

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW MISC. APPLICATION NO. E006 OF 2024

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE PRINCIPAL SECRETARY,

**MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL
GOVERNMENT.....1ST RESPONDENT**

THE HON. ATTORNEY GENERAL..... 2ND RESPONDENT

EX PARTE

MUSTAFA MWALIM MUSA

RULING ON CONTEMPT OF COURT APPLICATION

1. On 27th May 2025, this Court delivered judgment in this matter, issuing judicial review order of mandamus compelling the 1st respondent Principal Secretary, Ministry of Interior and Coordination of National Government to settle certificate of order for costs against the Government dated 1st December, 2023 for Kshs 719,741.70 awarded to the exparte applicant in ***Nairobi HC Judicial Review Application No. 178 of 2021 Republic versus Inspector General of Police & 2 others exparte Mustafa Mwalim Musa.***
2. The matter was then slated for mention before the deputy Registrar on 16th July 2025 when this Court was on leave, to confirm settlement of the said costs. On the aforesaid date, Mr. Kariuki Counsel for the respondents informed the Deputy Registrar that they had not received funds for

settlement of the certificate of order for costs as per the mandamus order of 27th May, 2025.

3. To date, no payment has been made.
4. Vid ethe notice of motion dated 8th October 2025, the exparte applicant now seeks orders that this court do find the 1st respondent office holder, Dr. Raymond Omollo to be in contempt of court order of mandamus issued on 27th may 2025 and commit him to civil jail for a term not exceeding six months. The other prayers are that the court do summon the said principal secretary to appear in person at the hearing of the application for contempt of court to show cause why he should not be held to be in contempt of Court order issued on 27th May 2025. He also prays for costs of the application.
5. The grounds upon which the application is predicated are contained on the face of the application and in the supporting affidavit sworn by the applicant, Mustaafa Maalim on 8th October, 2025 reiterating the grounds.
6. In the said grounds, the applicant gives a history of this matter which arises from decree and judgment in Nairobi HC JR Application No. E178 of 2021 issued on 1st December, 2023 as per the copy of judgment annexed and in which judgment, the court granted the orders sought against the 2nd and 3rd respondents with costs to the applicant, which costs were taxed and a certificate of order against the government issued as required under section 21 of the Government Proceedings Act and served upon the Attorney General demanding for settlement of the said costs. No payment was made

hence the applicant approaching this court in the present matter by way of an application for mandamus to compel settlement of the certified costs, since there is no other remedy that the applicant decree holder has against the Government, noting that execution against government assets is prohibited by law and for good order and public policy reasons explained in the judgment for mandamus delivered on 27th May 2025.

7. The respondents have at all times been participants in these proceedings and were also well represented by the Attorney General. The applicant did vide letter dated 21st August 2025 effect service of the decree and judgment for mandamus upon the 1st respondent herein and the said documents were received on 22nd August 2025 in the central registry of the Ministry of Interior and National Administration. The Office of Attorney general also received the said documents on 22nd August 2025 in the Civil litigation Registry although they were present in court on 27th May 2025 and 16th July 2025 before the Deputy Registrar.
8. The respondents filed a replying affidavit sworn by Deputy Chief Sate Counsel Mr. Kepha Onyiso, at the Ministry of Interior and National Administration on 6th November, 2025 deposing that they are willing to settle the costs but are constrained by lack of budgetary allocation from the National Treasury. That the failure to comply with orders of the Court is not intentional but due to government processes and that there are other several claims which need to be settled. That the respondent stands to suffer

adversely if the orders sought are granted and that there is no proof of personal service against the alleged contemnor Dr. Raymond Omollo. He deposes that it is in the interest of time that the respondents be granted time to process the payments.

9. The application was argued orally with the applicant's counsel reiterating the grounds in support and submitting in addition that the respondents had knowledge of the order which was also served upon them personally and that they had been represented in court all along.

10. Further, that the respondents had not demonstrated any intent to settle the decree while giving an excuse of budgetary constraints which is not a defence as there is no evidence of inability to settle the decree hence the respondents are giving excuses that deny the applicant his lawfully obtained judgment.

11. In response, the respondents' counsel relied on the replying affidavit and submitted that the respondents had not willfully refused to settle the decree. That once the National Treasury avails the funds, they shall settle the decree.

