



**Mwangi v Chief Finance Officer, County Government of Kisii & another (Judicial Review E010 of 2025) [2025] KEELRC 3150 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3150 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
JUDICIAL REVIEW E010 OF 2025  
JK GAKERI & JK GAKERI, JJ  
NOVEMBER 13, 2025**

**BETWEEN**

**CHARLES MWANGI ..... APPLICANT**

**AND**

**CHIEF FINANCE OFFICER, COUNTY GOVERNMENT OF  
KISII ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KISII ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before the court for determination is the applicant's Notice of Motion dated 18<sup>th</sup> September 2025 filed under Certificate of Urgency seeking Orders that:-
  1. Spent.
  2. This Honourable court be pleased to find that respondents representatives herein are in contempt of court.
  3. The Honourable Court cites the following for contempt of court
    - a. The Chief Officer, Department of Finance and Accounting Kisii County Government.
    - b. The Executive Member for Finance, Economic Planning and ICT Services Kisii county and; an;
  4. Order for committal to civil jail be made against them.
  5. The court do issue any other Order as it may deem fit.
  6. Costs be borne by the respondents.



2. The Notice of Motion is expressed under Order 40, Order 51 of the Civil Procedure Rules, Section 21 of the *Government Proceedings Act*, Section 1 of the *Judicature Act*, Order 52 Rule 3 of the Rules of the Supreme Court of England 1965, Practice and Procedure rules, and Part I Rule 3 and Section 3A of the *Civil Procedure Act* and is based on the grounds set forth on its face and the Supporting affidavit sworn by Dr. Charles Mwangi on 18<sup>th</sup> September 2025 who deposes that an Order of mandamus was decreed against the respondents on 14<sup>th</sup> July 2025 for payment of Kshs.7,453,047.76 as withheld salaries and Kshs.1,000,000 as damages for discrimination and costs but the respondents refused to comply with the Orders in contempt of court as the Orders were plain and unambiguous.

### **Respondent's case**

3. In opposition to the Notice of Motion, the respondents filed a Replying Affidavit sworn by Susan Kalinda who deposed that the application was misplaced and had no basis in law as there were no proceedings against the parties in the substantive motion and no decree against them in the substantive motion.
4. That the decree was never against the respondents and were being condemned or heard.
5. That Order 2, 3 and 4 cannot apply to parties who were not parties to the suit and the Certificate of Order against the Government establishes who the parties were and the decree related to them and the respondents herein were strangers to the proceedings and decree.
6. According to the affiant, the application was premature and the applicant had not proved why the respondents ought to be committed to civil jail and ought not to be condemned unheard.
7. That the motion was speculative and offended KISUMU ELRC PET. NO. E030 of 2023 Charles Mwangi V County Government of Kisii, Kisii County Public Service Board and County Secretary, Kisii County.

### **Applicant's submissions**

8. On rule of law, reliance was placed on the sentiments of the court in *Johhson V Grant* [1923] SC 789 at 790 to urge the need to punish disobedience of court Orders as were sentiments of the court in *Econet Wireless Ltd V Minister for Information & Communication of Kenya & another* [2005] eKLR, and *Kenya Tea Growers Association V Francis Atwoli & 5 others* [2012] eKLR.
9. On service, reliance was placed on the *Halsbury's Laws of England* 4<sup>th</sup> Edition Volume 9 at page 37 and Order 52 Rules 3 of the England Supreme Court Practice Rules on the need for personal service.
10. Reliance was also placed on *Basil Criticos V Attorney General & 8 Others* [2012] eKLR on the position knowledge of court orders as was Order 5 Rule 8(1) of the Civil Procedure Rules where personal service is not achievable.
11. Sentiments of *Kimaru J* (as he then was) in *Justus Wanjala Kisiangani & 2 others V City Council of Nairobi & 3 others* [2008] eKLR were also cited on knowledge of court Orders.

### **Respondent's submission**

12. Counsel submitted that the instant application sought to introduce persons who were not parties to the suit and were being condemned unheard as there was no judgment against them and were not Accounting Officers.



13. Reliance was made on the sentiments of the court in David Njoroge Kinuthia & 653 others V Gnanjivan Screws and Fasteners Ltd & 5 Others [2021] eKLR on the right to be heard.

That the prayers sought could not issue at this stage because the respondents did not participate in the suit.

14. Reliance was also placed on Republic V County Government of Bomet Ex Parte DKN (suing as Father and next Friend of the minor) [2021] eKLR, to urge that Section 21(4) of the Government Proceedings Act prohibited execution against the Government and further submit that Judicial Review Proceedings were neither criminal nor Civil as held by Ringera J in Jotham Mulati Welamondi V the Electoral Commission of Kenya [2002] IKLR 4.

