

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC JR CASE NO. E014 OF 2024

REPUBLICAPPLICANT

VERSUS

THE COUNTY SECRETARY, COUNTY GOVERNMENT OF MERU
.....1ST RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE, ECONOMIC
PLANNING & ICT2ND
RESPONDENT

THE CHIEF OFFICER, FINANCE AND ECONOMIC PLANNING, COUNTY
GOVERNMENT OF MERU3RD RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER, LEGAL AFFAIRS, PUBLIC
SERVICE, MANAGEMENT & ADMINISTRATION4TH RESPONDENT

JOSEPH MWIRIGI KABURU T/A MWIRIGI KABURU & CO. ADVOCATES
.....EXPARTE

APPLICANT

RULING

1. Before me is the Notice of Motion [application dated 12/11/2025 brought pursuant to the provisions of **section 5 of the judicature Act, Chapter 8 Laws of Kenya and Section 29 of the Environment and Land Court Act [2011]** and wherein the Ex-parte Applicant [herein after referred to as the Applicant] has sought the following reliefs:

[i] THAT this application be certified urgent and be heard expeditiously.

[ii] THAT the Honourable court be pleased to cite the Respondents for being in the contempt of the Mandamus issued by this court on 19.5.2025.

[iii] THAT the Honourable court do punish the Respondents for being in contempt of the orders of Mandamus issued on **19.5.2025**.

[iv] THAT costs of the application be provided for.

2. The instant Applicant is premised on various grounds, which have been enumerated in the body thereof. Simply put, the Applicant contends that same obtained an order of mandamus against the respondent herein on the 19.05.2025. Furthermore, the Applicant posits that upon obtaining the order of mandamus, same proceeded to and served the Respondents with the duly extracted order. In addition, the Applicant contends that the Respondents are knowledgeable of the terms of the orders of the court.
3. Additionally, the Applicant contends that despite having been served with order of mandamus directing the respondent to process and pay the sum of Kshs. 625,472/= only, the Respondents have failed, neglected or refused to comply with or adhere to the terms of the court order. To this end, the Applicant posits that the respondents are guilty of contempt and thus same ought to be cited and pushed for contempt.
4. The subject application is supported by the affidavit of one Mwirigi Kaburu [Advocate] sworn on even date and wherein the Applicant has annexed assorted documents including a copy of the judgment rendered on the 19.05.2025 granting the orders of mandamus. Besides, the Applicant has also annexed a copy of the order of mandamus and an affidavit of service denoting service of the order in question.
5. Though served with the subject application, the Respondents herein failed to file any response to the application. Furthermore, the Respondents herein also did not attend court nor participate in the hearing of the application. Essentially, the application by/on behalf of the Applicant is not controverted.
6. The application came up for hearing on the 15/01/2026 and whereupon learned counsel for the Applicant adopted the grounds at the foot of the application; reiterated

the contents of the supporting affidavit and thereafter highlighted two key issues, namely; the Respondents are knowledgeable of the terms of the order of mandamus; and the Respondents have failed to comply with or adhere to the terms of the orders of the court. To this end the learned counsel for the Applicant has implored the court to proceed and grant the orders sought.

7. Having reviewed the application, the supporting affidavit and submissions on behalf of the Applicant, I come to the conclusion that the determination of the subject application turns on two key issues, namely; whether the Respondents are aware and knowledgeable of the terms of the orders of the court; and whether the Respondents have disobeyed and acted in contempt of the said orders of the court.
8. Regarding the 1st issue, it is important to highlight and underscore that the Applicant herein filed an application for mandamus and which application was heard and disposed of vide judgment rendered on the 19.05.2025. Suffices to state that the court proceeded to and issued orders of mandamus wherein the court commanded the Respondents to process and pay to the Applicant the sum of Kshs. 625,472/= only, together with interest at 14% per annum wef 16/11/2023. Moreover, the court also decreed that the payments under reference be made within 60 days from the date of delivery of the judgment.
9. The orders of mandamus were subsequently extracted and sealed and thereafter same were served upon the Respondents in terms of paragraph 4 of the supporting affidavit. Notably paragraph 4 of the supporting affidavit adverts to the affidavit of service in respect of the orders of mandamus and demand letter seeking payment of the decretal sum.
10. I wish to state that the contents of the supporting affidavit have neither been controverted nor impugned. In this regard, I encounter no difficulty in coming to the conclusion that the Respondents were duly served with the orders of the court and are thus knowledgeable of the terms of the order of mandamus. Simply put the

Respondents are aware of the order of the court and thus same cannot feign ignorance of the said order.

