



Republic v County Executive Committee Member for Finance County Government of Kisumu & 2 others; Otieno, Ragot & Company Advocates (Ex parte Applicant) (Judicial Review Application E021 of 2024) [2025] KEHC 19078 (KLR) (17 December 2025) (Ruling)

Neutral citation: [2025] KEHC 19078 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E021 OF 2024
JM OMIDO, J
DECEMBER 17, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE
COUNTY GOVERNMENT OF KISUMU 1ST RESPONDENT**

**THE COUNTY SECRETARY COUNTY GOVERNMENT OF
KISUMU 2ND RESPONDENT**

THE COUNTY GOVERNMENT OF KISUMU 3RD RESPONDENT

AND

OTIENO, RAGOT & COMPANY ADVOCATES EX PARTE APPLICANT

RULING

1. Before me is the ex parte Applicant’s notice of motion dated 23rd April, 2025 through which the following orders are sought:
 1. That the Respondents herein, the County Executive Committee Member for Finance Kisumu County, the County Secretary of the County Government of Kisumu and the County Government of Kisumu be held in contempt of court and be punished accordingly for continuing to disobey the order of mandamus issued by this Honourable Court on 5th March, 2025 on account of their failure and or deliberate refusal to pay to the ex parte Applicant Ksh.139,723/- together with interest at court rates at 14% per annum from 9th August, 2021 until payment in full, being the decree and certified costs in Kisumu High Court Miscellaneous



Civil Application No. 86 of 2022, Otieno, Ragot & Co. Advocates v County Government of Kisumu.

2. That the Respondents herein be ordered to bear the costs of this application.
2. The grounds upon which the motion is premised are set out on its face and are in precis that on 29th November, 2022, judgement was entered for the ex parte Applicant against the 3rd Respondent in Kisumu High Court Miscellaneous Civil Application No. 86 of 2022, Otieno, Ragot & Co. Advocates v County Government of Kisumu for Ksh.139,723/- together with interest at 14% per annum, accruing from 9th August, 2021 until payment in full, together with costs of Ksh.19,790/-, and a decree and certificate of order against the 3rd Respondent subsequently issued on 16th August, 2023 in accordance with Order 29 Rule 3 of the Civil Procedure Rules and Section 21 of the Government Proceedings Act, Cap 40 Laws of Kenya.
3. That despite service of the decree and demand notices upon the 3rd Respondent, the decree remained unsatisfied, necessitating the commencement of judicial review proceedings vide the instant matter, through which an order for mandamus compelling the three Respondents to satisfy the said decree and costs was issued on 5th March, 2025, which order remains uncompiled with, hence the instant contempt of court proceedings.
4. The application is supported by the affidavit of Jude Ragot, Advocate, sworn on 23rd April, 2025, in which the deponent expounds on and reiterates the above grounds.
5. The deponent has annexed to his affidavit the following documents in support of the motion: A copy of a letter from the ex parte Applicant to the County Attorney, County Government of Kisumu dated 3rd May, 2024 forwarding the decree, certificate of order against the 3rd Respondent and the certificate of costs, all issued in Kisumu High Court Miscellaneous Civil Application No. 86 of 2022, Otieno, Ragot & Co. Advocates v County Government of Kisumu (with the documents attached). A copy of a letter dated 1st April, 2025 issued by the ex parte Applicant and addressed to the Respondent demanding that the order of mandamus issued herein be forthwith complied with and expressing an intention to commence contempt of court proceedings if the demand is not met.
6. The ex parte Applicant's position is that the amount outstanding at the time of bringing the instant contempt proceedings is Ksh.237,757/-, made up as follows:
Principal sum - Ksh.139,723/-
Interest at 14% p.a. from 9th August, 2021 - Ksh.78,244.90/-
Costs - Ksh.19,790/-
Total - Ksh.237,757.90/-
7. Although duly served with the motion, the Respondents did not file any responses. Nevertheless, the application proceeded through brief oral arguments.
8. In his submissions, Mr. Ragot, learned Counsel for the ex parte Applicant sought to rely entirely on the application, the affidavit in support thereof and the annexures thereto.
9. In response, Ms. Odhiambo, learned Counsel for the Respondents, constrained to address the court on points of law only, urged that her clients were tied down by Article 207(2) and (3) of the Constitution and Section 129 of the Public Finance Management Act, which provide that approvals from the Controller of Budget and the County Assembly must first be sought and obtained before payments are made and thus sought for time to secure those approvals.



