

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT AT KISUMU**

**JUDICIAL REVIEW NO. E027 OF 2024**

*(Before Hon. Justice Dr. Jacob Gakeri)*

**SAMUEL KEROSI ONDIEKI.....APPLICANT**

**VERSUS**

**KISII COUNTY ASSEMBLY**

**SERVICE**

**BOARD.....1<sup>ST</sup>**

**RESPONDENT**

**CLERK, KISII COUNTY ASSEMBLY.....2<sup>ND</sup>**

**RESPONDENT**

**KISII COUNTY GOVERNMENT.....3<sup>RD</sup>**

**RESPONDENT**

**RULING**

Before the court for determination is the applicant's Notice of Motion dated 23<sup>rd</sup> June 2023 filed under Certificate of Urgency seeking Orders that:

*1. Spent.*

*2. The 2<sup>nd</sup> Respondent, Jacob Onkeo, the Clerk of the County Assembly of Kisii and Secretary of the 1<sup>st</sup> respondent, the Accounting Officer, to show cause why he should not be cited and be found guilty of contempt of court for disobeying and defying the*

*judgement decree and the Order of mandamus given by the court on 25<sup>th</sup> February, 2025 to pay the applicant the decretal sum of Kenya Shillings Eight Million Five Hundred and Twenty Nine Thousand and Thirty (Kshs.8,529,030.00 and costs of the sum Kenya shillings One Hundred and Thirty-three thousand Five Hundred and Fifty (Kshs.133,550).*

- 3. The 2<sup>nd</sup> respondent, Jacob Onkeo in failing to show cause be summoned to personally appear before this court for sentencing, failing to which a warrant of arrest be issued against him to be executed by the OCS Kisii Central Police Station or any other OSC near his residence or by any County Police Commander or by the Inspector General of Police or any Police Officer(s) under them wherever the 2<sup>nd</sup> respondent may be founds.*
- 4. The 2<sup>nd</sup> respondent, Jacob Onkeo be committed to civil jail for a period of six (6) months and/or fined out of his own personal money or punished in any other lawful manner that the court shall deem fit and appropriate.*
- 5. The court do issue any further Orders as it may deem fit and just in these circumstances.*
- 6. Costs of this application be borne by the 2<sup>nd</sup> respondent.*

The Notice of Motion is expressed under Section 5 of the Judicature Act, Rules 81.4 and 81.5 of the English Civil Procedure Act Amendment No.3 2023 and Section 1A, 1B, 3A, 63(a) of the Civil Procedure Act and Order 51 of the Civil Procedure Rules and is based on the grounds set out on its face and the Supporting Affidavit of Samuel Kerosi Ondieki sworn on 23<sup>rd</sup> June, 2025 who deposes that judgment was entered in his favour on 15<sup>th</sup> February, 2023 in Kisumu ELRC No. 87 of 2023 and a Decree dated 14<sup>th</sup> April 2023 obtained in the sum of Kshs.8,529,030.00.

The affiant further deposes that he obtained a Certificate of Order against the respondent and served upon the respondents who failed and/or neglected to comply and the Order of *mandamus* against the respondents was not honoured and the conduct amounted to contempt of court.

### **Respondent's case**

By a Replying Affidavit sworn on 22<sup>nd</sup> July 2025, Mr. Jacob Onkeo the 2<sup>nd</sup> respondent and Accounting Officer of the 1<sup>st</sup> respondent deponed that the instant application was an abuse of the court process and was for dismissal.

The affiant deponed that the applicant had not demonstrated that the respondent's conduct was deliberate.

The affiant further deposed that the applicant did not serve the decree and Certificate of Order Against the Respondents.

That the County Government operated under the law as per the budget and when the courts directions were served upon the respondents, the 2024/2025 financial year had closed and no funds could legally be disbursed for any unbudgeted expenditure including the decretal sum and the delay in settlement was not wilful, deliberate or in contempt of court Orders but was caused by fiscal and legal constraints arising from closure of the financial year and fresh budgetary allocations to be approved in the succeeding year and the respondent was committed to honouring the court Order.

