



**Republic v County Secretary, County Government of Meru & another; Mugambi (Ex parte Applicant) (Judicial Review E002 of 2025) [2026] KEHC 415 (KLR) (26 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 415 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
JUDICIAL REVIEW E002 OF 2025  
HM NYAGA, J  
JANUARY 26, 2026**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF MERU ... 1<sup>ST</sup>  
RESPONDENT**

**CECM FINANCE COUNTY GOVERNMENT OF MERU ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JOHN MUCHAI MUGAMBI ..... EX PARTE APPLICANT**

**RULING**

1. Before me is an application dated 19<sup>th</sup> August 2025 which seeks the following orders:-
  - a. That this Honourable court be pleased to Cite the respondents for contempt of court for willfully disobeying the court order of Mandamus compelling the respondents to honor the satisfaction of orders against the county government of Meru issued by this honorable Court against the respondents in this matter.
  - b. That this honorable court do order the respondents to purge the contempt by immediately paying the decretal plus accrued interest and costs awarded, now standing at Ksh. 20,117,333/- or be penalized to pay Ksh. 200,000/- personally and in default be imprisoned for six (6) months or both such fine and such imprisonment
  - c. That the costs of this application be borne by the respondents.
2. The Application is supported by the applicant's affidavit sworn on even date.



3. In a nutshell, the applicant's case is that he was the original plaintiff in Chuka ELC case number 4 of 2018 (formerly Meru ELC case number 63 of 2004) and subsequently the appellant in the Court of Appeal In Civil Appeal number 20 of 2019.
4. The applicant further avers that the Court of Appeal entered judgment in his favour for a sum of Ksh.10,000,000/- plus costs and interest. That subsequently, he sought leave to commence an application for judicial review, through an application dated the 27<sup>th</sup> January 2025 . That leave was so granted and he filed the substantive motion dated the 29<sup>th</sup> of January 2025, which was allowed. That the order of Mandamus was duly served on the respondent, compelling them to honor the court order and satisfy the decree. That the respondents have willfully disobeyed the order of Mandamus issued by this court requiring them to satisfy the decree against the County Government of Meru. That section 27(b) of the Contempt of Court Act makes it an offense to willfully disobey a court order and is punishable by fine or imprisonment or both.
5. The applicant thus that prays that this honorable court orders the respondents to purge the contempt immediately or be punished by a fine of Ksh.200,000/- each, and in default of which they be committed to civil jail as the court may deem just.
6. The respondents opposed the application through a replying affidavit sworn by the Deputy County Solicitor, County Government of Meru.
7. In a nutshell it is averred that the respondents are duly aware of the decree issued by the Court of Appeal. That the county government has already paid the applicant a total sum of Ksh. 15,296,000/-, being settlement for the non- contentious issues in this matter. That the respondents have not failed nor refused to obey the court orders as alleged by the applicant. That the current administration of the County Government of Meru inherited liabilities from the defunct Local Authority which require scrutiny to verify and align them with the legal financial management procedures. That it is a mandatory obligation under Article 201(d) of the Constitution that public funds be used in a prudent and responsible manner. That sections 107 and 125 of the Public Finance Management Act require budgeting and approval before expenditure of public funds. That the failure to settle the decree is due to budgetary constraints faced by the County Government of Meru. That the Public Finance And Manage Management Act precludes the respondents from spending any public funds other than what is budgeted for under the Meru County Appropriation Act 2025. That issuing warrants against the respondents at this stage would be to compel the county government to expend public funds without adherence to the due process under the Constitution and the said Act. That the Decree and the accrued interest shall be duly budgeted for during the 2025- 2026 financial year budget, which will be prepared around April 2026 and shall pave way for the full payment to the applicant.
8. The respondents thus prayed that the court gives them an opportunity to secure the funds by adhering to the laid down financial procedures.

