



**Republic v County Government of Isiolo & 3 others; Mbogo
& Muriuki Advocates (Ex parte Applicant) (Judicial Review
E004 of 2025) [2025] KEELC 7518 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7518 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
JUDICIAL REVIEW E004 OF 2025
JO MBOYA, J
OCTOBER 23, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

THE COUNTY GOVERNMENT OF ISIOLO 1ST RESPONDENT

**THE COUNTY SECRETARY COUNTY GOVERNMENT OF
ISIOLO 2ND RESPONDENT**

**ICT AND ECONOMIC PLANNING COUNTY GOVERNMENT OF
ISIOLO 3RD RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE,
EXECUTIVE COMMITTEE MEMBER FOR FINANCE, ICT AND ECONOMIC
PLANNING, COUNTY GOVERNMENT OF ISIOLO 4TH RESPONDENT**

AND

MBOGO & MURIUKI ADVOCATES EX PARTE APPLICANT

RULING

1. What is before me is the Notice of Motion Application dated 3rd October 2025; brought pursuant to the provisions of Section 5 of the *judicature act*, cap 8 Laws of Kenya; Section 36 of the High Court [organization & administration act] 2015; and Order 51 Rule 1 of the civil procedure rules 2010; and wherein the ex-parte applicant [herein after referred to as the applicant] seeks the following reliefs;
 - i. That this Application be certified as urgent and be heard on priority basis.



- ii. That the Honourable court do find that the 2nd -4th respondents are in contempt of court for disobedience of the orders of this court issued on 30/7/2025 by failing to pay a cumulative sum of Kshs.3,762,930/=.
 - iii. That this Honourable court do summon Dade boru (The county secretary), Luqman Abdi (CECM Finance, Economic planning and ICT) and Habiba Galgalo Jirma (Chief officer finance economic planning & ICT) to personally attend court to show cause why they should not be punished for contempt of court.
 - iv. That upon grant of prayers (2) & (3) above, this Honourable court do issue an order that the above-mentioned persons be committed to civil jail for a period of 6 months for contempt of court.
 - v. That costs of the Application be provided for.
2. The subject application is premised on the various grounds which have been highlighted in the body thereof. Furthermore, the application is supported by the affidavit of Ken Muriuki, learned counsel for the applicant and which is sworn on the even date. In addition, the deponent has annexed assorted documents, including a copy of the certificate of taxation, a copy of the certificate of order and a copy of the affidavit of service pertaining to service of the decree and the certificate of order upon the respondents.
 3. The respondents filed a replying affidavit sworn on 14th October 2025 and wherein the deponent [Dade Boru] has averred that the respondents are knowledgeable of the debt underpinning the subject application. Moreover, it has been averred that the respondents have not been able to pay/liquidate the debt because the 1st respondent's budget has not been approved. Additionally, it has been averred that the 1st respondent was only allowed to access 50% of her budget amounting to Kshs.2.4 billion only and which monies were conditioned to be used for the provision of essential services only and not otherwise.
 4. The subject application came up for hearing on 22nd October 2025; whereupon the advocates for the parties covenanted to canvass and dispose of the application vide oral submission. To this end, the court proceeded to and give directions. Furthermore, the submissions by and on behalf of the parties are on record.
 5. Briefly, learned counsel for the applicant adopted the grounds contained in the body of the application; reiterated the averments in the supporting affidavit; and referenced the annexures attached thereto. In addition, learned counsel for the applicant has highlighted two key issues for consideration and determination by the court.
 6. Firstly, learned counsel for the applicant has submitted that the applicant procured a certificate of taxation against the 1st respondent and thereafter applied for judgment to be entered on the basis of the certificate of taxation. To this end, it was posited that judgment was indeed entered in accordance with the certificate of taxation, culminating into a decree of the court issued on 30th July 2025.
 7. Additionally, it was submitted that following the issuance of the decree, the applicant proceeded to and effected service upon the 1st respondent. In this regard, counsel submitted that the 1st respondent is knowledgeable of the terms of the decree of the court. Nevertheless, counsel has contended that despite being aware of the terms of the decree, the 1st respondent has failed to abide by or comply with the terms thereof.