15. Counsel submitted that the rules applicable to normal executions proceedings were not applicable in government and compliance with the provisions of Section 21 of the Government Proceedings Act had to be demonstrated.

Counsel urged the court to dismiss the application.

### **Analysis and determination**

16. The applicant seeks the arrest and committal to civil jail of the Kisii County Chief Finance Officer and Executive member for Finance for disobeying court Orders namely; failure and/or refusal to pay the applicant the sum of Kshs.8,453,047.00 and costs as decreed by the Order of mandamus dated 14<sup>th</sup> July, 2025.
17. Significantly, and contrary to the respondent's averment, executions against national and County Governments falls under the Accounting Officers and they need not be parties to the main suit.
18. Indeed Certificate of Order Against the Government is served upon the County Attorney.
19. The respondents in this case need not have been the respondents in the main motion. They are the responsible as far payment of monies by the Kisii County Government is concerned and are thus the proper parties in execution proceedings.
20. On the alleged prematurity of the application, the affiant availed no evidence as to what the applicant had not done bearing in mind that the application for the Order of mandamus was physically served on 8<sup>th</sup> May, 2025, and the respondents neither responded nor file submissions and a mention notice was served on 13<sup>th</sup> June, 2025.
21. Regrettably, the respondents did not file submissions. The application was unopposed and a ruling was delivered on 14<sup>th</sup> July 2025. Only the applicant's counsel, Mr. Okello was present and the Order was extracted on the same day.
22. By an Order of mandamus, the court directed the Chief Finance Officer County Government of Kisii and the County Executive Committee Member, Finance County Government of Kisii to pay the ex parte applicant Kshs.7,453,047.76 as withheld salaries and kshs.1,000,000 damages for discrimination within 2 months and awarded costs for the application.
23. On enforcement of court Orders, the provisions of Section 21 of the Government Proceedings are clear on the requirement of a Certificate of Order Against the Government on the amount payable and costs, if awarded by the court, and to his credit the applicant complied with the provisions of Section 21(1) of the Government Proceedings Act by obtaining the requisite certificate, which he contends was served upon the respondents.



24. Significantly, Section 21(4) of the *Government Proceedings Act* makes it clear that there was no other way of proceeding against the government for purposes of enforcement of payment.

25. This is fortified by the sentiments of Githua J in Republic V Permanent Secretary Ministry of State for Provincial Administration and Internal Security Ex Parte Fredrick Manoah Egunza [2012] eKLR as follows:

“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 Order obtained by the successful litigant from the court issuing the decree which should be served on the Hon. Attorney General.

26. The Certificate of Order against the Government should be issued by the Court after 21 days after entry of judgment. Once the Certificate of Order against the Government is served on 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”.

The court is in agreement with these sentiments.

The Certificate of Order against the Government on record is dated 29<sup>th</sup> April 2025.

27. If the certificate of Order Against the Government has been served but remains unpaid even after reasonable time, the litigant is entitled to apply for the Judicial Review Order of mandamus to compel the Accounting Officer to pay the amount due and the applicant herein did so vide Notice of Motion dated 6<sup>th</sup> May 2025 and the Order was granted on 14<sup>th</sup> July 2025 and accorded the respondents two (2) months to honour the Certificate of Order.

28. Analogous to the instant Notice of Motion, the respondents neither defend the application nor file submissions.

29. According to the applicant, the respondents failed, refused and/or neglected to comply with orders of the court and were thus guilty of contempt of court.

The principles that govern contempt of court are well settled.

30. Section 5(1) of the *Judicature Act* provides:

The High Court and the Court of Appeal have the same power to punish contempt of court as if for the time being possessed by the High Court of Justice in England and such power shall extend to upholding the authority and dignity of subordinate courts.

31. See Justus Kariuki Mate V Martin Nyaga Wambora & another [2014] KECA 590 (KLR) and Christine Wangari Gachege V Elizabeth Wanjiru Evans & 11 others [2014] KECA 945 (KLR).

32. The law on contempt of court is as was aptly captured by Mativo J (as he then was) in Samuel M. N. Mweru & Others V National Land Commission & 2 others [2020] eKLR as follows:

Contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of



the frustrated successful litigant but also, as importantly, acting as guardian of the public interest”

33. Concerning the elements of contempt, Mativo J. stated as follows:

It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove

- (i) the terms of the order,
- (ii) Knowledge of these terms by the Respondent,
- (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements, the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.

34. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated: -

- (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

35. 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 in civil cases) that (d) the defendant’s conduct was deliberate”.

36. See also *Katsuvi Ltd V Kapurchand Depar Shah* [2016] eKLR *Mahinderjit Singh Bitta V Union of India & others* No. 109 of 2010 Republic V Attorney General & another *Ex Parte Mike Kamau Maina*.

