



**KTK Advocates v Nairobi City County Government & 5 others (Judicial Review E139 of 2024) [2026] KEHC 1256 (KLR) (Judicial Review) (6 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1256 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW E139 OF 2024  
JM CHIGITI, J  
FEBRUARY 6, 2026**

**BETWEEN**

**KTK ADVOCATES ..... APPLICANT**

**AND**

**NAIROBI CITY COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**CECM, FINANCE & ECONOMIC AFFAIRS ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF OFFICER, REVENUE ADMINISTRATION ..... 3<sup>RD</sup> RESPONDENT**

**THE COUNTY SECRETARY, NAIROBI CITY COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**COUNTY ATTORNEY ..... 5<sup>TH</sup> RESPONDENT**

**CHIEF OFFICER, FINANCE/ COUNTY TREASURER NAIROBI CITY  
COUNTY ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. The Applications that come up for ruling are the *exparte* Applicant’s Notice of Motion dated 19.06.25 and the one by the 5<sup>th</sup> Respondent dated 6.11.25.
2. In its application, The *Exparte* Applicant seeks the following orders;
  1. ....Spent.
  2. That a Notice to Show Cause does issue to the Respondents:
    - i. CECM, Finance & Economic Affairs.
    - ii. Chief Officer, Revenue Administration.



- iii. County Secretary, Nairobi City County.
  - iv. County Attorney.
  - v. Chief Officer, Finance/County Treasurer Nairobi City County to Show Cause why Contempt of Court Proceedings should not be commenced against them for disobedience of Orders of this Honourable Court given on 03.04.25.
3. That, this Honourable Court does issue such orders as it may deem fit to grant in the interests of justice.
  4. That, the costs of this Application be provided for.
3. In its Application, the 5<sup>th</sup> Respondents seek orders that: -
1. The name of the 5<sup>th</sup> Respondent be struck out from the suit.
  2. The 5<sup>th</sup> Respondent be awarded costs of this Application.
  3. That, the cost of this Application be provided for.
  4. This Honourable Court be pleased to issue any such further and appropriate orders in the circumstances of this matter as it deem fit.

The Exparte Applicant's case;

According to the exparte Applicant, the following facts are not in Dispute;

- i. The Advocate/Client Bill of Costs was taxed on 29.03.22 in the sum of Kshs. 697,876.30.
  - ii. Judgment was entered on 14.03.24 in the sum of Kshs. 697,876.30 plus Interest of 14% p.a. from 01.04.22 until payment in full.
  - iii. Mandamus Orders were issued on 03.04.25 compelling the Respondents to settle the decretal sums within sixty (60) days of the date therefrom in the presence of the Respondents' lawyers.
  - iv. Decree was issued pursuant to the Mandamus Order against the Respondents and the same was served upon the Respondents.
  - v. The decretal sums have not been paid by the Respondents at all and the sixty (60) days ordered by Court lapsed on 03.06.25 or thereabouts.
  - vi. Despite knowledge, service and several reminders, the Respondents have failed and/or refused to settle the decretal sums despite the clarity of the orders of this Court.
4. Section 7 of the *Civil Procedure Act* Cap 21 Laws of Kenya defines the doctrine of Res Judicata in the following terms: -

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”



5. The Black's Law Dictionary 9<sup>th</sup> Edition defines contempt of court as follows: -
- “Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
6. Section 5 (1) of the *Judicature Act*, cap.8 states 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.”
7. In the case of *Teachers Service Commission V Kenya National Union of Teachers & 2 others* (2013) eKLR (Annexed at page...to page...of the Applicant's list of authorities), Ndolo J observed as follows in regards to obedience of Court orders: -
- “The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the Judiciary or the court or even the personal ego of the presiding Judge. Neither is it about placating the Applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”
8. The High Court of Kenya in *Wachira Nderitu, Ngugi & Co Advocates vs The Town Clerk, City Council of Nairobi* , Miscellaneous Application No 354 of 2012 (Annexed at page...page....of the Applicant's list of authorities) stated as follows regarding the finality of mandamus orders: -
- “ 18. Therefore once an order of mandamus is issued, the matter is no longer merely one of settlement of a decretal sum, but that of compelling a public officer to carry out his/her statutory duty. Therefore the issue of the officer's immunity for payment of sums due from a public body no longer arise. What then is in issue is the failure by the concerned officer to carry out a duty imposed on him/her by the law.’
9. The Court of Appeal of Kenya in the case of *Shimmers Plaza Limited Versus National Bank of Kenya Limited* Civil Appeal No. 33 of 2015 EKLK (Annexed at page...to page.... of the Applicant's list of authorities) stated thus in regards to obedience to Court orders: -
- “We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26<sup>th</sup> President of the United States of America once said:-
- “No man is above the law and no man is below it; nor do we ask any man's permission to obey it. Obedience to the law is demanded as a right; not as a favour”.