11. Turning to the 2nd issue, namely; whether the Respondents have disregarded or acted in contempt of the court order. To start with, the Respondents were served with court order and thus privy to the terms thereof. Secondly, the order of the court has neither been reviewed; appealed against; nor stayed [if at all].

12. Insofar as the order remains *in situ* the Respondents herein are obligated to abide by the order. Suffices to state that an order of the court is a command and not a mere suggestion. Moreover, an order of the court compels the addressee thereof to do, or to abstain from doing that which the court has commanded. [see the holding in the case **Teachers Service Commission versus Kenya National Union of Teachers [2013] eKLR; Shimmers Plaza Limited Versus National Bank of Kenya Limited [2015] eKLR**, respectively.

13. Despite being aware of the orders of the court, the Respondents have failed to adhere the terms thereof. The failure, neglect or refusal to abide by the terms of the order of the court denotes disobedience; contempt; and willfully disregard of court orders. In my humble view such conduct are bound to bring the dignity and integrity of the court to ridicule. The court must be prepared to deal with and address instances of contempt. Moreover, the parties must be forewarned that failure to comply with court orders has consequences.

14. In the case of **Dr. Fred Matiangi, the Cabinet Secretary Ministry of Interior and Coordination of Internal Security versus Dr. Miguna Miguna [2018] eKLR** the Court of Appeal elucidated the significance of a court order and the need to adhere to terms thereof.

15. The court stated as hereunder:

Court orders issue *ex cathedra*, are compulsive, peremptory and expressly binding. It is not for any party; be he high or

low, weak or mighty and quite regardless of his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance. This Court, as must all courts, will deal firmly and decisively with any party who deigns to disobey court orders and will do so not only to preserve its own authority and dignity but the more to ensure and demonstrate that the constitutional edicts of equality under the law, and the upholding of the rule of law are not mere platitudes but present realities.

16. The foregoing words [supra] apply with equal force to the matter before hand. The Respondents cannot imagine that same are not answerable to the orders of the court. On the contrary, it is common ground that the Respondents herein are bound by the provisions of the inter alia Article 10 of the Constitution 2010 which espouses the National values and principles of governance. In particular, the Respondents must submit to the rule of law and good governance.

17.In my humble view the conduct exhibited/displayed by the Respondents does not augur well with rule of law and the general administration of justice. Instructively, litigants, the Respondents not excepted, are commanded to obey the orders of the court. Notably the command is unqualified and peremptory.

FINAL DISPOSITION

18. Flowing from the analysis contained in the body of the ruling, it must have become apparent that the application before hand is meritorious and thus same deserves to be granted.

19. In the premises, the final orders of the court are as hereunder:

[i] The Application 12/11/2025 be and is hereby allowed.

[ii] The Respondents and in particular the 1st , 2nd , 3rd and 4th Respondents[who constitutes the principal/ Executive officers of the 5th respondent] be and are hereby cited for contempt of court.

[iii] the named officers shall attend court personally on the return date to be fixed upon the delivery of the ruling for purposes of mitigation; show cause; and punishment [where appropriate].

[iv] costs of the applications be and are hereby awarded to the Applicant.

20. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU this 15th of January 2026.

OGUTTU MBOYA, FCIArb; CPM [MTI-EA].

JUDGE

In the presence of:

Hussein – Court Assistant.

Mr. Mwirigi Kaburu for the Applicant.

No appearance for the respondents.