

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E034 OF 2022

SBI INTERNATIONAL HOLDINGS (KENYA)..... APPLICANT

VERSUS

THE DIRECTOR GENERAL

KENYA NATIONAL HIGHWAY AUTHORITY.....RESPONDENT

RULING ON CONTEMPT OF COURT APPLICATION

1. This Ruling determines the applicant's application notice dated 13th June, 2025 seeking orders that the respondent be cited for contempt of court for disobeying decree for mandamus issued on 25th September 2023. The applicant also prays for costs of the application on indemnity basis.
2. The application is premised on the grounds on the face of the application and supported by an affidavit sworn by Gilad Mishni, the applicant's Managing Director. The applicant further filed a supplementary and further affidavit after receiving the replying affidavit sworn by the respondent's managing director.
3. The applicant's case provides a history of when the cause of action arose until the present date. According to the applicant, as per its depositions and submissions in support of its case, on 25th September, 2023, judgment for mandamus was rendered in favour of the applicant against the respondent, following an earlier judgment delivered in favour of the applicant in HCCC

NO. E228 of 2020 and decree dated 8th June, 2021 and issued on 1st October, 2021. The decretal sum was Kshs 536,464,436.69.

4. The decree, judgment and mandamus orders were all served upon the respondent and there is no dispute about service or knowledge of the decree, as demonstrated in the proceedings where the parties even recorded a consent on how the decree was to be settled.
5. The applicant asserts that the respondent has at all times had resources for settling of the decree in question as it generates its own revenue, but that it has blatantly defied the court orders and declined to settle decree yet under section 68 of the Kenya Roads Act, the respondent is mandated to urgently settle decrees and orders of the Court from its own revenues as defined under section 31 of the Kenya Roads Act.
6. The applicant avers that contempt of court is the only avenue by which the decree of the court shall be settled and that the delay in the settlement of the decree has prejudiced the applicant, an international company which performed its part of the contract. The respondent is accused of impunity hence the prayer for contempt of court decree, to protect the dignity of the Court.
7. The supporting and replying affidavits all reiterate the grounds in support of the application and so do the submissions filed by the applicant's counsel
8. In response to the application, the respondent filed a replying affidavit sworn by Eng. Luka Kimeli on 3rd October, 2025 the Acting Director General of the

Kenya National Highways Authority- KENHA. The deponent at paragraph 4 states that the respondent does not dispute its obligation to settle the decrees of the court but that it has been making good faith efforts to comply with court orders, including partial payments made and acknowledged in prior correspondence.

9. That pursuant to the consent dated 19th December, 2023, the respondent committed to a structured payment plan to clear the outstanding debt in six equal installments starting January, 2024. That it has so far paid 1.2. billion and was pursuing funds to clear the balance as some funds were held in litigation preserved by a court order which has since been vacated thereby enabling further payments. That it wrote to the Principal Secretary for Roads on 16th May 2025 informing him of the balance due for settlement in favour of the applicant and requesting for additional budget allocation to enable settlement and that the request to the parent Ministry is still being processed. That the delay is not due to willful disobedience but budgetary constraints and administrative processes within the Authority to fulfil its obligations responsibly and transparently.
10. That the respondent Authority is committed to settling the decree in line with the public interest and its sustainable operations.
11. The above response elicited the filing of a further affidavit by the applicant, which affidavit the court does not find necessary in the circumstances of this case.

12. Only the applicant filed written submissions dated as the respondent procrastinated despite being granted time to file written submissions.

Analysis and determination

13. I have considered the application and the responses thereto together with the applicant's submissions. The main issue for determination is whether the applicant has made out a case for this Court to find the respondent to be in contempt of court decree for mandamus.