#### **Submissions by the ex -parte applicant**

9. It was submitted that the respondents are held accountable for failure to pay the decretal sum together with interest and costs. Cited in support of this submission are the following cases;
  - a. James H. Gitau Mwaura vs The Attorney General and another (2015) eKLR.
  - b. Fred Matiangi the Cabinet Secretary Ministry of Interior and Co-ordination of national Government vs Miguna Miguna and 4 others (2018) eKLR.



10. It was further submitted that the beneficiary of the decree is an elderly lady aged over 90 who cannot wait for the County Government to conduct the business of budgeting for a matter that has been in court since 2004. That section 21(3) of the *Government Proceedings Act* imposes a duty on the accounting officer to pay any sums to the person entitled or his advocate and is not on condition that such payment be subject to budgetary allocation.
11. It was further submitted that the burden in contempt proceedings involving State organs, Ministries or County Government lies on the accounting officers for which the deponent of the affidavit in response is not such officer. That section 27 of the *Contempt of Court Act* makes it an offence to willfully disobey a court order and Section 28 outlines the punishment thereof.
12. The applicant thus urged the court to refuse to hear the respondents until such a time as they will have purged the contempt.
13. The respondents did not file any submissions.
14. There is no doubt that the decree emanating from the Court of Appeal has not been satisfied. This is what prompted the applicant to move this court, seeking orders of judicial review of mandamus to compel the respondents to make the payment. The court duly issued an order of Mandamus but still no payment has been done, hence the current application.
15. The applicant has referred to the *Contempt of Court Act*. However that particular piece of legislation was declared unconstitutional by the High Court in Kenya Human Rights Commission v Attorney General & Another [2018] eKLR due to lack of public participation. Therefore, this court's powers to punish for contempt of court stem from the *Judicature Act*. At Section 5 it is provided as follows;  
Contempt of court
  - (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.
  - (2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.
16. The respondents have a duty to obey court orders. While it is appreciated that the County Government of Meru has to make adequate provisions for payment of such a decree, the respondents ought to exhibit to this court the efforts or actions that they have taken to try and settle it. This debt arises from years past and having been aware of the same, adequate measures ought to have been taken during this financial year or the past ones. No such evidence was tendered.
17. While the County Government is bound by *the Constitution* and the law in making payments from public funds, it cannot use the same laws to avoid payment of a lawful decree. Section 104 of the said Public Finance And Manage Management Act sets out the responsibilities and duties of the County Treasury, which include preparation of budget estimates. Therefore, during such a process, the County Treasury has a duty to take steps to ensure that court decrees are paid, and promptly so. It goes without saying that in its annual budgetary cycle, the County Treasury ought to make budgetary provisions for any decrees that may arise, and not await such decrees the start the budgeting process. To this end, the County Treasury and the County Government as a whole must be proactive and not reactive.
18. It is this failure by the County Government to take action that has led to its accounting officers being hauled before the court herein and every now and then in other matters.



19. As regards this matter, the County Solicitor has expressed their willingness to pay the decree. As such, I am of the view that the respondents ought to be given time within which to comply with the orders of this court. It is a collective duty of the respondents to ensure that they commence and implement the process of compliance, and they cannot hide behind the budgetary process or constraints year in year out. The so-called budget constraints have not just appeared from the blue.
20. Since the month of April, 2026 is just around the corner, I will give the respondents the time sought in order to make appropriate provisions from the County Government's budget for the upcoming financial year, or under a supplementary budget within this financial year. Come that month the respondents should give any other excuse. Compliance with a court decree is not optional. It is upon the executive arm of the County Government to prepare the requisite approvals for processing by its legislative arm. Failure to make budgetary provisions for the decree herein will definitely lead to appropriate sanctions from this court.
21. For now, I will hold off any action against the respondents to enable them comply with the order by payment of the decretal sum, which shall, where applicable, include the interest accrued thereon.
22. Costs to the ex-parte applicant in any event.

**DATED, SIGNED & DELIVERED AT MERU THIS 26<sup>TH</sup> DAY OF JANUARY, 2025.**

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**H.M. NYAGA**

**JUDGE**

