

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**CONSTITUTIONAL, HUMAN RIGHTS & JUDICIAL REVIEW**  
**DIVISION**  
**APPLICATION NO. E004 OF 2025**

**RYANJA ENTERPRISES LTD.....APPLICANT**

**-VERSUS-**

**COUNTY EXECUTIVE COMMITTEE**

**MEMBER, FINANCE & ECONOMIC PLANNING**

**COUNTY GOVERNMENT OF KWALE.....1<sup>ST</sup> RESPONDENT**

**CHIEF FINANCE OFFICER**

**COUNTY GOVERNMENT OF KWALE.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before court are contempt proceedings initiated against the respondents by way of a motion dated 21 February 2025 which is itself expressed to be filed under section 5 of the Judicature Act, cap. 8 and Order 53 rule 1(1) of the Civil Procedure Rules. The prayers in the motion have been expressed as follows:

***“1. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be summoned to appear before this Court and/or show cause why they should not be punished for persistent and deliberate contempt of express order of mandamus and other orders made and Issued on 16<sup>th</sup> December 2024 and 17<sup>th</sup> December 2024 respectively.***

***2. That the Court be pleased to punish and commit both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, to civil jail for a period not exceeding six (6) months for willful and deliberate disobedience to remit the***

*decretal sum to the Applicants Advocates together with costs and further interest pursuant to the express order of mandamus and other orders made and Issued on 16th December 2024 and 17<sup>th</sup> December 2024 respectively.*

*3. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein be denied audience by this Court until it purges the contempt of the court which has impeded the course of justice.”*

The applicant has also asked for costs of the application.

2. The application is supported by the affidavit of George Gichohi Karanja who has sworn that he is the director of the applicant company. According to Karanja, on 22 September 2021, the applicant obtained a judgment for the sum of Kshs. 7,937,868.43 against “the respondent” in Chief Magistrates Court Civil Case No. 107 of 2018. The decree and the certificate of costs were extracted on 14 October 2021 and 18 October 2021 respectively.
3. An appeal by the respondent against the decree, lodged by the respondent in this Honourable Court as Civil Appeal No. E169 of 2021 was dismissed on 25 August 2023. The decretal sum plus interest as at 1 October 2024 stood at Kshs. 18,870,165. The applicant subsequently obtained an order of mandamus compelling the respondents to pay this sum but as the time the application was filed, the respondents had either

ignored, neglected or refused to pay the decretal sum. It is for this reason that the applicant has filed the instant application.

4. Alex Onduko swore an affidavit in response to the application. He has introduced himself in the affidavit as the 2<sup>nd</sup> respondent and that he has sworn the affidavit on his own behalf and on behalf of the 1<sup>st</sup> respondent.
5. According to the Onduko, the motion before court is intended to “bully” the respondents who were not party to the contract against which the applicant sued and obtained judgment for the sum the payment of which the applicant has sought to enforce by way of the order for mandamus and, subsequently, through these proceedings. He has, thus, denied the existence of any court order that can be enforced against any of the respondents.
6. Nonetheless, Onduko has sworn that he is aware of the decree sought to be executed. He contends that, the expenditure of public funds is governed by the Public Finance Management Act of 2012 and its Regulations. The budget making process involves allocation, public participation and passage of the budget by the county Assembly. Such a vote as of legal dues, court awards or settlement is domiciled at the office of the County Attorney and not in his department.
7. In a further affidavit filed by Karanja, he exhibited the order for mandamus obtained before my learned brother, Mutai, J. on 16 December 2024. The order is in the following terms:

***“It is hereby ordered***

***1) That an order of mandamus do (sic) against the respondents, compelling them to forthwith pay the decretal amount of Kshs. 7,937,868.43/= and costs awarded at Kshs. 1,288,805/= with accrued interest with effect from the date of the judgment and taxation respectively until payment in full as per the outlay hereunder; -***

<b><i>Decretal sum as at 18.10.21</i></b>	<b><i>Kshs. 7,937,864.43</i></b>
<b><i>Interests as at 18.10.2021</i></b>	<b><i>Kshs.</i></b>
<b><i>3,889,553.57</i></b>	
<b><i>Lower court’s costs as at 18.10.21</i></b>	<b><i>Kshs. 553,022.45</i></b>
<b><i>Subtotal</i></b>	<b><i>Kshs. 12, 349,473.45</i></b>
<b><i>(as per lower court’s decree dated 18.10.21)</i></b>	
<b><i>Add interest at court rates to date</i></b>	<b><i>Kshs. 5,186,778.849</i></b>
<b><i>High Court as per certificate of taxation</i></b>	
<b><i>Dated 04.07.2024</i></b>	<b><i>Kshs. 1,288,805.00</i></b>
<b><i>Add interest on costs todate</i></b>	<b><i>Kshs. 45,108.175</i></b>
<b><i>Total Kshs.</i></b>	<b><i>Kshs. 18,870,165.474</i></b>