14. The essential ingredients of civil contempt of court, particularly for disobedience of court orders, are now well-settled. An applicant must prove the following:

- i. Existence of a lawful court order. There must be a clear, unambiguous, and binding order or decree issued by a court of competent jurisdiction. The terms must be capable of being complied with.
- ii. Knowledge of the order by the respondent. The respondent must have been served with the order or otherwise made aware of it. Actual knowledge may be proved by service, participation in proceedings, consent orders, or conduct demonstrating awareness.
- iii. Ability to comply with the order- It must be shown that the respondent had the capacity, means, or legal authority to comply with the order, either wholly or substantially. In civil contempt,

impossibility of compliance can be a defence; hence ability must be demonstrated by the applicant unless admitted or obvious.

- iv. Wilful disobedience or failure to comply. Here, the applicant must show that the respondent deliberately, knowingly, and intentionally failed to comply. Mere non-compliance is not sufficient; the conduct must amount to wilful disobedience, neglect, or indifference to the court's authority.

15. In the instant proceedings, the finding of this court is that all the essential elements of civil contempt are satisfied. First, there exists a clear, unequivocal, and binding decree of this Court, vide HCC No. E228 of 2020 dated 8th June, 2021 and issued on 1st October, 2021, which decree has neither been appealed against nor stayed. This decree is reinforced by orders/decree for mandamus dated 23rd September, 2023, issued by this Court directing the Respondent Authority to settle the judgment debt.

16. Second, the Respondent had full knowledge of these orders, having participated in the proceedings, executed a consent settlement on 19th December 2023, and repeatedly appeared through counsel to address the issue of compliance.

17. Third, the Respondent possesses the statutory duty and capacity under section 68 of the Roads Act and funding avenues under section 31 of the Roads Act to satisfy the decree and has offered no evidence of any legal or practical impossibility of compliance with the decree of this Court.

18. Fourth, the Respondent's continued non-payment, despite the mandamus orders, the consent and its own assurances to the Court, constitutes willful and deliberate disobedience, not inadvertence or incapacity. The cumulative conduct of the Respondent squarely meets the threshold for a finding of contempt

19. The fact of the respondent being under a statutory obligation to settle decree issued by this court in mandamus proceedings is not in dispute and the respondent at paragraph 4 of its replying affidavit acknowledges and concedes as much. The only defence offered is that it has paid part of the decretal sum which is substantial and that it is still making efforts to settle the balance which is equally substantial. It pleads administrative processes and budgetary constraints.

20. The respondent however acknowledges that it entered into a consent with the applicant for settlement of the decretal sum by way of a payment plan and that it then made some payment. That it has not deliberately refused to settle the outstanding decree and that it wrote to the Principal Secretary of its parent Ministry asking for budgetary allocation.

21. What the respondent has carefully avoided is why it has not settled the decree as per its own binding undertaking by way of a consent recorded on 19th December 2023 giving a payment plan that was convenient for it and secondly, why it has not applied itself to the provisions of sections 68 and 31

of the Roads Act. It has not explained any impediments to implementing the statutory duty placed on it by section 68 of the Roads Act.

22. Moreover, this Court observes that the respondent is very evasive in its affidavit in reply and one can easily tell that it is not interested in settling the decree of this court. Even with a consent to payment plan, the respondent has not told this court what went wrong with that payment plan provided by the respondent in the consent.

23. From the evasiveness of the respondent, who has not made any application to vary the consent order recorded on 19th December, 2023, knowing very well that it was not going to fulfil the terms of the consent, this court gathers that the respondent has blatantly and brazenly refused to settle the decree and that the issue at hand is not budgetary constraints or any administrative procedures.

24. The respondent has not shown to this court that during this period, it has not settled any of its other contractual or statutory obligations that involve money payment owing to what it claims to be administrative procedures or budgetary constraints balanced with its sustainability and public interest, If anything, public interest demands that decrees of the court be settled as a matter of priority and so does the law establishing the respondent at section 68 of the Roads Act provide for urgency in such settlement, with sources of funding clearly spelt out in section 31 of the Act.

25. In the view of this Court, the Respondent has elected to trifle with the authority of judicial orders, adopting a posture of waiting to see what consequences may follow, in the hope that none will. This conduct is wholly unacceptable.

