

3. THAT the costs of this application be borne by the Respondent.

2. The application is supported by the annexed affidavit of Githui John, Advocate for the Applicant who deponed that on 24th September 2025, this Honourable court issued an order of mandamus directing the County government of Nakuru, through the County Executive Committee Member in charge of Finance to pay the decretal sum of Kshs. 2,000,000/= taxed costs of Kshs. 285,028/= together with interest as awarded in Nakuru ELC No. E037 of 2020.
3. Mr. Githui further deponed that the said order and a notice of penal consequences were duly served on the County government of Nakuru through the office of the County Executive Committee Member for Finance, on 30th September 2025 and the Respondent acknowledged receipt, but despite service the Respondent has willfully refused to comply with the order or make any payments which actions amounts to contempt.
4. Counsel stated that there is no adequate or speedy alternative remedy that will afford the Applicant the same effective relief as the application for contempt and urged the court to allow the application as prayed.

RESPONDENT'S RESPONSE

5. The Respondent filed its replying affidavit sworn by Iribe Njogu, a County Executive Committee Member for Finance and averred that he

was never served with an application seeking orders of mandamus directing the Respondent to pay the decretal sum of Kshs. 2,000,000/= together with taxed costs of Kshs. 285,028/=.

6. He further averred that he was never served with the order and notice of penal consequences as alleged by the Applicant and stated that he was advised by his advocates, that Section 21 of the Government Proceedings Act stipulated the procedure for execution against the government. Further, a Certificate of Order has to be issued to the Respondent for payment to be effected and that the same has not been issued.
7. The Respondent also deponed that owing to the lack of proper documents to initiate payment, the Accounting Officer has been unable to settle the judgment amount. It was his disposition that he has not refused to settle the amount and that once the requisite documents are availed, the payment process would be initiated. He urged the court to dismiss the Application as it is premature.
8. The Applicant in response to the Respondent's Replying Affidavit filed a supplementary affidavit sworn on 17th December, 2025, and deponed that he applied for a Certificate of order and the same was granted and the court directed that the same be served upon the Respondent who acknowledged receipt, and despite receipt, the Respondent has neither complied nor given timelines within which it would comply.

APPLICANT'S SUBMISSIONS

9. Counsel for the Applicant identified two issues for determination:
 - a) *Whether the CECM in Charge of Finance at the County Government of Nakuru can be held in contempt for deliberate non-compliance with court orders.*
 - b) *Whether the County Executive Committee Member in Charge of Finance should be committed to civil jail for failing to execute the orders of this Honorable Court.*

10. On the first issue, counsel relied on the Black's Law Dictionary 9th Edition for the definition of contempt and the cases of **Meguro Chadwick Kerala Mathis V Kenya School of Law & 3 others [2018] KEHC 9058 (KLR)**, **Soloh Worldwide Inter-Enterprises v County Secretary Nairobi County & another [2015] eKLR**, and **Republic V County Government of Kitui Ex Parte Fairplan Systems Limited [2022] eKLR**, and submitted that the CEC in Charge of Finance Nakuru County government has the legal obligation to settle the judgment debt entered against the Respondent failure to which after service of the decree, the court calls for an explanation.

11. Counsel submitted that failure of the Accounting Officer to comply with a court order amounts to contempt of court. Further, the intervention of the court by way of proceedings in the nature of contempt of court does not punish inability to pay but the blatant disregard of orders of court, and relied on the case of **Republic V County Chief Officer, Finance &**

Economic Planning, Nairobi City County Ex Parte Stanley Muturi [2018] eKLR.

12. Counsel submitted that the court in Nakuru ELC No.E037 of 2020 made an order of mandamus directing the County Executive Committee Member in charge of Finance, Nakuru County to pay the decretal sum of Kshs. 2,000,000/=, taxed costs of Kshs 285,028/=, together with the accrued interest as awarded in.
13. Mr. Githui further submitted that on 30th September, 2025, the Respondent was duly served with the said order which he acknowledged and despite, no payment or explanation having been made for the non-compliance. Counsel further cited the case of **Law Society of Kenya & 3 others V Inspector General of Police & 4 others [2024] KEHC 10634 (KLR)** and submitted that the Respondent's actions were a clear refusal to comply with the court's orders and as such the CEC in Charge of Finance should be held in contempt.
14. On the second issue, counsel submitted that the CEC was responsible for authorizing the release of funds in settlement of the decree and compliance with court orders involving county finances, and that due to his failure to comply with the orders, he should be committed to civil jail for contempt of court orders.