The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by the Constitution. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy. We think we have said enough to send this important message across.”

10. Further reliance is placed in the case of Fred Matiang’i, The Cabinet Secretary Ministry of Interior and Coordination of National Government v. Miguna & others [2018] eKLR where it was held:-

“Courts must not look the other way, while Public and State Officers ride roughshod over constitutionalism and the rule of law. When Courts issue orders, they do not do so as suggestions or pleas, to the persons at whom they are directed. Court orders issue ex cathedra, are compulsive, peremptory and expressly binding. It is not for a Party, be he high or low, weak or mighty, and quite regardless of standing in Society, to decide whether or not to obey, to choose which to obey and which to ignore, and to negotiate the manner of compliance.”

11. In Republic vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza [2012] eKLR extensively dealt with the defence of lack of budgetary allocation by the Respondents and stated as follows: -

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit.

Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act.

The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment.

Once the certificate of order against the Government is served on the Hon Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon.



This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.”

12. In *Wachira Nderitu, Ngugi & Co Advocates vs The Town Clerk, City Council of Nairobi*, Miscellaneous Application No 354 of 2012 further pronounced itself on the issue of failure by the Respondents to comply as a result of financial difficulties or budgetary allocations as follows: -

“.....financial difficulty is only a consideration when it comes to determining the mode of settlement of a decree but is not a basis for declining to compel the Respondent to settle a sum decreed by the Court to be due from it.”

13. In the case of *Republic versus Nairobi City County & 3 others*, Miscellaneous Application No. E054 of 2022 the court stated thus in regards to the duty of this Honourable Court to protect, promote and fulfill rule of law by ensuring that Court orders are religiously complied to: -

“37. This court has a duty to protect, promote and fulfil the rule of law under Article 20 of *the Constitution*. The Authority of the court under Article of *the Constitution* will be eroded if the court allows judgments debtors to disregard court orders.

38. Article 159 (1) of *the Constitution* provides that:

“Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution. (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

- a. justice shall be done to all, irrespective of status;
- b. justice shall not be delayed;
- c. alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);
- d. justice shall be administered without undue regard to procedural technicalities; and
- e. the purpose and principles of this Constitution shall be protected and promoted.”

39. The failure on the part of the court to enforce its orders amounts to a betrayal of the people of Kenya. This court shall not allow that. Impunity if allowed to thrive by way of disobedience of court orders will generate an affront of democracy and the rule of law. Impunity must be nipped at the bud.

40. Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”

14. It is the Applicant’s submission that it is trite law that to succeed in a contempt Application, the Applicant must prove the following; -



- a. The terms of the order;
  - b. Knowledge of the terms by the Respondent;
  - c. Failure by the Respondent to comply with the terms of the order; and
  - d. The Respondent's conduct was deliberate.
15. In the instant case, Mandamus Orders were issued on 3.04.25 compelling the Respondents to settle the decretal sums of Kshs. 697,876.30 plus Interest of 14% p.a. from 01.04.22 until payment in full within sixty (60) days from 03.04.25 in the presence of the Respondents' lawyers.
  16. Further, the Applicant ensured the Respondents were duly served with the said orders issued on 03.04.25 by extracting the Decree pursuant to the Mandamus order against the Respondents and serving the same upon the Respondents. It is not in dispute that the Respondents were duly served with the Mandamus orders issued on 03.04.25.
  17. Despite knowledge, service and several reminders, the Respondents failed and/or refused to settle the decretal sums despite the clarity of the orders of this Court as they failed to pay the Applicant the decretal sums within sixty (60) days as ordered by this Court and yet the said timeline lapsed on or about 03.06.24 or thereabouts.
  18. The Respondents' argument that it lacks budgetary allocation to settle the decretal sums within the ordered timelines is not a valid reason for failing to comply with this Court's orders as the Respondents have absolutely failed to demonstrate steps if any that they have taken since 03.04.25 to effect payment of the monies due to the Applicant.
  19. Once an order of mandamus is issued, the matter is no longer merely one of settlement of a decretal sum, but that of compelling a public officer to carry out his/her statutory duty. What then is in issue is the failure by the concerned officers to carry out a duty imposed on him/her by the law.
  20. It is its case that all the Respondents are in contempt of this Court as they deliberately disobeyed this Court orders by not complying to the Mandatory orders issued on 03.04.25.
  21. The issue of whether the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents should be struck out of this proceedings on account of misjoinder was already decided and Mandamus order issued. The same is therefore res judicata.

