



**Republic v Principal Secretary Ministry of Agriculture, Livestock and Fisheries & another; Nkari (Ex parte Applicant) (Judicial Review Application E129 of 2024) [2025] KEHC 17211 (KLR) (Judicial Review) (25 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17211 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E129 OF 2024  
RE ABURILI, J  
NOVEMBER 25, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE PRINCIPAL SECRETARY MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**ELIAS MUTWIRI NKARI ..... EX PARTE APPLICANT**

**RULING**

1. The Notice of Motion dated 29<sup>th</sup> July 2025 BY Elias Mutwiri Nkari is brought pursuant to Section 5 of the *Judicature Act*, Part 81(Applications and Proceedings in Relation to Contempt of Court) of the Civil Procedure (Amendment No.2) Rule 2012 of England, Order 39 rules 2(2) of the Civil Procedure Rule 2010.
2. The application seeks for the Principal Secretary of the 1<sup>st</sup> Respondent namely Dr. Paul Kipronoh Ronoh and/or his successor be committed to civil jail for six (6) months or such period as the Honourable Court will deem fit or both fine and imprisonment for contempt of the Honourable court orders/decreed issued on 26<sup>th</sup> March 2025. It also seeks that the 1<sup>st</sup> Respondent be compelled to pay punitive and/or exemplary damages for contempt of court orders as may be assessed by the Honourable Court.
3. The application is supported by the affidavit of Morris Jamhuri Kisia sworn on 29<sup>th</sup> July 2025.



4. The Ex parte Applicant's case is that this honourable court delivered judgment on 26<sup>th</sup> March 2025 and issued an order of mandamus compelling the Principal Secretary of the 1<sup>st</sup> respondent to settle decree in the sum of Kshs. 1,313,096.47.
5. That the decree was thereafter drawn and the same together with the judgment were served upon the 1<sup>st</sup> respondent on 8<sup>th</sup> April 2025 vide letter dated 4<sup>th</sup> April 2025. That the respondents were well represented and were well aware of the penal notice for disobedience or non-observance of the court orders.
6. That despite having full knowledge of the above, the 1<sup>st</sup> Respondent has blatantly disobeyed the mandamus orders issued and continues to do so to date. It is also averred that the 1<sup>st</sup> Respondent has no regard for the rule of law, even in the face of express and unambiguous orders of this Honourable Court.

### **The Respondents' Response**

7. In response, the Respondents filed an undated replying affidavit sworn by Dr. Paul Kipronoh Ronoh, the Principal Secretary Ministry of Agriculture, Livestock and Fisheries.
8. In the affidavit, it is deposed that the Respondent is willing to comply with the court's orders and to settle the decretal sum, but that despite the willingness to comply, he is currently constrained by the lack of budgetary allocation from the National Treasury.
9. It is deposed that the failure to comply with the court's orders is not willful or deliberate and that the delay is occasioned by financial constraints and bureaucratic processes inherent in government procedures, especially considering the existence of numerous similar claims awaiting settlement.
10. That the 1<sup>st</sup> Respondent stands to suffer undue prejudice and administrative disruption should the application dated 29<sup>th</sup> July 2025 be allowed and that therefore, in the interest of justice and fairness, the 1<sup>st</sup> Respondent be granted reasonable time to process and effect payment.

### **Submissions**

11. The application was canvassed by way of oral submissions made before the court on 21<sup>st</sup> October 2025, by the respective parties' counsel.
12. In his oral submissions, counsel for the Applicant Mr. Kisia submitted that judgment was entered and the decree was served. That the Respondent has refused to settle the decree which has a penal notice. Further, that in the response, there is no denial of the fact that the decree has not been settled and also that there is no evidence to show inclusion of the decree in the 2025/2026 financial year.
13. In response Ms. Gathenya for the Respondent submitted that the Respondent is willing to settle the decree but is constrained by the budget and that the respondent stands to suffer prejudice and that the Respondent seeks time to pursue for budgetary allocation from the National Treasury to settle the decree.
14. In a rejoinder, the applicant's counsel submitted that if the court disallows the application, the Respondents will feel exonerated and will never pay the decretal sum.