***(As at 01.10.2024) together with interest at court rates till payment in full)***

*2) That in default of payment this Honourable Court do cite and hold the respondents to be in contempt of court and mete an appropriate punishment including but not limited to Civil jail.*

*3) That his Honourable Court hereby grants such further orders and or consequential orders, writs and declaration for purposes of enforcing ex parte applicant's judgment or decree herein.*

*Given under my hand and seal of the Honourable Court this 16<sup>th</sup> December 2024."*

8. The order was signed by the deputy registrar of this Honourable Court. It is stamped as having been received by the Chief Officer, Finance, in the County Government of Kwale on some date in December 2024.
9. The respondents to which reference has made and named in the order are the same respondents in the instant application.
10. The question whether the applicant's suit was bad for misjoinder ought to have been raised in the proceedings leading to the order that the respondents are alleged to be in contempt of. In any event, there is no evidence that the order has been appealed against or questioned on any grounds in any other forum.
11. In these circumstances, there is a valid court order before court and the only question that the court is confronted with in the instant application is whether the respondents are in contempt of the order.

12. Contempt of court proceedings are informed by various circumstances one of which is, of course, disobedience of a court order or judgment. As a foundation for contempt of court proceedings against the contemnor, it is a necessary prerequisite, in the case where a court order or judgment is alleged to have been disobeyed, to demonstrate that the alleged contemnor was aware of the order or judgment. In other words, proof of service of the order or judgment is necessary unless, for reasons to be stated, the court dispenses with service of the order or judgment on the alleged contemnor.

13. But service is just one of the conditions that an applicant has to meet in contempt of court proceedings. One other condition is a warning to the alleged contemnor of the penal consequences that may ensue if the order is not complied with. In this regard, there has to be permanently displayed on the front copy of the judgment or order served a warning to the person required to do or not to do the act in question that disobedience of the order would be contempt of court punishable by imprisonment, a fine or sequestration of assets (in case of a company). It has been held that without this display, the judgment or order may not be enforced unless it is an undertaking contained in a judgment or order.

14. The need to comply with these conditions, amongst other conditions, is a question that has been settled by the Court of Appeal in its previous decisions where this question has arisen.

15. In the case of **Nyamodi Ochieng Nyamogo & Another versus Kenya Posts & Telecommunications Corporation (1994) eKLR**, for instance, the twin issues of the necessity for personal service of both the order and the application for contempt and the endorsement on the face of the order of with the penal notice were discussed. As far as service is concerned, the Court of Appeal noted as follows:

*“The law on the question of service of order stresses the necessity of personal service. In Halsbury’s Laws of England (4th Ed) Vol 9 on p 37 para 61 it is stated:*

*“61. Necessity of personal service.*

*As a general rule, no order of court requiring a person to do or abstain from doing any act may be enforced unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question ...”*

*Where the order is made against a company, the order may only be enforced against an officer of the company if this particular officer has been served personally with a copy of the order ...”*

The court further noted:

***“Keeping the importance of personal service of the order in mind we now take a look at the aforesaid two copies of the order both of which bear the stamp of Wetangula & Co Advocates, in acknowledgement of receipt of the said orders. Service on Wetangula & Co does not constitute personal service on any of the three officers. It is a personal service on each one of them that is required to be effected by law. Service of the two orders on Wetangula & Co, Advocates, on 25th October, 1993, and 1st November, 1993, therefore, is a wasted effort.”***

16. The court described personal service as “an elementary but mandatory procedural rule which in contempt proceedings has (been) prescribed “personal service”.

17. And on the need for endorsement of the order with the requisite warning of penal consequences, the court stated as follows:

***“Mr Lakha pointed out other flaws to which we will now turn our attention. He referred to the order and also to the application itself and pointed out the absence of a notice in the form of an endorsement thereon of penal consequences. It is not disputed that the copies of the order alleged to have been served on the three alleged contemnors and handed in by Mr Nowrojee during the hearing (instead of having been annexed to the application)***

*do not bear any such endorsement of penal consequence. Section 5(1) of the Judicature Act has given this Court the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England. In England rule 5 of order 45 R S C 1982 Ed, governs the method of the enforcement by the Court of its judgments or orders in circumstances amounting to contempt of court (p766). Order 45/7 deals with matters relating to “Service of copy of judgment, etc, pre-requisite to enforcement under rule 5”. The relevant procedural obligation is succinctly stated in order 45 rule 7/5 of the RSC 1982 Ed as follows:*

