

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW DEIVISION**

**JUDICIAL REVIEW APPLICATION NO. E085 OF 2024**

**BETWEEN**

**BARASA KUNDU NYIKURI.....APPLICANT**

**AND**

**THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR AND  
COORDINATION OF NATIONAL GOVERNMENT...1<sup>ST</sup> RESPONDENT**

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

**RULING**

1. on 14<sup>th</sup> May 2025, this Court rendered judgment determining the applicant’s substantive notice of motion dated 24<sup>th</sup> April, 2024, seeking judicial review orders of mandamus compelling the 1<sup>st</sup> respondent herein, the Principal Secretary Ministry of Interior and Coordination of National Government to settle decree in Nairobi HC JR No. E1089 of 2020 Republic v Director of Public Prosecutions & 2 others exparte Barasa Kundu Nyikuri. The court in allowing the prayer for mandamus also directed the applicant who had underpaid court fees for filing of the substantive notice of motion to pay the same within ten days from the date of the judgment. A decree was drawn on 16<sup>th</sup> May 2025.
2. The applicant has now approached this court seeking orders that the 1<sup>st</sup> respondent be cited for contempt of court for non-settlement of the decree

for mandamus and from the court record, he has not complied with the order for payment of court fees as directed in the judgment of 14<sup>th</sup> May, 2025.

3. This court in allowing the application for mandamus exercised discretion under section 96 of the Civil Procedure Act to allow the applicant time to pay the correct court fees which ought to have been paid on the application.
4. To date, the applicant has not paid the full and correct court fees on the application for mandamus.
5. In the circumstances, there is no way this Court can grant any orders in respect of contempt of court proceedings against the 1<sup>st</sup> respondent when the applicant himself has disobeyed the order of this court that exercised discretion in his favour, as the court could have struck out the application for mandamus. A party who seeks orders of the court must also be ready to abide by orders or directions of the court. He must come to court with clean hands.
6. Section 71 of the Interpretation and General provisions Act provides that:

***Act for which payment required need not be performed until payment made***

***(1) Where a person, public officer or local authority is required to do anything for which a fee is to be paid or a charge made under a written law, that person, public officer or local authority may decline to do that thing until the fee is paid or until payment of the charge is made, or,***

*where the precise amount of the payment to be made cannot be ascertained until the thing has been done, until there is paid such an amount as may be estimated to be the correct amount by the person or public officer, or the responsible officer of the local authority, required to do the thing.*

*(2) Where a thing has been done for which an estimated amount has been paid, that amount shall be adjusted to.*

7. In the mandamus judgment, this Court exercise discretion under section 96 of the Civil Procedure Act and directed the applicant who had not paid full court fees to settle the same within a timeline of ten days and to date, that directive has not been complied with.
8. An order of the court is not a mere suggestion. In the circumstances, and in view of the unpaid court fees for mandamus as ordered on 14<sup>th</sup> May 2025, I proceed to strike out the application for contempt of court dated 8<sup>th</sup> October, 2025 with no orders as to costs.
9. I further direct the applicant to settle the correct court fees within seven days of today and in default, the mandamus order shall stand dismissed.
10. The matter shall be mentioned on 3/2/2026 before the Deputy Registrar in the new term to confirm compliance with these orders and for further directions.
11. I so order.

**Dated, Signed and Delivered at Nairobi this 15<sup>th</sup> Day of December, 2025**

**R.E. ABURILI  
JUDGE**

ORIGINAL