10. In brief response, Mr. Ragot wondered why those approvals had not been sought despite the Respondents having been informed through service of the liabilities.
11. I have anxiously considered the ex parte Applicant's application, the affidavit sworn in support thereof, the annexures attached thereto and the rival oral submissions of both learned Counsel. The Respondents, though duly served, did not deem it necessary to place any affidavit evidence before court and instead confined themselves to points of law urged from the bar. In doing so, the factual depositions made by the ex parte Applicant remain substantially uncontroverted and form the evidential foundation upon which this ruling is anchored.
12. The application before me seeks to invoke the coercive jurisdiction of this court through contempt proceedings arising from the alleged continued disobedience of an order of mandamus issued on 5th March, 2025. That order compelled the Respondents, jointly and severally, to satisfy a lawful decree arising from Kisumu High Court Miscellaneous Civil Application No. 86 of 2022.
13. The gravity of such proceedings cannot be understated, for contempt is not merely a private remedy but a public one, aimed at safeguarding the authority, dignity and efficacy of the judicial process.
14. From the pleadings, evidence and submissions, the issues that arise for determination may be framed as follows:
 1. Whether there exists a valid, clear and binding court order capable of enforcement through contempt proceedings.
 2. Whether the Respondents had knowledge of that order and have failed or refused to comply with it.
 3. Whether the constitutional and statutory provisions relied upon by the Respondents provide a lawful justification for non-compliance.
 4. What orders are appropriate in the circumstances of this case.
 5. A determination as to costs of the application.

1. Existence of a valid and enforceable court order.

15. The starting point must be the undisputed procedural history. On 29th November, 2022, judgment was entered in favour of the ex parte Applicant against the County Government of Kisumu for the sum of Ksh.139,723/- together with interest at court rates of 14% per annum from 9th August, 2021 and costs subsequently taxed at Ksh.19,790/-.
16. That judgment has never been appealed against, reviewed or set aside, and remains valid and binding.
17. In strict compliance with Section 21 of the *Government Proceedings Act*, Cap 40 Laws of Kenya, and Order 29 Rule 3 of the Civil Procedure Rules, the ex parte Applicant extracted and was issued with a decree, a certificate of order against the Government and a certificate of costs. These instruments are not procedural niceties. They are the statutory mechanism through which a money decree against a government entity is transformed into a payable obligation.
18. When payment was not forthcoming despite service and demand, the ex parte Applicant invoked the jurisdiction of this court and obtained an order of mandamus on 5th March, 2025, compelling the Respondents to satisfy the decree, costs and interest. An order of mandamus is a command issued by the court to compel the performance of a public duty imposed by law. Once issued, it carries the full authority of the court and is to be obeyed as issued unless lawfully stayed or set aside.



19. The Respondents have not suggested, let alone demonstrated, that the order of mandamus was irregularly obtained, ambiguous, or that it was stayed or discharged. I therefore find, without hesitation, that there exists a lawful, clear and unequivocal court order capable of enforcement through contempt proceedings.

2. Knowledge of and disobedience to the order.

20. The next inquiry is whether the Respondents had knowledge of the order and failed to comply with it. Knowledge may be actual or constructive and need not, in every case, be proved by personal service.

21. In the present case, the Respondents were parties to the judicial review proceedings culminating in the issuance of the order of mandamus and were represented by counsel throughout.

22. In addition, the ex parte Applicant placed before court documentary evidence in the form of a letter dated 1st April, 2025, expressly demanding compliance with the order and warning of impending contempt proceedings. That correspondence was not denied. No affidavit was filed to contest service, knowledge or receipt of the order or the subsequent demand. The Respondents did not contest such knowledge.

23. Despite this, the decretal sum, interest and costs remain unpaid to date. The ex parte Applicant has particularised the outstanding amount as Ksh.237,757.90/-, and that computation has not been challenged. The silence of the Respondents, coupled with continued non-payment, speaks more loudly than any affidavit might have done.