37. On service of the court Order with a Penal Notice although the applicant deponed that the ruling was delivered and/or done in the presence of counsel for the respondent, that was not the case.

38. The court record for 14<sup>th</sup> July 2025 shows that only Mr. Okello for the ex parte applicant was present and the court delivered the ruling on that day and the same was uploaded on the Judiciary CTS at 13:11pm.

39. From the record, neither the ruling nor the Order dated 14<sup>th</sup> July 2025 was served on any of the respondents or the County Attorney.

40. Having not participated in the proceedings by way of response to the application or filing of submissions and the non-appearance in court in four (4) out of the six (6) times the matter came up before the court and the Deputy Registrar, it behooved the applicant to ensure that the Orders emanating from the unopposed application were served upon the respondents personally, which remains the general rule as correctly submitted by counsel for the applicant.

41. This position is fortified by the Court of Appeal decision in *Jacob Zedekiah Ochino & another George Aura Okombo & 4 others* [1989] KECA 64 (KLR) where the court stated;

“The power to deal with contempt of court is provided for under section 5 of the *Judicature Act* (cap 8) and Order 39 rule 2(3) of the Civil Procedure Rules. We have to follow the procedure and practice in England. As we read the law, the effect of the English provisions



is that as a general rule, no order of court requiring a person to do or abstain from doing any act may be enforced (by committing him for contempt) unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question. The copy of the order served must be indorsed with a notice informing the person on whom the copy is served that if he disobeys the order, he is liable to the process of execution to compel him to obey it. As this court pointed out recently in the case of *Mwangi Mangondu V Nairobi City Commission Civil Appeal No 95 of 1988...*”

42. Service is necessary as it accords with the right to fair trial which is integral to the overarching principle of the right to be heard, which is non derogable as held in *Stephen Maina Githiga & 5 Other V Kiru Tea Factory Ltd [2023] KESC 41 (KLR)*.

See also *Kidero & 4 Others V Waititu & 4 Others [2014] KESC 11 (KLR)*.

43. Be that as it may, the law has morphed and recognized knowledge of court Orders as sufficient particularly where a party conducts itself in such a way as to evince that it had knowledge of the Order as it was held in *Basil Criticus V Attorney General [2012] eKLR*.

44. In *Shimmers Plaza Ltd V National Land Commission [2015] eKLR*, the Court of Appeal stated:

On the issue of service we hold that view that knowledge of the Order supersedes personal service and for good reason.

The law cannot countenance a situation where a party who is fully aware of a court Order is allowed to go around violating it simply because he was not personally served...”

45. In the instant case, contrary to the applicant’s averment and submission that the respondent was aware of the Orders, no scintilla of evidence was availed to demonstrate that the two respondents had actual knowledge of the Orders and as adverted elsewhere in this ruling the respondent’s counsel was not present when the ruling, was delivered on 14<sup>th</sup> July, 2025 and neither filed a response nor submissions.

46. More significantly, the applicant did not furnish any evidence of any action or conduct of the respondents after 14<sup>th</sup> July 2025 which would suggest that they had knowledge of the Order of mandamus but refused or failed to honour it.

47. No doubt, the terms of the Order were clear and unambiguous. See *Mwangi Magondu V Nairobi City Commission (supra)* and *Carcy V Laiken [2015] SCC17*.

48. Relatedly and as deposed by Susan Kalinda, the applicant had not demonstrated what the two respondents had not done to comply with any court Order.

49. As to whether the respondent’s conduct was deliberate or intentional in *Newton Kagira Mukuha V Charles Mukuha Gashwe & 14 Others [2023] KECA 1482 (KLR)*, the Court of Appeal held:

It is trite that the refusal to obey should be both willful and malafides and that unreasonable non-compliance provided it is bona fide does not constitute contempt.

50. The applicant must show that the offence is committed not by mere disregard of a court Order, but the deliberate and intentional violation of the court’s dignity, repute and authority”.

51. Finally, the applicant did not demonstrate the court order was served with a penal sanction.

52. In the instant case, the applicant’s Supporting Affidavit is reticent on how the conduct of the two respondents was deliberate.



53. Having failed to show that the two respondents were aware of the court Orders dated 14<sup>th</sup> July 2025 or that the Orders were specifically served upon them, it is burdensome for the applicant to show that there was any intention or mala fides.
54. Bearing in mind that the standard of proof in civil contempt is higher than the preponderance of probabilities in ordinary civil cases, it is the finding of this court that the applicant has failed to prove that the respondents disobeyed any court Orders and were thus guilty of contempt of court.
55. From the foregoing, it is discernible that the applicant's Notice of Motion dated 18<sup>th</sup> September 2025 is for dismissal and it is accordingly dismissed with no Orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2025**

**DR. JACOB GAKERI**

**JUDGE**

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