According to the affiant, the alleged contempt was neither intentional nor culpable but stemmed from statutory financial procedures that bound the County and its officers.

## **Applicant's submissions**

On service of the Decree and Certificate of Order Against the Respondents counsel submitted that service was effected as it was annexed to the Application for Review and Judicial Review Application for *mandamus* and the Affidavit of service was unchallenged.

Reliance was placed on the sentiments of the court in **Republic V County Government of Meru & 5 others** [2025] KEELRC 1211 (KLR) on the doctrine of presumption of service.

Similarly, the decisions in **David Koome Matugi V APA Insurance Ltd** [2021] KEHC 4942 (KLR) and **Republic V County Government of Mandera & 3 Others** [2025] KEHC 10340 (KLR), **Mwenda V Mukama** [2025] KEELC 3276 (KLR), were cited to urge that the respondents were duly served and acknowledged of and were privy to the terms of the Order of *mandamus*, Decree and Certificate of Order Against the Government but the 2<sup>nd</sup> respondent failed to honour his obligations.

Concerning budgetary allocation as a defence, counsel submitted that the arguments relied upon by the 2<sup>nd</sup> respondent were unfounded in fact and law.

Counsel submitted that Section 21(3) of the Government Proceedings Act obligated the Accounting Officer to pay sums specified in the Certificate of Order Against the Government.

Reliance was placed on the sentiments of the court in **Executive Committee Kisii County, Kisii County & County Government of Kisii V Marosa Construction Co. Ltd & Transition Authority [2020] KECA 801 (KLR)** on the essence of contempt proceedings as well sentiments of the court in **Republic V County Government of Kajiado & 2 Others [2025] KEHC 6957 (KLR)**, **Republic V County Government of Mandera & 3 others; Ahmed (Ex Parte Applicant [2025] KEHC 10340 (KLR)** and **Republic v County Government of Nairobi & 2 others; Kingpost Ltd (Ex Parte Applicant [2025] KEELC 579 (KLR)** on satisfaction of Decrees after the service of the Certificate of Order Against the Government.

As to whether the 2<sup>nd</sup> Respondent was guilty of contempt, counsel submitted that Government officers were bound to comply with court orders and could not escape responsibility by citing budgetary limitations.

Counsel urged that the purpose of a contempt application was to enforce a favourable judgment and the 2<sup>nd</sup> respondent was guilty of contempt of court and liable to punishment.

### **1<sup>st</sup> and 2<sup>nd</sup> Respondent's submissions**

As to whether the 2<sup>nd</sup> respondent was guilty of contempt, reliance was placed on the sentiments of the court in **Gatharia T. Mutitika V Baharini Farm Ltd** [1985] KLR 227 on the standard of proof in contempt matters to submit that the various elements of contempt as captured in **Katsuri Ltd V Kapurchand Depar Shah** [2016] KEHC 6447 (KLR) namely; terms of the Order, knowledge of the Order or proper notice of the terms of the Order breach of terms of the Order and that the respondent's conduct was deliberate had to be demonstrated.

Counsel submitted that the applicant had not proved these elements citing personal service and proof of the same by the contemnor.

Reliance was placed on the decisions in **Shimmers Plaza Ltd V National Bank of Kenya Ltd** [2015] KECA 945

(KLR) and **Francis Mbuya Kinyoria V Nyansiongo Tea Factory & another** [2015] KEHC 100g (KLR) to urge that service of the Decree and Certificate of Order Against the respondent had not been demonstrated.

As to whether the 2<sup>nd</sup> respondent deliberately disobeyed court Orders, reliance was placed on the sentiments of Mativo J in **Republic V Attorney General & another Ex Parte Mike Maina Kamau** [2020] KEHC 10013 (KLR) to urge the test of disobedience of a court order namely; deliberate and *mala fides*.

Reliance was also placed on the decision in **Republic V County Government of Kajiado & 2 Others** [2025] KEHC 6957 (KLR) of 2014 to urge that payment could only be effected when the County Treasury allocated money in the 2025/2026 financial year.