8. Arising from the foregoing, learned counsel has submitted that the applicant was thereafter obliged to and indeed took out the subject judicial review proceedings for purposes of issuance of an order of mandamus. Furthermore, it has been contended that the court duly issued an order of mandamus.
9. Secondly, learned counsel for the applicant has submitted that despite the issuance and service of the orders of mandamus, the respondents herein have failed, neglected or refused to comply with the terms of the order of mandamus. In particular, it has been submitted that the respondents have declined to pay/liquidate the decretal sum. In this regard, counsel has submitted that the act of failing to comply with the terms of the order of mandamus constitutes contempt of court.
10. Finally, learned counsel for the applicant has submitted that obedience of court orders is not subject to any third-party actions. In this regard, it was submitted that the respondents cannot condition compliance with the court orders to budgeting by the county assembly. To this end, counsel cited and referenced the decision in the case of Permanent Secretary's Office of the President v Republic; ex parte Nassir Mwanihi (2014) eKLR, where it was held that a court order is not subject to any action by the 3rd party.
11. In view of the foregoing, learned counsel for the applicant has invited the court to find and hold that the respondents are guilty of contempt and hence same ought to be cited and punished for contempt of lawful court orders.
12. Learned counsel for the respondents adopted the contents of the replying affidavit sworn on 14th October 2025; and thereafter highlighted two issues. Firstly, learned counsel for the respondent has submitted that the 1st respondent has not been able to actualize its budget. Moreover, it was submitted that the 1st respondent was only able to access the sum of Kshs.2.4 billion only, being part of the budget due to itself.
13. Additionally, it has been submitted that the monies which were accessed by the 1st respondent were conditioned to be utilized for purposes of essential services only and hence the said monies cannot be deployed to pay/liquidate the decretal sum herein. In this regard, learned counsel has invited the court to take cognizance of the letter dated 12th September 2025; by the Controller of Budget.
14. Secondly, learned counsel for the respondent has submitted that the respondents herein are awaiting the judgment in respect of Isiolo Petition No. E007 of 2025, pertaining to the approval of the 1st respondent's budget. Moreover, counsel contended that the judgment under reference is currently scheduled for delivery on 13th November, 2025. To this end, learned counsel posited that subject to the delivery of the said judgment, the respondent shall be able to address the issue of the decretal sum herein.
15. Be that as it may, learned counsel for the respondents conceded and acknowledged that the respondents are aware of the subject debt. In addition, learned counsel submitted that the debt is not in dispute.
16. Flowing from the foregoing, learned counsel for the respondents has implored the court to find and hold that the subject application is premature and devoid of merits. In this regard, the court has been invited to dismiss the application with costs.
17. Having reviewed the application; the response thereto and upon taking into consideration the oral submissions canvassed on behalf of the parties, I come to the conclusion that the determination of the subject matter turns on one key issue, namely; whether the respondents are in contempt of the court orders or otherwise; and if so whether the court ought to cite and punish the respondents.



18. It is common ground that the applicant herein took out judicial review proceedings in the nature of mandamus and wherein the applicant sought to compel the respondents to pay/liquidate the decretal sum which was issued vide Isiolo Misc Application No. E006 of 2025. The said judicial review proceedings were heard and determined by the court, culminating in the judgment rendered on 30th July 2025. For good measure, the terms of the judgment are explicit.
19. Be that as it may, it suffices to highlight that the court ordered and directed that the respondents herein do process and facilitate the payment of the decretal sum within a duration of 60 days from the date of delivery of the judgment. It suffices to state that the terms of the judgment have neither been reviewed nor set aside.
20. Despite the terms of the said judgment, which is acknowledged and admitted by the respondents, same have neither complied nor sought to negotiate the scheme of payment with the applicants. As it is, the respondents herein are in disobedience of the said court orders. The question that begs the answer is whether court orders, including an order of mandamus, is subject to budgeting by the county assembly of Isiolo and by extension the authority of the controller of budget.
21. I beg to state that a court order is a command. The command is directed to the named/designated person, who is commanded and enjoined to perform the act in question. Moreover, the performance of the act under reference is to be undertaken in accordance with the court order or, better still, in accordance with the law. In addition, where timelines are provided, the commanded action must be undertaken within the prescribed timelines unless the time has been varied or revised.
22. In the case of *Teachers Service Commission v Kenya National Union of Teachers (2013) eKLR*, the court stated as hereunder;