Analysis and determination

12. In my determination, having considered the application, the response thereto and the submissions by the respective parties' counsel, the main issue for determination is whether the applicant has established that the respondent who is the accounting officer is in contempt of Court decree made on 27th May 2025 and if so, what orders should this Court make.

13. The respondent in the replying affidavit and oral submissions contends that they have not willfully refused to settle decree but that they have budgetary constraints and that they need time to settle the decree. On the other hand, they allege that there was no personal service of the decree upon the accounting officer.

14. I will therefore first tackle the question of personal service of the decree upon the accounting officer 1st respondent herein. As I have stated above, the decree and judgment of this court were served upon the 1st respondent and the Attorney General on 22nd August 2025. The letter forwarding the documents was stamped by the respective offices and the said letter gave notice of 7 days to settle decree or execution process be commenced against the Principal Secretary.

15. It is important to note that the decree is not issued against the Principal Secretary personally and therefore service upon him through the central registry of his office as acknowledged is sufficient.

16. A similar issue arose in the **Isaiah Ochanda v Attorney General & Permanent Secretary Ministry of Defence (Civil Appeal 212 of 2014) [2016] KECA 42 (KLR) (Civ) (9 December 2016) (Judgment)** case in which the respondents claimed that service upon the principal Secretary was not effected personally accompanied by a penal notice on consequences of non-compliance hence not contempt of Court could lie. The High Court agreed with that preliminary objection raised by the respondents.

17. The ex parte applicant appealed to the Court of Appeal. Allowing the appeal and setting aside the order dismissing the ex parte applicant's application for contempt of court, the Court of Appeal had the following to state regarding both allegations of lack of service and penal notice:

"...The copy of the said accompanying letter bore the official stamp of each of the respondents and signature of the person on whom the documents were served. Neither of the two respondents filed a replying affidavit to the application for committal for contempt either showing cause why the application should not be allowed or denying the service.

Service of the court processes on the Government is prescribed in Order 5 rule 9 Civil Procedure Rules, 2010, thus;

"9 (1). The provisions of this Order shall have effect subject to section 13 of the Government Proceedings Act, which provides for the service of documents on the Government for the purpose of or in connection with civil proceedings by or against the Government.

(2) Service of documents in accordance with the said section 13 shall be effected –

(a) by leaving the document within the prescribed hours at the office of the Attorney General, or any agent whom he has nominated for the

purpose but in either case, with a person belonging to the office where the document is left; or

(b)

(3) All documents to be served on the Government for the purposes of or in connection with any civil proceedings shall be treated for purposes of these rules as documents in respect of which personal service is not required.

(4) In this rule, “documents” includes writs, notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications.

Section 13 of the Government Proceedings Act aforesaid merely provides that all documents required to be served on the Government in civil proceedings shall be served on the Attorney General.

Mr. Ngugi, learned counsel for the appellant submitted in the High Court and still contends in this Court that, actual service was done in the office of the Attorney General – an institution and that personal service was not necessary.

“...The proceedings initiated by the appellant in the High Court were in the nature of civil proceedings for enforcement of a decree for payment

of money against the Government. Both the Government Proceedings Act and the Civil Procedure Rules specifically provide that personal service is not required in such proceedings. Furthermore, the application before the court was for civil contempt as opposed to criminal contempt which would have necessitated a specific charge by the prosecuting authority, it is apparent that the court relied on general rules which do not specifically provide for service of court documents including court orders on the Government. As rule 3 of Orders aforesaid expressly provides all documents to be served on the Government, documents relating to civil proceedings are excluded from personal service. The specific provisions in our law prevail over the general rules on question of service.

The appellant's counsel further submitted in the High Court that the letter dated 23rd November 2012 forwarding the Ruling and order constituted a penal notice. The letter is a notice to the government to pay within seven days and in default, contempt proceedings would be instituted.

That notice letter is for all intents and purposes an effectual penal notice as the object of the general rules has been substantially achieved.