## Analysis and Determination

15. I have considered the application and the opposition thereto as submitted orally. The only issue for determination is whether there is brazen violation of the order of mandamus issued on 26<sup>th</sup> March 2025.
16. According to the Black's Law Dictionary (Ninth Edition) contempt is defined as follows:

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
17. In essence, contempt refers to conduct that undermines the fair and proper administration of justice. It is not limited to enforcing court orders. Superior courts possess the power to cite parties for contempt when they disregard court directives, a power that safeguards both the authority and credibility of the judiciary. Therefore, when a court is called upon to punish a contemnor, it is not only addressing the grievance of the successful litigant whose rights have been impeded, but also protecting the broader public interest. See the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR.
18. In the Scottish case of Stewart Robertson vs Her Majesty's Advocate, 2007 HCAC63, Lord Justice Clerk stated that:

“Contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings”
19. In the case of Kenya Tea Growers Association Vs Francis Atwoli and 5 Others [2012] eKLR Lenaola J (as he then was in the High Court) cited with approval the case of Clarke and Others Vs Chadburn & Others [1985] 1All E.R (PC), 211 in which the Court observed that:

“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal....even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”
20. On the significance of contempt proceedings, the Court in the case of Econet Wireless LTD vs. Minister For Information & Communication of Kenya & Another [2005] eKLR held that:

“Where an application for committal for contempt of court orders is made the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance, an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious- a contemnor would have no right of audience in any court of law unless he is punished or purges the contempt.”



21. It is trite that contempt of court proceedings and applications are subtle and quasi-criminal in nature and courts would impose criminal sanctions if a conviction followed.
22. In Kenya, the *Contempt of Court Act* was declared unconstitutional by the Court in Kenya Human Rights Commission v Attorney General & Another (2018) eKLR. This means that Section 5 of the *Judicature Act* was reinstated following the nullification of the *Contempt of Court Act*. This was the position taken by the Court in Republic v Kajiado County & 2 others Exparte Kilimanjaro Safari Club Limited [2019] eKLR which I concur with and wherein the Court stated that:

“This section was repealed by section 38 of the Contempt of Act of 2016, and as the said Act has since been declared invalid, the consequential effect in law is that it had no legal effect on, and therefore did not repeal section 5 of the *Judicature Act*, which therefore continues to apply. In addition, the substance of the common law is still applicable under section 3 of the *Judicature Act*. This Court is in this regard guided by the applicable English Law which is Part 81 of the English Civil Procedure Rules of 1998 as variously amended, and the requirement for personal service of court orders in contempt of Court proceedings is found in Rule 81.8 of the English Civil Procedure Rules.”

23. In Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR Mativo J. (as he then was in the High Court) restated the test for establishing contempt of court and stated that:

“40. 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.”

