

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW NO. E 140 OF 2024

KTK ADVOCATES.....APPLICANT

~AND~

**NAIROBI CITY COUNTY GOVERNMENT.....1ST
RESPONDENT**

CECM, FINANCE & ECONOMIC AFFAIRS.....2ND RESPONDENT

**CHIEF OFFICER,
REVENUE ADMINISTRATION 3RD
RESPONDENT**

**THE COUNTY SECRETARY, NAIROBI CITY COUNTY.....
.....4TH RESPONDENT**

**COUNTY ATTORNEY..... 5TH
RESPONDENT**

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

***EX PARTE:* KTK ADVOCATES**

RULING

1. The Applications that come up for ruling are the ones dated 19th June, 2025 by the decree holder and the one dated 5th November 2025 by the 5th Respondent.

2. The decree holder/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. The 5th Respondent on its part seeks the following orders:

- 1) The name of the 5th Respondent be struck out from the suit.
- 2) The 5th 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 Decree holder/Applicant's case;

4. It is the Applicant's case that pursuant S.51 (2) of The Advocates Act, Cap. 16, a Judgment was issued on 14.03.24. An order for *Mandamus* was subsequently issued on 03.04.25 in the presence of the Respondent's lawyers compelled the Respondents to settle the decretal sums within Sixty (60) days from the date therefrom.
5. The Sixty (60) days lapsed on 3.6.25 or thereabouts and the Respondents didn't settle the decretal sums at all. The Decree was issued pursuant the *Mandamus* Order.
6. It is its case that on 17.04.25 the Judgment with the *Mandamus* Order was served on the Respondents. On 30.04.25 Hon. Charles Kerich, the CECM-Finance & Economic Planning was again served with the Decree.
7. It is the Applicant's case that the Respondents have jointly and/or severally refused and/or neglected to comply with the Decree.

The Decree Holder's Submissions;

The 1st, 2nd and 6th Respondents Case;

8. They rely on the Replying Affidavit sworn by Asha Abdi on 05.08.25.

The 1,2 and 6th Respondents Submissions:

9. They argue that they have been wrongly sued and that the Application should be dismissed.
10. It is their case that they are not the accounting officers of the county government and they should not be held liable for the county government's obligations.
11. It is further their case that the 5th Respondent is the legal advisor of the county government and is immune to civil and criminal prosecution.
12. Over above, they are submitting that the Exparte Applicant should in any event wait for the county government to complete its budgetary allocation so that funds can be made available through the proper statutory procedure so that the payment can be effected.
13. It is their case that there are many competing needs, which must be met, and the decree is one of those expenditures that call for resources.
14. They argue that the expenditure by the county government must be done through the appropriate allocation of funds.

The 5th Respondents Case;

15. The fifth Respondent has separately filed an Application seeking the orders of court to be removed from the Suit because of the fact that it is immune from civil and criminal prosecution.

The Respondents Submissions;

- 16.** The functions and powers of the County Attorney are outlined under Section 7 and 8 of the Office of the County Attorney Act, 2020.
- 17.** The 5th Respondents case that as the principal legal advisor to the County Government, it advised 2nd and 6th Respondents to settle the amounts owed to the Applicant.
- 18.** 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.
- 19.** 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.
- 20.** Section 151 of the PFMA 2012 delegates spending authority of a county entity to the respective accounting officer.
- 21.** Section 153 of the PFMA 2012 mandates accounting officers to be responsible for managing the assets and liabilities of a county government entity.
- 22.** The 5th Respondent submits that it is not a designated accounting officer for any entity within the county government.
- 23.** It argues that it lacks statutory and/or administrative authority or means to effect payment to the Applicant as per the mandamus

orders issued by the court on 3rd April, 2025 compelling it to settle the decretal sum owed to the Applicant.