In conclusion, counsel submitted that the instant application had not met the elements of contempt of court

### **Analysis and determination**

Since 2<sup>nd</sup> October, 2024, when none of the parties was present in court for hearing of the Chamber Summons

dated 31<sup>st</sup> July 2024, the applicant has filed a record seven (7) applications under certificate of urgency.

Regrettably, none was certified urgent. The instant application is the seventh and was filed one (1) month after delivery of the last Ruling.

When the matter came up on 6<sup>th</sup> October, 2025 to confirm the status of payment of the amount due to the applicant, the amount was still outstanding and the court gave directions which included *inter alia* appearance of the 2<sup>nd</sup> respondent in court in person to appraise the court on the status of payment of the decretal sum and taxed costs.

Parties were also accord 3 days each to file and exchange submissions and a mention/hearing was slated for 23<sup>rd</sup> October, 2025.

In its last Ruling dated 19<sup>th</sup> May, 2025, the court decreed the Order of *mandamus* to compel the 2<sup>nd</sup> respondent to pay the *ex parte* applicant Kshs.8,529,030.00 and taxed costs at Kshs.133,550.00 in Kisumu ELRC No. 87 of 2019.

Whereas the applicant maintained that the respondent was in contempt of court on account of refusal, failure or

neglect to honour the Certificate of Order Against the County Government and the Order of *mandamus*, the 2<sup>nd</sup> respondent deponed that the applicant had not established the essential element of deliberate refusal or failure to obey court Orders.

That neither the Certificate of Order Against the County Government nor the decree was served and in any case, the County Government operated in strict compliance with the law and financial and legal procedures were to blame.

Concerning service of the Decree and Certificate of Order Against the Government, the respondents did not question the affidavits of service on record or apply to cross-examine the process server. In the court's view, nothing turns on this issue.

Significantly, the 2<sup>nd</sup> respondent admitted that the respondents were committed to honouring the court Orders but for the financial procedures.

Strangely, the 2<sup>nd</sup> respondent did not disclose whether the amount owed to the applicant was budgeted for in the current financial year bearing in mind that the

respondents had knowledge of potential liability from early as 25<sup>th</sup> February, 2025 when the court rendered its 1<sup>st</sup> ruling on the matter and liability crystallized in May 2025.

Having admitted that court Orders had not been complied with or abide by, the only issue for determination is whether the 2<sup>nd</sup> respondent is indeed in contempt of court.

The principles that govern contempt of court proceedings are well settled. This is a mechanism which ensures that court decisions Orders and directives are complied by all and sundry affected by them. It ensures the maintenance of rule of law and Order in society.

In **Republic V Attorney General & another Ex Parte Mike Maina Kamau [2020] eKLR** Mativo J (as he then was) stated:

*“Court orders must be obeyed at all times in order to maintain the Rule of Law and good order. This of course means that the authority and dignity of our courts must be upheld at all times and this differentiates civilized societies from those applying the law of the jungle. It is the duty of the court not to condone deliberate*

*disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with contemnors. The court does not, and ought not be seen to make orders in vain; otherwise the court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.*

*A court order is binding on the party against whom it is addressed and until set aside remains valid and is to be complied with. It is a crime to unlawfully and intentionally disobey a court order”.*

See also **Canadian Metal Co. Ltd V Canadian Broadcasting Corp (No.2) [1975] 48 KLR (30), Kenya Human Rights commission V Attorney General & another [2018] eKLR, Econet Wireless Kenya Ltd V Ministry of Information & Communication of Kenya & another [2005] eKLR, Republic V Mohamed & another [2018] eKLR, Gulabchand V Pobatlah & another Civil Appeal No. 39 of 1990, Josephine Mueni Mutunga V Energy Regulatory Commission & another [2016] eKLR, Mwaniki Silas Ngare V John Akama & another [2016] eKLR and Teachers Service Commission V**

**Kenya National Union of Teachers & 2 others  
[2013] eKLR** among other.

As regards the elements of contempt of court, in **Samuel Mweru & others V National Land Commission & 2 others No. 443 of 2017** the court stated:

*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.*

*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:*

*"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 civil cases) that (d) the defendant's conduct was deliberate"*

See also **Katsuri Ltd V Kapurchand Depar Shah [2016] eKLR, Mahinder Jit Singh Bitta V Union of India & others No. 109 of 2010** and **Republic V Attorney General & another Ex Parte Mike Kamau Maina (supra)**.