38 The reason why courts will punish for contempt of court then 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 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.
23. Furthermore, the commanding nature of a court order was highlighted by the Court of Appeal in the case of *Fred Matiang'i, the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others [2018] KECA 789 (KLR)*, where the court stated thus;

Court orders issue ex cathedra are compulsive, peremptory and expressly binding. It is not for any party; be he high or low, weak or mighty and quite regardless of his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance. This Court, as must all courts, will deal firmly and decisively with any party who deigns to disobey court orders and will do so not only to preserve its own authority and dignity but the more to ensure and demonstrate that the constitutional edicts of equality under the law, and the upholding of the rule of law are not mere platitudes but present realities.
24. Back to the question for determination. Has the applicant demonstrated contempt and or disobedience of lawful court orders by the respondents? To start with, the applicant herein procured and obtained an order of mandamus. The legal import and tenor of an order of mandamus is to



- command the performance of a public duty. In this case, the public duty called upon the respondents to pay the decretal sum within a circumscribed timeline.
25. The respondents have neither paid the decretal sum nor entered into any scheme of negotiation. What the respondent is contending is that same are yet to receive their budget for the financial year. In addition, the respondents have posited that what same has since received is the sum of Kshs.2.4 billion only and which monies were conditioned to be used for essential services only and not otherwise.
 26. What flows from the position taken by the respondents is to the effect that the applicant must wait for the 1st respondent to procure and obtain funds. Moreover, the respondents seem to suggest that compliance with the court order is subject to budgeting by and on behalf of the 1st respondent. I am afraid that compliance with Court Orders is not subject to will of the party; or better still, third Party actions on behalf of the concerned party. [See the holding in the case of Republic v Permanent Secretary Office Of The President Ministry Of Internal Security & another Ex-Parte Nassir Mwandihhi [2014] KEHC 6027 (KLR).
 27. To my mind, a court order remains a command. Being a command, it is peremptory in nature and hence the person against whom the order is issued cannot seek to place road blocks, obstacles, and or hurdles on the path of the realization of the court order. An order of the court is not subordinate to the actions of the judgment debtor. Moreover, a court order can also not be treated as a mere suggestion to be complied with at the pleasure of the judgment debtor.
 28. In my humble view, the respondents have been knowledgeable of the terms of the court order. Same have had the opportunity to comply. However, the respondents have not endeavored to comply with the terms of the court order. Such non-compliance constitutes willful disobedience and thus contempt of lawful court orders.
 29. Flowing from the foregoing, and having taken into account the holding in the case of Dr. Fred Matiang'i [supra]; and Republic v The Permanent Secretary Office of the President Exparte; Nassir Mwandihhi [supra], I come to the conclusion that the Applicant has duly established and proved contempt as against the respondents.

Final Disposition.

30. For the reasons which have been highlighted in the body of the ruling, it is apparent that the subject application is meritorious; and thus same ought to be allowed.
31. In the upshot, the final orders of the court are as hereunder;
 - i. The Application dated 3rd October 2025, be and is hereby allowed.
 - ii. The 2nd, 3rd and 4th Respondents [being principal officers of the 1st respondent] be and are hereby cited for contempt.
 - iii. The 2nd, 3rd and 4th Respondents shall attend court in the next 21 days from the date hereof for purposes of mitigation/showing cause why same ought not to be sentenced for contempt of court.
 - iv. The date for mitigation/show cause shall be fixed upon the delivery of the subject ruling.
 - v. Costs of the Application be and are hereby awarded to the ex-parte applicant.
 - vi. Costs in terms of clause [v] be and are hereby assessed and certified in the sum of Kshs.25,000/= only.



32. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 23RD DAY OF OCTOBER 2025.

OGUTTU MBOYA, FCI Arb [CPM-MTI-EA].

JUDGE

In the presence of:

C/A Hussein/Mukami

Mr. Ken Muriuki for the Ex-parte Applicant

Mr. Koome Murithi for the Respondents