- 24.** It argues that the issues in dispute are between the Applicant and the 1st, 2nd and 6th Respondents, and that the 5th Respondent has been improperly joined in these proceedings.
- 25.** It submits that the Orders issued by this Honourable Court on 3rd March, 2025 are not capable of execution by the 3rd, 4th and 5th Respondents since the responsibilities with respect to management and control of public finance under the Public Finance Management 2012 lie with the County Executive Committee Member in charge of finance.
- 26.** The 3rd, 4th and 5th 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.
- 27.** It submits 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.
- 28.** They argue that the Respondents have various competing interests catered for in the budget and therefore, this Honourable Court ought to allow for the Applicants 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 die Public Finance Management Act, 2012.

- 29.** They argue 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.
- 30.** It is submitted that under the Public Finance Management' Act, 2012 particularly Part IV of the County Government Responsibilities makes provisions of the management and control of public finance the statutory duty to pay out funds from the County treasury vests in the County Executive Committee in charge of finance.
- 31.** It submits that the court must establish whether the 3rd, 4th and 5th Respondents are the proper parties in the suit.
- 32.** The Application offends Section 103 of the Public Finance Management Act, 2012 as the 4th Respondent has severally been discharged from proceedings relating to the financial obligations of a county government and its officials in numerous court proceedings.
- 33.** The 4th and the 5th 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.
- 34.** Section 104 of the said Act further discuss 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.

- 35.** 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.
- 36.** 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 Pursuant to Section 7 (a) and Section 10 of the Office of the County Attorney Act.
- 37.** The 5th 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.
- 38.** 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 3rd 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.

39. They argue that the 3rd, 4th and 5th 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. 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.
40. In the High Court of **Kiambu Miscellaneous Application E236 or 2024; KARO/3L4 & 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.
41. It is therefore the Respondents' prayer that this allow for the budgeting, allocation and approval of the amounts through the procedures provided for under the County Government Act.
42. Reliance is placed in the case of **Republic vs County Government of Nairobi; KCB Bank Limited (Exparte) (Judicial Review Application E077of2022) (2023) KFHC22611 (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 Application 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) Who shall bear the costs.

Whether the Application 19th June, 2025 has merit.

- 43.** The Respondents do not deny that they owe the Applicant the amounts claimed.
- 44.** 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.
- 45.** I say so because it will be noted that The 5th Respondent argued that she advised the 2nd Respondent to settle the claim.
- 46.** The further argument by the Respondents that they have various competing interests catered for in the budget cannot come to the Respondent's aid. The Ex Parte Applicant is entitled to what he is pursuing.
- 47.** Decrees of this court must be settled and failure to do so amounts to impunity which this court cannot countenance.

48. 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. Once a decree holder complies with *Section 21(4) of the Government Proceedings Act, the script changes and the Respondent can no longer seek refuge in such an argument like the one the Respondent is seeking to invoke.*
49. 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.”

- 50.** 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.

According to De Smith, Woolf & Jowell, “*Judicial Review of Administrative Action*” 6thEdn. 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."

- 51.** 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."

- 52.** 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 would settle his claim.
- 53.** The decree holder must not remain indefinitely holding a decree that is yet to translate into funds. Litigation cannot be said to have come to an end if a decree holder does not have access to redress and in this

case the fruits of the decree. The procedure of the issuance of the Notice to Show Cause that the Applicant seeks to invoke gives the Respondents a fair hearing.

On the issue whether the 5th Respondent's Application should be allowed.

54. It is this court's finding and I so hold that the 5th a Respondent enjoys immunity from Civil and Criminal prosecution.

Costs;

55. 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. "

56. The other Respondents shall shoulder the costs of this suit.

Disposition:

57. The Applicant has proven that save for the 5th Respondent, the Notice to Show Cause against the other Respondents has merit.
58. The 5th Respondent's Application has merit.

Order:

- 1) The 5th Respondent's Application dated 6.11.25 is allowed.
- 2) The Application dated 19th June, 2025 is allowed in the following terms;

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.

- 3) *The matter shall proceed with the Notice to Show Cause on 24.2.26 at 10 AM in open Court.*
- 4) *Costs in the cause.*

Dated, signed and delivered at Nairobi this 6th day of February, 2026.

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J. CHIGITI (SC)
JUDGE