own costs.
53. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 29TH DAY OF SEPTEMBER 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

Mr. Kahindi holding brief for Mr. Amadi for the Applicant