26. It is a cardinal principle of the rule of law that all persons and authorities, including statutory bodies, are bound to obey the orders of the Court. No statutory body may rely on its institutional character as a shield against compliance, nor may it treat a decree of the Court as optional. Where an authority freely enters into a consent, particularly one fashioned to accommodate its own financial arrangements, as was the case herein, it assumes an enhanced duty to perform that settlement promptly and in utmost good faith.

27. In this case, the Respondent Authority executed a consent on 19th December 2023 adopting a payment plan of its own proposal. Having secured indulgence from the Court on terms favourable to itself, the Authority has nonetheless defaulted and has taken no meaningful steps toward satisfaction of the decree. Its affidavit in reply is evasive, admitting non-payment yet offering no lawful justification for its continued inaction.

28. It bears emphasis that the Respondent Authority's continued failure to settle the decree is rendered all the more egregious by its possession of express statutory funding avenues under section 31 of the Roads Act. Its unwillingness or neglect to deploy those resources toward compliance places

it in clear contravention of section 68 of the same Act, which obliges the Authority to meet lawful obligations arising from judicial proceedings.

29. In the circumstances, the Respondent's conduct can only be characterized as a deliberate and willful refusal to obey a subsisting order of this Court.

30. The respondent Authority has at all material times been fully aware of the subsisting orders of mandamus compelling settlement of the decree. Despite this knowledge, it has repeatedly flouted those orders and, on each successive appearance, merely dispatched counsel to make vague assurances that it had not willfully refused to settle the decree or that a request for budgetary allocation had been directed to the parent Ministry. These representations, unaccompanied by any tangible action or partial compliance since 2023 reveal not diligence but calculated delay.

31. This Court cannot countenance such disregard. A statutory body that elects to disobey the very orders that legitimate its operations undermines public confidence in lawful administration. The Respondent's continued default, in the face of a binding consent and statutory funding mechanisms, constitutes willful contempt.

32. The Respondent's persistent non-settlement of the decree, its breach of the consent order of 19th December 2023, and its failure to act in accordance with its statutory obligations constitute wilful and deliberate disobedience of the lawful orders of this Court.

33.I conclude by stating that Court orders are not mere suggestions or invitations to negotiate compliance at one's convenience. They are binding commands issued under the authority of the law, requiring strict and timely obedience by all persons and bodies to whom they are directed. The integrity of the judicial process depends upon their observance. When a party, particularly a statutory authority charged with upholding the law, elects to disregard or postpone compliance, it strikes at the very foundation of the rule of law.

34.Disobedience of a court order is not a trivial lapse; it is a serious affront to the administration of justice and constitutes contempt, for the authority of the Court is measured not by the eloquence of its pronouncements but by the fidelity with which they are obeyed.

35.Accordingly, I find hand hold the Respondent Authority's Director General or the person occupying that office whether in acting capacity as the accounting officer of the KENHA and which office is currently occupied by Eng. Luka Kimeli who swore the replying affidavit on 3rd October, 2025 is hereby found and declared to be in contempt of the decree of this Court for mandamus issued on 23rd September, 2023, compelling the Authority to settle decree in HCCC No. E228 NOF 2020 and requiring settlement thereof. The respondent's Director General or the person occupying that office whether in an acting capacity, Eng. Luka Kimeli, and therefore the accounting officer, is hereby convicted for contempt of court.

36. The said Eng. Luka Kimeli, being the person responsible for ensuring compliance with court orders and execution of the Respondent's statutory mandate, shall personally appear before this Court on 19/12/2025 while represented by counsel, for mitigation and sentencing as shall be appropriate and lawful for the court to order.

37. Costs of these contempt proceedings shall be borne by the Respondent Authority.

38. As agreed by the parties, this ruling shall apply *mutatis mutandis* and with necessary modifications to all the other series files being JR E035/2022; JR E036/2022; JR E037/2022; and JR E038/2022, in view of the similarity of the issues involved in all the five matters.

39. It is so ordered.

Dated, Signed and Delivered at Nairobi this 25th Day of November, 2025

**R.E. ABURILI
JUDGE**