### **The Respondent's Case;**

22. In support of their Application they argue that the 5<sup>th</sup> Respondent has been improperly joined in these proceedings.
23. It is the Respondent's case that the functions and powers of the County Attorney are outlined under Section 7 and 8 of the [\*Office of the County Attorney Act, 2020\*](#).
24. The 5<sup>th</sup> Respondent argues that she advised 2<sup>nd</sup> and 6<sup>th</sup> Respondents to settle the amounts owed to the Applicants.
25. According to the Respondents, Section 148 of the PFMA 2012 empowers the CECM in charge of finance to appoint accounting officers for sectors and departments within the county executive.
26. Section 149 of the PFMA 2012 outlines the responsibilities of accounting officers to be key among others, ensuring that the resources of the entity for which the officer is designated are used in a way that is; (a) lawful and authorized; and (b) effective, efficient, economical and transparent.



27. Section 151 of the PFMA 2012 delegates spending authority of a county entity to the respective accounting officer.
28. Section 153 of the PFMA 2012 mandates accounting officers to be responsible for managing the assets and liabilities of a County Government entity.
29. The 5<sup>th</sup> Respondent argues that she is not a designated accounting officer for any entity within the County Government and she lacks statutory and/or administrative authority or means to effect payment to the Applicant as per the mandamus orders issued by the court on 3<sup>rd</sup> April, 2025.
30. According to the 5<sup>th</sup> Respondent, the issues in dispute are thus between the Applicant and the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> Respondents

### **The Respondents' Submissions;**

31. They submit that the Application is frivolous, vexatious and or amounts to an abuse of the Court's process.
32. The Respondents submit that the Order issued by this Honourable Court on 3<sup>rd</sup> March, 2025 is not capable of execution by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents since the responsibilities with respect to management and control of public finance under the [Public Finance Management Act](#), 2012 lie with the County Executive Committee Member in charge of finance.
33. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents are not designated accounting officers for any entity within the County Government and as such, have no statutory or administrative authority or means within their respective offices to make payment of any money owed to the Applicant.
34. They submit that all the expenditures by the Respondents are appropriated by the County Assembly in each financial year and spending any public funds without any prior authorization and budgetary appropriation is an offence and therefore an illegality under the [Public Finance Management Act](#), 2012.
35. They submit that the Respondents have various competing interests catered for in the budget and therefore, this Court ought to allow for the Applicant's claim to be factored in the budget as approved by the County Assembly taking into consideration the fact that the County Executive cannot expend money not approved in the budget as doing so will be in contravention of the law thus amounting to an illegality. This is provided for under Section 196 of the [Public Finance Management Act](#), 2012.
36. They submit that the satisfaction of Rulings, Decrees and Judgements is deemed to be expenditure by the County and as a result it must be justified in law and provided for in the County's expenditure.
37. The same position was reiterated in Kenya National Examination Council vs Republic ExParte Geoffrey Gathenji & Others (1997) eKLR where it was held that, under the [Public Finance Management Act](#), 2012 particularly Part IV of the County Government Responsibilities which makes provisions Of the management and control of public finance, that the statutory duty to pay out funds from the County treasury vests in the County Executive Committee in charge of finance.
38. They submit that the Application offends Section 103 of the [Public Finance Management Act](#), 2012 as the 4<sup>th</sup> Respondent has severally been discharged from proceedings relating to the financial obligations of a County Government and its officials in numerous court proceedings.
39. The 4<sup>th</sup> and the 5<sup>th</sup> Respondents herein, the County Secretary and the County Attorney are not listed under Section 103 of the said PFMA as among members of the County Treasury.