The effect of the dismissal of the application is to require the appellant to take further steps and file fresh proceedings with resultant delay in realization of the fruits of the judgment. The appellant has severally demanded payments without success and filed several proceedings already since the judgment was entered in his favour. The principle purpose of the inherent jurisdiction bestowed on the courts is to vindicate the authority of the court so that its orders are obeyed for the proper administration of justice. The procedural protection in the nature of personal service and penal notice in the general rules are designed to give the alleged contemnor a fair hearing in view of the fact that contempt proceedings attract criminal sanctions. However, the procedural protection should not be construed in a manner that abrogates or renders the jurisdiction of the court to punish for disobedience of its order practically inoperative. In an appropriate case, the court retains the discretion to dispense with procedural protection in the interest of justice, more so now that Article 159(2)(d) of the Constitution ordains that justice shall be administered without undue regard to procedural technicalities. Had we found that personal service was required and was not done or that penal notice was not given, we would have in the circumstances of this case, dispensed with general rules.

It is our finding that the High Court fell into error by dismissing the application on the grounds that no personal service was effected nor penal notice given...”[emphasis added]

18. From the above Court of Appeal decision, it is clear that personal service upon the 1st respondent is not a legal requirement, noting that the settlement of decree is a question of statutory duty placed upon the accounting officer and not a personal liability. Furthermore, the office of the Principal Secretary was served and there is no denial of receipt of the documents and the letter dated 21st August 2025 which were also served upon the Attorney General as required under sections 13 and 21 of the Government Proceedings Act.

19. Accordingly, the allegation by the respondents that there was no personal service has no merit.

20. On whether there was an order of this court capable of being obeyed by the 1st respondent, this court rendered judgment on 27th May 2025 issuing judicial review order of mandamus compelling the 1st respondent to settle decree as stated above and that judgment and decree have not been set aside or stayed.

21. The judgment and decree were pursuant to the certificate of order for costs against the government issued way back in 2023 in judicial review proceedings commenced by the applicant against the respondents in JR E178 of 2021. That decree, judgment and certificate of order for costs were

equally served upon the respondents notwithstanding their active participation in those proceedings demanding payment of the awarded and taxed costs. There was no payment and that is what prompted the applicant to move this court by way of mandamus to compel settlement.

22. There is no proceeding challenging the decree and orders for costs as awarded and taxed against the respondents. Neither is the decree for mandamus challenged. The decree was extracted on 3rd June, 2025 and uploaded on the CTS on 12th August, 2025 and served on 22nd August 2025.

23. The decree is a summary of the judgment delivered on 27th May 2025 and it clearly spells out the mandamus order compelling the 1st respondent PS herein to pay the applicant costs of Kshs 919,741.70 arising from the judgment delivered in Judicial Review Application No. E178 of 2021 as per the judgment of 3rd October, 2023 and it is clear that the matter was to be mentioned on 16th July 2025 to conform settlement.

24. The decree which was to be settled is not a new one. Mandamus only compelled settlement. From the date of taxation of costs in 2023, the 1st respondent knew that there were costs to be settled. There is no evidence placed on record to show that he asked for budgetary allocation of the said amount not even for the year 2024/2025 financial year or 2025/2026 financial year since the mandamus judgment was rendered on 27th May 2025. That in itself is evidence of willful refusal to comply with orders of the court which were within his knowledge as far back as 2023.

25. The 1st respondent also contends that there are other several claims which need to be settled. That may be so. Those claims are however not disclosed and no information is given as to whether those claims rank superior to this one and what criteria is used to rank them. However, the question is, what is it that he is doing to have those claims, if at all they are decrees of the court, and this particular matter to be settled.

26. In the absence of any evidence that the 1st respondent is doing anything to have the decree settled as compelled by this Court, or that the decree is incapable of being settled, I find the failure to settle the decree for mandamus to be brazen. I find the 1st respondent Dr. Raymond Omollo the accounting officer for the of the 2nd respondent Ministry to be in contempt of mandamus decree issued on 27th May 2025 and he is hereby convicted for being in contempt of court order.

27. The 1st respondent office holder/ accounting Officer Dr Raymond Omollo shall appear before this court for mitigation and appropriate orders shall be made in accordance with the law, regarding punishment for contempt of court orders. Mention on 20/1/2026.

28. In order to save the public of more costs, I order each party to bear their own costs of the application for contempt of court orders.

29. I so order.

Dated, Signed and Delivered at Nairobi this 2nd Day of December, 2025

R.E. ABURILI
JUDGE

ORIGINAL