*“It is a necessary condition for the enforcement of a judgment or order under rule 5 by way of sequestration or committal, that the copy of the judgment or order served under this rule should have the requisite penal notice indorsed thereon.”*

*“And a couple of paragraphs later is given the form that an endorsement is required to take, in the following words in the case of a judgment or order requiring a person to abstain from doing an act:*

*“If you, the within named A B disobey this judgment (or order) you will be liable to process of execution for the purpose of compelling you to obey the same.”*

*“A similar form with suitable alterations is given in the case of an order against a corporation.*

*This Court in Court of Appeal Civil Appeal No 95/1988 Mwangi H C Wang’onde v Nairobi City Commission (UR) confirmed the mandatory nature of the requirement of endorsement of notice of penal consequence on the order in the following words:*

*“In the present case, according to the affidavit of the appellant sworn on 26th January, 1988, in support of his application, the order alleged to have been disobeyed by the respondent was served on the respondent on 31<sup>st</sup> August, 1987, and a copy of that order which was annexed to the affidavit did not carry a notice of the penal consequences of disobedience as required by the Rules. It is clear from this that the appellant did not comply with the mandatory provisions of section 5(1) of the Judicature Act with the result that his application was incompetent. It must follow that there was no valid application for contempt of court before the judge.”*

18. The court concluded its discussion on this point by stating as follows:

***“As the copies of the orders produced before us are not so endorsed as required under the mandatory provisions of section 5(1) of the Judicature Act (cap 8) this application is incompetent and deserves to be dismissed on this account also.”***

19. Rule 85.5 of the Civil Procedure (Amendment No. 3) Rules 2020 of England which would apply to contempt of court proceedings in this country by dint of section 5 of the Judicature Act, cap. 8 also require that the order or judgment be served and be endorsed with the requisite notice. It reads as follows:

***81.4. — (1) Unless and to the extent that the court directs otherwise, every contempt application must be supported by written evidence given by affidavit or affirmation.***

***(2) A contempt application must include statements of all the following, unless (in the case of (b) to (g)) wholly inapplicable—***

***a) the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court);***

***(b) the date and terms of any order allegedly breached or disobeyed;***

***(c) confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;***

***(d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service;***

***(e) confirmation that any order allegedly breached or disobeyed included a penal notice;***

***(f) the date and terms of any undertaking allegedly breached;***

***(g) confirmation of the claimant's belief that the person who gave any undertaking understood its terms and the consequences of failure to comply with it;***

***(h) a brief summary of the facts alleged to constitute the contempt, set out numerically in chronological order;***

***(i) that the defendant has the right to be legally represented in the contempt proceedings;***

***(j) that the defendant is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test;***

***(k) that the defendant may be entitled to the services of an interpreter;***

*(l) that the defendant is entitled to a reasonable time to prepare for the hearing;*

*(m) that the defendant is entitled but not obliged to give written and oral evidence in their defence;*

*(n) that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant;*

*(o) that the court may proceed in the defendant's absence if they do not attend but (whether or not they attend) will only find the defendant in contempt if satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute contempt;*

*(p) that if the court is satisfied that the defendant has committed a contempt, the court may punish the defendant by a fine, imprisonment, confiscation of assets or other punishment under the law;*

*(q) that if the defendant admits the contempt and wishes to apologise to the court, that is likely to reduce the seriousness of any punishment by the court;*

*(r) that the court's findings will be provided in writing as soon as practicable after the hearing; and*

***(s) that the court will sit in public, unless and to the extent that the court orders otherwise, and that its findings will be made public. (Emphasis added).***

Of particular relevance is Rule 84.4 (2)(a) and (c).

20. The applicants' application meets the threshold of the two conditions of personal service and the endorsement of the order with the penal notice.

The respondents have not denied that they were served. Their contention is that as much as the order is addressed to them, they are not privy to the contract out which the civil proceedings were initiated and judgment obtained.

21. As far as the penal notice is concerned, there is such a notice on the face of the order warning the respondents that they would be liable to contempt of court proceedings and be punished by imprisonment for a term not exceeding six months in the event of disobedience of the order.

22. The terms of the order are clear. There is no dispute as to the amount the respondents ought to pay to the applicant.

23. In the ultimate, I find the applicant's application to be merited. I hold the respondents to be in contempt of court and convict them accordingly. The applicant will have costs of the application.

It is so ordered.

**Signed, dated and circulated on the CTS on 20 February 2026**

Ngaah Jairus  
**JUDGE**