24. The order of mandamus issued on 26<sup>th</sup> March 2025 was clear, explicit and unambiguous. It compelled the Principal Secretary of the 1<sup>st</sup> Respondent Ministry to settle the decretal sum of Kshs. 1,313,096.47. The decree itself had long crystallized, having been issued on 8<sup>th</sup> February 2019, and the Certificate of Order Against the Government was duly served upon the Respondent on 14<sup>th</sup> February 2020. There is no dispute regarding the existence of the decree, the terms of the order or service thereof.
25. It is also material to note that the underlying accident occurred in 2017. Therefore, by the time the Applicant filed the present contempt motion in 2025, the matter had been pending for approximately eight years, during which period, the Respondent had ample time to honour its statutory and constitutional obligations. The protracted delay despite a valid decree issued in 2019, six year ago, a Certificate of Order Against the Government dated 13<sup>th</sup> February 2020 in the original primary suit being Milimani Commercial CM'S Court Civil Suit No. 4360 of 2017 served in 2020, and a mandamus order issued in 2025 in these proceedings demonstrates a systemic and sustained failure on the part of the Respondent to give effect to a lawful judgment. If the Respondents were serious about honouring the decree, they would have demonstrated by a budgetary item for those years for settlement of the pending decrees and evidence of settlement of some of the decrees that the 1<sup>st</sup> respondent claims are also due for settlement.
26. The Respondents do not dispute knowledge of the decree, the Certificate of Order Against the Government or the mandamus order. Neither do they dispute that no payment or effort towards payment has been made. The sole explanation offered relates to alleged budgetary constraints and administrative procedures.
27. This does not, in law, constitute a lawful justification for non-compliance. A party burdened by a court order must obey it or demonstrate the efforts made towards obeying the court order, unless and until it is stayed, reviewed or varied. The Respondent has not demonstrated any effort or sought any stay pending release of funds from the National Treasury and neither has he demonstrated that he sought any such funds for settlement of this decree subject of these proceedings.
28. As the authorities demonstrate, including *Clarke v Chadburn* and *Kenya Tea Growers Association v Francis Atwoli*, (supra) inconvenience, difficulty, or internal bureaucratic challenges do not excuse non-compliance with court orders. The Respondent has placed before the Court letters dated 10<sup>th</sup> February 2025 and 19<sup>th</sup> February 2025 in an attempt to demonstrate ongoing efforts to secure payment of the outstanding decree.
29. Such correspondence only indicates the belated administrative movement. It does not assist the Respondent in any meaningful way. The Certificate of Order Against the Government dated 13<sup>th</sup> February 2020 was served on 14<sup>th</sup> February 2020, and there is no explanation why the Respondent failed to make provision for the decretal sum in any of the subsequent financial years after the judgment and decree were made in 2019.



30. If indeed the Respondent was acting diligently, budgeting for settlement of this decree should have commenced long before 2025. The recent letters therefore cannot operate as a shield against contempt, particularly where the decree has remained unsatisfied for over six years.
31. In light of the above and the timeline accident occurring in 2017, decree in 2019, certificate of order against government served in 2020, and mandamus in 2025, this Court finds and holds that the Respondent's request for more time is wholly untenable. It is not merely unreasonable, it is an affront to the administration of justice. The Respondent has had five (5) years since the decree was issued in the primary suit and over four years since the certificate of order against government was served. To now seek additional time, without demonstrating any meaningful effort toward compliance, only reinforces the inference of willful disobedience.
32. Consequently, I find that the Applicant has satisfied the requirements set out in Samuel Mweru & Others v National Land Commission case (supra), that there is a lawful court order whose terms are clear; the Respondent had full knowledge of the order and its terms and consequences that flow from disobedience of the said orders; the Respondent has failed to comply; and the disobedience is deliberate.
33. Obedience to court orders is not discretionary. It is an indispensable foundation of the rule of law. The Respondent's continued defiance, despite full knowledge of the orders and the penal consequences, undermines the dignity and authority of the Court and prejudices not only the Applicant, who has waited since 2019 to enjoy the fruits of a lawful judgment, but the public interest in the effective administration of justice.
34. Accordingly, I find merit in the Notice of Motion dated 29<sup>th</sup> July 2025. I hereby find and hold the Principal Secretary of the 1<sup>st</sup> Respondent, Dr. Paul Kipronoh Ronoh, who is the accounting officer in the Ministry of Agriculture, Livestock, Fisheries and Cooperatives, or its equivalent name, on whose behalf the Attorney general was sued in the original primary suit being Milimani Commercial CM'S Court Civil Suit No. 4360 of 2017 to be in contempt of the mandamus orders made on of this Court and he is hereby convicted for contempt of court.
35. Accordingly:
- a. The contemnor, Mr. Paul Kipronoh Ronoh shall appear before this Court on 19/12/2025 for mitigation and sentencing as appropriate.
  - b. The issue of punitive or exemplary damages as prayed shall be addressed at the sentencing phase.
  - c. Costs of the application shall be borne by the Respondent Ministry

24. It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY AT NAIROBI THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2025**

**R.E. ABURILI**

**JUDGE**