The high standard of proof in civil contempt proceedings and its rationale were exquisitely captured by the Court of Appeal in **Mutitika V Baharini Farm Ltd [1985] KLR** the court stated *inter alia*

*"In our view, the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities almost but no exactly beyond reasonable doubt..."*

*The rationale for this standard is that if cited for contempt and the prayer sought for committal to jail the liberty of the contemnor will be affected. As such the standard of proof higher than the standard in civil cases. This power to commit a person to jail must be exercised with utmost care and exercised only as last resort. It is of utmost importance therefore for the respondents to establish that the alleged contemnors conduct was deliberate in the sense that he or she willfully acted in a manner that flouted the court Order”.*

Applying the foregoing principles to the instant suit, it is clear that respondents were aware of this suit and contested all applications where a Ruling was delivered. The 2<sup>nd</sup> respondent was aware of the amount due to the applicant and their obligation to pay being the Accounting Officer of the County Assembly by dint of the provisions of Section 21 of the Government Proceedings Act.

Secondly, the terms of the court Order were unambiguous and capable of being honoured or implemented.

Third, the 2<sup>nd</sup> respondent admitted in his Replying Affidavit that court Orders had not been honoured but the respondents were committed to honouring them.

The last requirement which the 2<sup>nd</sup> respondent appears to be contesting is that his conduct was neither intentional nor deliberate. What is however intriguing are the reasons for not obeying the court Order namely; that by the time the courts directions were served, the 2024/2025 financial year had closed and financial and legal procedures were to blame.

It is trite law that non-availability of budgetary provisions or financial year cannot be a justification for disobedience of court orders.

As aptly captured by Githua J in **Republic V Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex Parte Fredrick Manoah Egunza [2012] eKLR,**

*“...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”.*

The court is in agreement with these sentiments.

Noteworthy, the provisions of Section 21 of the Government Proceedings Act on payment of the amount due under the Certificate of Order Against the Government are not subject to the provisions of the Controller of the Budget Act or Public Finance Management Act or any other Act of Parliament.

The singular obligation of the respective accounting officer is to honour the terms of the Certificate of Order Against the Government.

The reasons cited by 2<sup>nd</sup> respondent for failure to obey court Orders relate to ability or inability to pay which are outside the purview of contempt proceedings as held in **Executive committee, Kisii County, Kisii County & County Government of Kisii V Masosa construction Co. Ltd & transition Authority [2020] KECA [801] (KLR)** that:

*“... In contempt proceedings, the issue is whether a court Order has been obeyed or not”.*

See also **Republic V County Government of Kajiado & 2 others (supra)** and **Isaiah Oduor V Attorney General & another** and **Republic V County Government of Mandera & 3 others; Ahmed (Ex Parte) Applicant [2025](KEHC) 10340 (KLR)** among others.

Having admitted that the decretal sum and taxed costs remained unpaid contrary to court orders and having failed to demonstrate any sustainable reason for the failure and/or refusal to pay the sum due to the applicant, the court is satisfied that the 2<sup>nd</sup> respondent is guilty of disobedience of court orders.

Consequently, the 2<sup>nd</sup> respondent Mr. Jacob Onkoe is cited for contempt of court.

- (a) The 2<sup>nd</sup> respondent is accorded a period of 1<sup>1/2</sup> months to pay the amount due to the applicant failing which sentence will follow.*
- (b) Mention/sentencing on 19<sup>th</sup> January, 2026.*

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT  
KISUMU ON THIS 6<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.

**DR. JACOB GAKERI**  
**JUDGE**

ORIGINAL