40. Section 104 of the said Act further discusses the powers, duties and responsibilities of the County Treasury, and from it, it is clear that the 4th and 5th Respondents have no role and obligation in matters relating to county finances.
41. Section 148 of the [Public Finance Management Act](#), 2012 empowers the County Executive Committee Member in charge of finance to appoint accounting officers for the sectors and departments within the County Executive.
42. Therefore, according to the Respondents an accounting officer for a County Government entity is the person so appointed and designated as such by the CECM for finance to ensure that each County Government entity has an accounting officer.
43. Pursuant Section 7 (a) and Section 10 of the Office of the County Act, the 5<sup>th</sup> Respondent is the principal legal advisor to the County Government, and enjoys protection from any criminal or civil proceedings being brought against her in the course of discharging the functions of the County Attorney's office.
44. According to Section 44(1) of the County Government Act, the County Secretary is the Secretary to the County Executive Committee but not an accounting officer. Section 132 and 133 of the [Public Finance Management Act](#), 2012 and Part IV of the Public Finance Regulations, 2015 mandates the 3<sup>rd</sup> Respondent herein, the Chief Officer for Revenue Administration to enhance resource mobilization through implementation of robust revenue raising strategies to fund the budgetary requirements of the county.
45. They submit that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents have been wrongly joined in the Application as they are not accounting officers hence seeks that the Application should be struck off with costs to the Respondents.
46. Under Order 1, Rule 9 of the Civil Procedure Rules, the court has power to order a party who has been improperly enjoined in a suit to be struck out.
47. In the High Court of Kiambu Miscellaneous Application E236 of 2024; Karobia & another Vs County Secretary Kiambu, the court held that the County Secretary is not the right party to be sued as he or she is not in charge of the management of the finances of the county.
48. They urge the Court to allow for the budgeting, allocation and approval of the taxed amounts through the procedures provided for under the County Government Act.
49. Reliance is placed in the case of Republic vs County Government of Nairobi; KCB Bank Limited (Exparte) (Judicial Review Application E077 Of 2022) (2023) KEHC22611 (KLR) (Judicial Review) (21 September 2023) where Justice J. Chigiti (SC) held that; "it is neither in the interest of this court nor that of the ex parte Applicant that the Respondent should be brought to its knees. The Court appreciates and it is a matter of judicial notice that most of the local authorities are reeling under the weight of the debts accrued by their predecessors and that they are trying to find their footing in the current governmental set up. Accordingly, I am satisfied based on the material on record that the Respondent ought to be given breathing space to arrange its finances and settle the sum due herein."

Analysis and determination;

The issues for determination are:

1. Whether the Applications have merit.
2. Whether the 5th Respondents should be removed from the proceedings.



3. Who shall bear the costs.

**Whether the Applications have merit.**

50. The Respondents do not deny that they owe the Applicant the amounts claimed.
51. The Respondents' argument that they have not been able to settle the claim because all the expenditures by the Respondents are appropriated by the County Assembly in each financial year is a red herring.
52. I say so because it will be noted that The 6th Respondent in her affidavit told the court that she actually advised the 2nd Respondent to settle the claim.
53. The court is of the view that the argument by the Respondents that they have various competing interests catered for in the budget cannot come to the Respondent's aid.
54. Decrees of this court must be settled and failure to do so amounts to impunity which this court cannot countenance.
55. The Respondents' argument that Rulings, Decrees and Judgements are deemed to be expenditure by the County and as a result must be justified in law and provided for in the County's expenditure is misplaced.
56. In the case of Republic v Principal Secretary, Ministry of Defence Ex parte George Kariuki Waithaka [2019] eKLR held as follows on the issue of budgetary allocation;

“The defence of non-allocation of funds by Parliament was also raised by the Respondent in the present Application in his replying affidavit. Odunga J. in his ruling of 12th February 2018 extensively dealt with the defence as follows:

“As regards lack of budgetary allocation, Githua, J in Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR expressed herself as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against



the Government is served on the Hon Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.” [Emphasis mine].

26. I associate with the said decision and it is therefore my view that settlement of decretal sum by the Government whether National or County does not necessarily depend on the availability of funds. This position was appreciated by this Court in *Wachira Nderitu, Ngugi & Co. Advocates vs. The Town Clerk, City Council of Nairobi* Miscellaneous Application No. 354 of 2012 in which this Court pronounced itself as follows:

“I have however considered the other issues raised by the Respondent with respect to its debt portfolio as against its financial resources. It is neither in the interest of this Court nor that of the ex parte Applicant that the Respondent should be brought to its knees. The Court appreciates and it is a matter of judicial notice that most of the local authorities are reeling under the weight of the debts accrued by their predecessors and that they are trying to find their footing in the current governmental set up. Accordingly, I am satisfied based on the material on record that the Respondent ought to be given some breathing space to arrange its finances and settle the sum due herein.”

