



**Republic v County Secretary Garissa County & another; Ganuni  
Construction Company (Ex parte Applicant) (Miscellaneous Judicial Review  
E003 of 2025) [2025] KEHC 16381 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16381 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT GARISSA**

**MISCELLANEOUS JUDICIAL REVIEW E003 OF 2025**

**JN ONYIEGO, J**

**NOVEMBER 13, 2025**

**IN THE MATTER OF AN APPLICATION TO APPLY  
FOR JUDICIAL REVIEW ORDERS OF MANDAMUS**

**AND**

**IN THE MATTER OF THE COUNTY SECRETARY, COUNTY GOVERNMENT OF GARISSA**

**AND**

**IN THE MATTER OF SECTION 21 GOVERNMENT PROCEEDINGS ACT CAP 40, LAWS  
OF KENYA IN THE MATTER OF AN APPLICATION BY GANUNI CONSTRUCTION  
COMPANY LIMITED SEEKING JUDICIAL REVIEW ORDER OF MANDAMUS AGAINST  
THE COUNTY SECRETARY GARISSA COUNTY AND GARISSA COUNTY GOVERNMENT**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY SECRETARY GARISSA COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**GARISSA COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**GANUNI CONSTRUCTION COMPANY ..... EX PARTE APPLICANT**

**RULING**

1. The ex parte applicant, Ganuni Construction Company moved this court via an application dated 29.09.2025 seeking for orders as follows:



- i. That this Honourable Court be pleased to find that Mohamud Hassan Mursal, the County Secretary, Garissa County Government and Abdilatiff Sheikh Mohamed, the Chief Officer Finance, Garissa County Government are in contempt of court for disobeying and/or wilfully disregarding the orders of mandamus made on 24.07.2025 compelling payment of the decretal sum and certified costs arising from Garissa High Court Civil Case No. 2 of 2017.
  - ii. That Mohamud Hassan Mursal, the County Secretary, Garissa County Government and Abdilatiff Sheikh Mohamed, the Chief Officer Finance, Garissa County Government do show cause why they should not be committed to civil jail for disobeying and/or wilfully disregarding the said orders.
  - iii. That in default of sufficient cause being shown, this Honourable court be pleased to commit Mohamud Hassan Mursal, the County Secretary, Garissa County Government and Abdilatiff Sheikh Mohamed, the Chief Officer Finance, Garissa County Government to civil jail for a period of six months or such other period as this Honourable Court shall deem fit or in the alternative and/or in addition thereto, that the said officers be required to pay a fine of such amount as may be ordered by this Honourable Court for the said contempt.
  - iv. Cost of this application.
2. The application is supported by the affidavit of Hassan Mzahim, the director of the ex parte applicant sworn on 29.09.2025 stating that on 17.07.2025, this Honourable Court delivered its ruling allowing the ex parte applicant's Judicial Review Application and issued an order of mandamus compelling the respondents to pay the decretal sum and certified costs as specified therein. That on 26.08.2025, the order dully endorsed was personally served upon the county secretary and the county government of Garissa. That despite being served, the 1<sup>st</sup> and 2<sup>nd</sup> respondents have to date wilfully refused, failed and/or neglected to pay the decretal sum, interest and costs as ordered. This court was therefore urged to allow the prayers sought.
3. The respondents did not file any response despite being served.
4. The court directed that the application be canvassed by way of written submission but the applicant chose to rely on his application and the affidavit as filed.
5. I have considered the application herein and the affidavit in support. In my considered view, the issue for determination is whether the respondents should be cited for contempt of court.
6. A perusal of the record herein shows that this court vide a ruling delivered on 17.07.2025 granted an order of mandamus against the respondents. As a matter of fact, the said order stated as followed:
  - i. An order of mandamus be and is hereby issued directed at the respondents to compel them to pay out a sum of Kes. 13,208,570/- together with interest thereon at 14% p.a. from 25.04.2017 until payment in full, being the decretal sum awarded to the applicant against the respondents in High Court Civil Case No. 2 of 2017.
  - ii. An order of mandamus be and is hereby issued directed at the respondents to compel them to pay out a sum of Kes. 706,751/- together with interest thereon at 14% p.a. from 25.04.2017 until payment in full, being the certified costs awarded to the applicant against the respondents in High Court Civil Case No. 2 of 2017.
  - iii. Costs to the ex parte applicant.



7. The ex parte applicant averred that despite this court issuing the orders of mandamus, the respondents are yet to comply with the said orders despite being served. The ex parte applicant stated that the respondents to date have willfully refused, failed and/or neglected to pay the decretal sum, interest and costs as ordered.
8. To succeed in enforcement of contempt proceedings, the applicant has to meet certain conditions. See the case of Samuel Mweru & others vs National Land Commission & others [2020] KEHC 9233 (KLR) where the court stated that: -
  - “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: -
      - “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: -
        - 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
        - d. the defendant's conduct was deliberate....
9. Upon proof of these requirements, the presence of willfulness and bad faith on the part of the respondents would normally be inferred. However, the respondents could rebut this inference by contrary proof on a balance of probabilities. [ See the case of Gatharia K. Mutikika vs Baharini Farm Ltd (1985) KLR 227].
10. In the instant case, the orders of the court delivered on 17.07.2025 directed the 1<sup>st</sup> and 2<sup>nd</sup> respondents to pay out a sum of Kes. 13,208,570/- together with interest thereon at 14% p.a. from 25.04.2017 until payment in full, being the decretal sum awarded to the applicant against the respondents in High Court Civil Case No. 2 of 2017. Additionally, the order directed at the 1<sup>st</sup> and 2<sup>nd</sup> respondents do pay out a sum of Kes. 706,751/- together with interest thereon at 14% p.a. from 25.04.2017 until payment in full, being the certified costs awarded to the applicant against the respondents in High Court Civil Case No. 2 of 2017. From the foregoing, it is clear that the order was not only clear but also unambiguous despite the same not being complied with.
11. On whether the 1<sup>st</sup> and 2<sup>nd</sup> respondents were aware of the said orders, counsel urged that on 26.08.2025, the order dully endorsed was personally served upon the county secretary and the county government



of Garissa by one Stanley Wachira, a licensed court process server. That despite being served, the respondents have to date willfully refused, failed and/or neglected to pay the decretal sum, interest and costs as ordered. I have perused the affidavit of service filed by the court process server, Stanley Wachira sworn on 16.10.2025 and the same supports proper service as enumerated by Hassan Mzahim, the director of the ex parte applicant. In this regard, I am satisfied that willful disregard of the court order has been established as service of the orders to the respondents have been proved.

12. In view of the foregoing, the court finds that:

- i. The 1<sup>st</sup> and 2<sup>nd</sup> respondents herein have been found to be in contempt of court orders herein.
- ii. The respondents are hereby granted 30 days to show cause why the amount due and owing to the applicant should not be paid in default warrant of arrest for committal to civil jail shall issue.
- iii. Mention on 17-12-2025

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

.....

**J. N. ONYIEGO**

**JUDGE**