24. I am therefore satisfied that the Respondents had full knowledge of the order of mandamus and have failed to comply with it.

3. Whether financial management laws justify non-compliance.

25. The Respondents' resistance to the application is grounded solely on Article 207(2) and (3) of *the Constitution* and Section 129 of the *Public Finance Management Act*.

26. It was contended that payment could not be made without approvals from the Controller of Budget and the County Assembly and that, until such approvals are obtained, compliance with the court order is not possible.

27. Article 207(2) establishes the County Revenue Fund into which all county monies are to be paid, while Article 207(3) prohibits withdrawals from that Fund except as authorised by an Act of Parliament or county legislation.

28. Section 129 of the *Public Finance Management Act* sets out the budgetary framework within which county governments must operate.

29. These provisions underscore the constitutional imperative of prudent and accountable management of public finances.

30. However, those provisions cannot be invoked as a carte blanche to disregard lawful court orders. *The Constitution* must be read as a harmonious whole. The same Constitution that provides for fiscal discipline also entrenches the rule of law and vests judicial authority in the courts. Compliance with court orders is not a discretionary matter, nor is it subordinate to administrative processes.

31. Once a decree has been issued against a government entity and a certificate of order against the Government extracted under Section 21 of the *Government Proceedings Act*, the obligation to pay crystallises.



32. The purpose of mandamus is precisely to compel the accounting officers and responsible officials to take all necessary steps, including seeking budgetary or statutory approvals, to meet that obligation.
33. To hold otherwise would be to permit public bodies to defeat decrees indefinitely by pointing to internal procedures of their own making. Such an approach would render the remedy of mandamus illusory and undermine public confidence in the administration of justice.
34. In the present case, the Respondents, in any event, did not place any evidence before court to show that they had taken concrete steps to seek the alleged approvals, when such steps were taken or that approval was refused. A bare assertion from the bar, without evidential backing, cannot suffice as a defence to contempt.
35. I therefore find that the constitutional and statutory provisions relied upon do not excuse the Respondents' non-compliance but rather impose upon them a duty to act expeditiously and in good faith to satisfy the court order.

4. Conclusion and orders.

36. Contempt of court is a serious matter. It goes to the very foundation of the rule of law, for if court orders can be ignored with impunity, the authority of the courts is diminished and the administration of justice brought into disrepute.
37. In light of the foregoing analysis, I find and hold that all the Respondents are in wilful and contumacious disobedience of the order of mandamus issued by this court on 5th March, 2025.
38. Consequently, the Notice of Motion dated 23rd April, 2025 is allowed in the following orders:
 - a. The three Respondents are hereby found to be in contempt of court for failure to comply with the order of mandamus issued on 5th March, 2025.
 - b. The three Respondents shall, within thirty (30) days from the date hereof, purge the contempt by paying to the ex parte Applicant the sum of Ksh.237,757.90/- being the decretal amount, accrued interest and costs, together with any further interest that may accrue.
 - c. In default of compliance within the stated period, the matter shall be mentioned for mitigation and sentencing on 21st January, 2026 and the 1st and 2nd Respondents are ordered to be in court physically on that day.

5. Costs of the application.

39. On the issue of costs, it is trite that costs follow the event, unless the court, for good reason, orders otherwise.
40. The ex parte Applicant was compelled to approach this court after exhausting all lawful avenues to secure compliance with a valid decree and a subsisting order of mandamus, only to be met with continued inaction on the part of the Respondents.
41. The Respondents, for their part, neither complied with the order nor placed before court any evidence that would justify their default.
42. In those circumstances, and bearing in mind that contempt proceedings are necessitated by disobedience of court orders rather than by any fault on the part of the successful litigant, I find no reason to depart from the general principle on costs.



43. The costs of the notice of motion dated 23rd April, 2025 shall therefore be borne by the Respondents, which I hereby assess at Ksh.5,000/- and which shall form part of the decree subject of the order of mandamus.

44. It is so ordered.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 17TH DAY OF DECEMBER, 2025.

JOE M. OMIDO

JUDGE

For Ex Parte Applicant: Ms. Ayere for Mr. Ragot.

For Respondents: Ms. Odhiambo.

Court Assistants: Mr. Ngoge & Mr. Juma.

