

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**JUDICIAL REVIEW MISC APPLICATION NO. 219 OF 2024**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE COUNTY GOVERNMENT OF NAIROBI.....1<sup>ST</sup> RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER,**

**FINANCE & ECONOMIC PLANNING.....2<sup>ND</sup> RESPONDENT**

***EX PARTE***

**FRIDAH ACHUTI & JOSEPH ONYONO CHOGO**

**RULING**

1. On 30<sup>th</sup> June 2025, this Court delivered judgment issuing judicial review order of mandamus compelling the respondents to settle decree for Kshs 5,043,300.00 plus costs of Kshs 308,182.50 and interest arising from judgment and decree issued in Nairobi CMCC No. E086 of 2022 on 22<sup>nd</sup> November, 2023 pursuant to judgment rendered on 2<sup>nd</sup> November, 2023 as well as the Certificate of Order against the government dated 25<sup>th</sup> April 2024.
2. The court in the Judgment of 30<sup>th</sup> June, 2025 also awarded costs of the mandamus application to the applicant, assessed at Ksh 50,000.
3. The applicants are now before this Court vide their Notice of Motion dated 6<sup>th</sup> October, 2025 seeking orders that the respondents herein be

committed to civil jail and detained in prison for a term of six months or such period as this court will deem fit or all be fined and imprisoned for contempt of this court's decree made on 30<sup>th</sup> June, 2025.

4. Among the grounds in support of the application are that the respondents are aware of the decree and that they have refused to settle despite demand. The rest of the grounds give the history of this matter from the lower court to this court where mandamus was sought compelling settlement of the decree against the City County Government of Nairobi.
5. The application is supported by the affidavit jointly sworn by the applicants and reiterating the grounds on the face of the application.
6. Opposing the application, the respondents filed a replying affidavit sworn by Asha Abdi, the County Chief Officer for Finance on 4<sup>th</sup> November 2025 deposing that the county budgets for funds for settlement of decrees and that the decree herein shall be settled upon being factored into in the budget and once funds are allocated for the same.
7. That the respondents have not deliberately refused to settle the decree which they will settle once the funds are allocated. Further, that section 148 of the Public Finance Management Act empowers the CECM Finance to delegate ethe person to be the accounting officer for the County government sectors and departments to manage finances of the county government. That decisions regarding payments involve various stakeholders while the county involves many departments responsible for

financial and fiscal matters hence that it is in the interest of justice that this court allows budgeting allocation and approval of amounts through the procedures provided for under the County Government Act. Finally, that the applicant has not satisfied the requirements for execution as per the Public Finance Management Act and the Government proceedings Act.

8. The application as argued orally on 10/11/2025 with the parties' counsel restating the pleadings and affidavits. The respondent's counsel submitted in addition that the respondents had not deliberately failed to settle decree ut that the matter is among those in the workplan for settlement and budgeted for while the applicants' counsel submitted in reply that there was no commitment demonstrating the plan for settlement of the decree.
9. In my determination, having considered the application as filed and arguments by the respective parties' counsel, the only issue for determination is whether the prayers sought are available to the applicant.
10. The Notice of motion dated 6<sup>th</sup> October, 2025 seeks the following orders:
  1. ***that the County Executive Committee member Finance and Economic Planning -County Government of Nairobi be committed to civil jail and detained in prison for a term of six months or such period as this court will deem fit or all be fined and imprisoned for contempt of this court's decree made on 30th June, 2025.***

**2. *That costs of the application be provided for.***

11. From the prayer 1 above sought, the prayer presupposes that the Court has already considered an application seeking to cite the respondents for contempt of court and that it has already found the respondent to be in contempt of court and therefore what remains is the imposition of penal consequences to the contemnor.
12. The court record shows that the judgment for mandamus was delivered on 30<sup>th</sup> June, 2025 and decree issued on 2<sup>nd</sup> July 2025. There is no application for contempt of court filed, heard and determined against any of the respondents to warrant committal to civil jail of the CECM Finance, the 2<sup>nd</sup> respondent herein. Parties are bound by their pleadings and this court cannot plead for the parties and issue orders contrary to the pleadings. Additionally, contempt of court is quasi criminal and there are established elements that must be proved before a court can make a finding of contempt. The standard of proof is also higher than that on a balance of probabilities. Upon conviction, a contemnor is likely to lose their liberty and therefore no court of law can handle contempt proceedings in a casual manner.
13. In the instant proceedings, there is no contempt order made, to warrant the penal consequences which are being sought by the applicants.
14. Therefore, without belaboring so much, I find and hold that the application as pleaded is premature and the orders sought are incapable of

being granted, as grant of the same would amount to condemning the respondent without according him a hearing contrary to Article 50(1) of the Constitution.

15. Furthermore, as stated by the respondents, the applicant ought to read the Public Finance Management Act together with the provisions of the Government proceedings Act to appreciate which of the officers of the County Government is an accounting officer for purposes of being served with the decree for compliance as stipulated in section 21 of the Government proceedings Act. The applicants may have obtained decrees against the City County Government but settlement of a decree is a statutory duty of an accounting officer. I say no more.

16. The application dated 6<sup>th</sup> October, 2025 is premature and is hereby dismissed.

17. I make no orders as to costs.

18. Mention on 20<sup>th</sup> January, 2026 for further directions in the matter.

**Dated, Signed and Delivered at Nairobi this 2<sup>nd</sup> Day of December, 2025**

**R.E. ABURILI**

**JUDGE**