27. In my view a party facing financial constraints is at liberty to move the Court for appropriate orders which would enable it to settle its obligations while staying afloat. That however, is not a reason for one to evade its responsibility to settle such obligations. In other words, financial difficulty is only a consideration when it comes to determining the mode of settlement of a decree but is not a basis for declining to compel the Respondent to settle a sum decreed by the Court to be due from it. That objection therefore fails.”

48. Non-allocation of funds by Parliament is not an acceptable defence or justifiable excuse for non-payment of decretal sums ordered to be paid by Government officials, in the absence of any evidence of any attempts made by the responsible Government official to commence the process of such allocation. In the present case, this is particularly relevant given that the present contempt of Court proceedings commenced in April 2017, and the Respondent did not indicate what steps if any, have been taken since then to effect payment of the monies due to the Applicant.”

57. This court is in agreement with the above findings. The Respondent’s argument that it lacks budgetary allocation is therefore not a valid reason for failing to comply with this court’s orders and I so hold.

58. According to De Smith, Woolf & Jowell, “Judicial Review of Administrative Action” 6<sup>th</sup>Edn. Sweet & Maxwell page 609:

“A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the



rule of law, which requires predictability and certainty in government’s dealings with the public.”

59. In *South Bucks District Council vs. Flanagan* [2002] EWCA Civ. 690 [2002] WLR 2601 at [18] that:

“Legitimate expectation involves notions of fairness and unless the person making the representation has actual or ostensible authority to speak on behalf of the public body, there is no reason why the recipient of the representation should be allowed to hold the public body to the terms of the representation. He might subjectively have acquired the expectation, but it would not be a legitimate one, that is to say it would not be one to which he was entitled.”

60. When the Applicant secured a judgment, extracted a Decree, a Certificate of Order and a Certificate of Costs and the time for lodging an appeal lapsed, then the Applicant had a legitimate expectation that the Respondent would settle the claim during its next budgetary cycle at the minimum. Such is the case before me. The Applicant has a legitimate expectation that the Respondents should settle his claim.

61. The decree holder remains clinging on a decree that is yet to translate into funds. This has to come to an end. The procedure of the issuance of the Notice to Show Cause that the Applicant has invoked gives the Respondents a fair hearing.

#### **Whether the 5th Respondents should be removed from the proceedings.**

62. Section 7 (a) and Section 10 of the Office of the County Act, the 5<sup>th</sup> Respondent is the principal legal advisor to the County Government, and enjoys protection from any criminal or civil proceedings. The 5<sup>th</sup> Respondents’ Application has merit.

#### **Costs;**

63. In determining the issue of costs, this court is guided by the case of *Party of Independent Candidates of Kenya versus Mutula Kilonzo a 2 others HC EP No. 6 of 2013*, the court stated as follows on the issue of costs:

“It is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place, the award of costs is a matter in which the trial judge is given discretion but this is a judicial discretion and must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. In the second place the general rule that costs should be awarded to the successful party, is a rule which should not be departed from without the demonstration of good grounds for doing so.”

64. The Respondents shall shoulder the costs of this suit.

#### **Disposition:**

65. The *ex parte* Application has merit save for the finding that the 5<sup>th</sup> Respondent’s Application is allowed.  
Order:

The *Ex parte* Application is allowed in the terms as set out in the orders as issued below.

1. The 5th Respondent’s Application dated 6.11.25 is allowed.
2. The Application dated 19<sup>th</sup> June, 2025 is allowed in the following terms;



3. A Notice to Show Cause is hereby issued to the following Respondents:
  - i. CECM, Finance & Economic Affairs.
  - ii. Chief Officer, Revenue Administration.
  - iii. County Secretary, Nairobi City County.
  - iv. Chief Officer, Finance/County Treasurer Nairobi City County to Show Cause why Contempt of Court Proceedings should not be commenced against them for disobedience of Orders of this Honourable Court given on 03.04.25.
4. The matter shall proceed with the Notice to Show Cause on 24.2.26 at 10 AM in open Court.
5. Costs in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2026.**

.....

**J. CHIGITI (SC)**

**JUDGE**