15. Counsel relied on the case of **Econet Wireless Kenya Limited V Minister for Information & Communication of Kenya & another [2005] KEHC 3180 (KLR)** which quoted the case of **GULABCHAND POPATLAL SHAH & ANOTHER CIVIL APPLICATION NO. 39 OF 1990**, and urged the court to allow the application as prayed to preserve the integrity of the court.

RESPONDENT'S SUBMISSIONS

16. Counsel for the Respondent identified one issue for determination, whether premised on the Applicant's allegations the alleged contemnor, the Respondent is guilty of contempt.
17. Counsel submitted that for an Applicant to succeed in civil contempt proceedings, he must demonstrate that the Respondent's refusal to obey was *willful* and *malafides*, and relied on the case of **Samuel M.N Mweru & Others V National Land Commission & 2 Others [2020] eKLR**.
18. Mr. Kimotho further submitted that the Applicant ought to have met the requirements/threshold of proof in contempt proceedings which are higher than that required in civil cases, and cited the case of **James Muchina Wandutu V County Government of Muranga & 5 Others [2019] eKLR** and **Section 21** of the **Government Proceedings Act**.
19. It was his submission that payment by the Respondent was based on a Certificate of Order from the court having issued a decree, which ought

to be served upon the Attorney General. Counsel further submitted that the Applicant has not presented any evidence as proof of service of the decree or notice of penal consequences.

20. Counsel submitted that the Certificate of Order was served upon the Respondent's counsel on 11th December, 2025, yet the application seeking to cite the contemnor was served on 30th October, 2025. Further, the Certificate of Order was to be served upon the Accounting Officer of the Respondent to effect payment and that the CEC Member for finance is not the Accounting Officer, and urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

21. The main issue for determination is whether the Respondent should be cited for contempt of the orders issued by the court on 24th September, 2025. The orders which is the subject of the contempt application were as follows:

a) That an order of mandamus to compel the County Executive in charge of Finance at the County Government of Nakuru to settle the decretal sum of Kshs. 2,000,000/= and costs of Kshs. 285,028/= together with interests in Nakuru ELC No. E037 of 2020.

22. In the Court of Appeal case of **Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others [2018] eKLR** the court held as follows:

“It is trite that to commit a person for contempt of court, the court must be satisfied that he has wilfully and deliberately disobeyed a court order that he was aware of...secondly, as this Court emphasized in Jihan Freighters Ltd v Hardware & General Stores Ltd and in AB & another v R B [2016] eKLR, to sustain committal for contempt of court, the order of the court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing. Lastly, the standard of proof in committal proceedings is higher than proof on a balance of probabilities, though not as high as proof beyond reasonable doubt.”

23. Section 29 of the Environment and Land Court provides as follows:

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”

24. In the case of **Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] KLR 828, Ibrahim, J.** (as he then was), underscored the importance of obeying court orders, stating:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its

orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”

25. Further, in the case of **Republic versus DPP & Another ex parte Stephen Kipkurgat Mutai [2016] eKLR**, the Court emphasized that:

"No person is entitled to disregard court orders merely because they disagree with them or deem them illegal or irregular."

26. It is the Applicant's case that the Respondent failed to settle or communicate the terms of payment as directed by this court. The Respondent stated that it was neither served with the decree nor notice of penal consequences and that the Certificate of Order was to be served upon the Accounting Officer of the Respondent to effect payment.

27. The chronology of this case is as presented by the Applicant which is not disputed by the Respondent. It is also evident that there is a valid decree from the court for the Respondent to make payment, which has not been set aside. The Applicant has also proved that he served all the requisite documents to the respondent who claims that the application is premature, as they have not been notified to take the necessary steps to make payment. What nature of notification does the Respondent need

outside the laid down procedures, which the Applicant has complied with.

28. Counsel submitted that the order was supposed to be served on the Attorney General, which is not factually or legally correct, as County governments have their own County Attorneys who represent them in court cases. The Attorney General represents the national government.
29. I find that the Respondent was served with all the processes, and has willfully disobeyed the court order to make payment of the decree to the Applicant. If the Respondent wanted to make payment, they would have either triggered the process of the payment or explained why they have not yet complied with the court order.
30. Consequently, I order that the CEC in Charge of Finance, appear in court within 7 days to show cause why he should not be committed to Civil jail for failure to obey the court order. Costs of the application to the Applicant.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH DAY OF JANUARY 2026.

**M. A. ODENY
JUDGE**