



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC JUDICIAL REVIEW APPLICATION NO. E013 OF 2024

REPUBLIC.....APPLICANT

=VERSUS=

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

COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE, ECONOMIC PLANNING & ICT.....2ND RESPONDENT

THE CHIEF OFFICER, FINANCE AND ECONOMIC PLANNING, COUNTY GOVERNMENT OF MERU.....3RD RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER, LEGAL AFFAIRS, PUBLIC SERVICE MANAGEMENT & ADMINISTRATION.....4TH RESPONDENT

COUNTY GOVERNMENT OF MERU.....5TH RESPONDENT

JOSEPH MWIRIGI KABURU T/A MWIRIGI KABURU & CO. ADVOCATES.....EX-PARTE APPLICANT

RULING

- 1.** Falling for determination in this ruling is a notice of motion dated 12/11/2025, brought by **Joseph Mwirigi Kaburu t/a Mwirigi Kaburu & Co Advocates** [the ex-parte applicant]. It was brought under **Section 5** of the **Judicature Act** and **Sections 14** and **29** of the **Environment and Land Court Act**. Through it, the ex-parte applicant seeks: (i) an order citing the respondents for being in contempt of the order of mandamus issued by this court on 13/5/2025; (ii) an order handing down punishment to the respondents for being in contempt of the order of mandamus issued by this court on 13/5/2025; and (iii) an order providing for costs of the application.
- 2.** The application was premised on the grounds outlined in the motion and in the supporting affidavit sworn on 12/11/2025 by **Mr Mwirigi Kaburu**. The case of the ex-parte applicant is that, on 13/5/2025, this court issued an order of mandamus compelling the respondents to pay the ex-parte applicant Kshs 939,600 plus interest at 14% per annum from 31/7/2024. The said order of mandamus was to take effect from 1/10/2025. The respondents were duly served with the order of mandamus but have chosen to ignore it.
- 3.** From the record, the ex-parte applicant filed an affidavit of service dated 3/12/2025, indicating that the respondents were duly served with the application on 1/12/2025. The application was not opposed and was heard on 19/1/2026 as an uncontested motion. The application fell for

determination yesterday but, due to pressure of work, the ruling was not ready.

4. The court has considered the application. The single question that falls for determination at this stage is whether the ex-parte applicant has proved contempt of court on part of the respondents. Before the above question is disposed, I will recap the contextual background to the application. Part of the contextual background was contained in the opening paragraphs of the preceding judicial review judgment dated 13/5/2025.
5. The ex-parte applicant represented the County Government of Meru in **Meru CMC Civil Case Number 421 of 2014**, involving an ownership dispute over land parcel number Meru **Municipality Plot No. 17664**. Subsequent to that, the ex-parte applicant filed an advocate-client bill of costs, to wit, **Meru ELC Miscellaneous Application No E019 of 2023** and invited the taxing officer of this court to assess/tax the bill. The bill was, on 23/5/2024, taxed by the taxing officer of this court [**Hon E Ndegwa**] at Kshs 939,600. The taxing officer issued a certificate of costs/taxation dated 10/7/2024.
6. Subsequent to that, the ex-parte applicant brought a motion dated 31/7/2024 in the said cause, inviting the court to enter judgment in their favour in terms of the certificate of costs. The court [**Nzili J**] heard the application and disposed it through a judgment dated 16/10/2024. The court [**Nzili J**] decreed the County Government to pay to the ex-parte applicant the taxed sum

of Kshs 939,600 together with interest at the rate of 14% per annum with effect from 31/7/2024.

7. Thereafter, the ex-parte applicant brought a chamber summons application dated 17/12/2024, seeking leave of the court to apply for an order of mandamus compelling the respondents to implement the judgment and order issued in **Meru ELC Misc. Application No. E019 of 2023** by paying the decretal sum to the ex-parte applicant. Vide an order made on 18/12/2024, the court [**Yano J**] granted the ex-parte applicant the leave sought. Consequently, the ex-parte applicant brought a notice of motion dated 19/12/2024, seeking an order of mandamus compelling the respondents to pay the decretal sum.
8. This court considered the judicial review application and rendered a judgment dated 13/5/2025 in which it found that the application for an order of mandamus met the relevant criteria. Alive to the fact that the relevant certificate of order was issued in November 2024, and that there was need to factor the certificate of order in the Financial Year 2025/2026 Budget, this court granted the order of mandamus but stayed its enforcement until after the end of the first quarter of the 2025/2026 Financial Year.
9. For clarity, the court issued an order of mandamus in the following terms:

a) An order of mandamus is hereby issued compelling the respondents to implement the judgment, decree and certificate of order issued in Meru ELC Land Misc. Application No.

E019 of 2013 by paying to the ex-parte applicant the sum of Kshs. 939,600 being the decretal sum and by further paying to the ex-parte applicant the accrued interest at the rate of 14% per annum reckoned from 31/7/2024 until payment in full.

b) The order of mandamus shall take effect from 1/10/2025.

c) Parties shall bear their respective costs of this suit

10. In Kenya's legal system, contempt of court is generally regarded as conduct that defies the authority or dignity of the court. Contempt of court is considered to be a serious aggression against the rule of law and against the administration of justice. A finding of contempt attracts severe sanctions by the court.

11. In the case of ***Econet Wireless Kenya Limited v Minister For Information And Communication Of Kenya Authority [2005] eKLR***, the court stated the following on contempt of court:

“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."

12. In *Gatharia K. Mutikika v Baharini Farm Ltd [1985] KLR 227* it was held that:

"A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily..... it must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and

carefully watched and exercised with the greatest reluctance.....”

13. In ***Oilfield Movers Ltd v Zahara Oil & Gas Limited [2020] eKLR*** the court stated:

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty...”

14. The contextual background to the present application has been outlined. It is clear from the evidence on record that the order of mandamus was served on the respondents. As at the time of writing this ruling, none of the respondents had stepped forward to tender any explanation as to why the order of mandamus had not been complied with. None had stepped forward to seek any form of indulgence.

15. The court has considered the framework in the **Public Finance Management Act** as read together with the **Government Proceedings Act**. The person in charge of the finances of a County Government is the County Executive Committee Member responsible for finance and economic planning. The accounting officers designated and working under him report to him. That is the officer who should have ensured that funds are set aside and the order of the court is complied with. Consequently, the view

of the court is that the officer who is in contempt of the order of 13/5/2025 is the County Executive Committee Member responsible for finance and economic planning. That person is the 2nd respondent in the application under consideration. The court has not found evidence of contempt on part of the other respondents.

- 16.** For the above reasons, the court finds that the Meru County Executive Committee Member responsible for finance and economic planning is in contempt of the order of mandamus issued by this court on 13/5/2025 requiring the respondents to pay the ex-parte applicant the sum of Kshs 939,600 together with the accrued interest. Consequently, the said member of the County Executive Committee is required to personally attend court on **18/2/2026 at 12:00 noon** for mitigation and sentencing.

DATED, SIGNED AND DELIVERED AT MERU THIS 10TH DAY OF FEBRUARY, 2026.

**B M EBOSO [MR]
JUDGE**