

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT HOMA BAY**

**MISC. APPLICATION NO. E009 OF 2023**

**IN THE MATTER OF AN APPLICATION FOR AN ORDER OF  
CONTEMPT AGAINST THE CLERK, HOMA BAY COUNTY  
ASSEMBLY**

**AND**

**IN THE MATTER OF SECTION 12 & 13 OF THE COUNTY  
GOVERNMENTS ACT, NO. 17 OF 2012**

**AND**

**IN THE MATTER OF SECTION 21(1), (2), (3), (4) & (5) OF  
THE GOVERNMENT PROCEEDINGS ACT, CHAPTER 40, LAWS**

**AND**

**IN THE MATTER OF SECTION 148(4) OF THE PUBLIC  
FINANCE MANAGEMENT ACT, 2012**

**AND**

**IN THE MATTER OF ORDER 29 RULE 3 AND ORDER 53  
RULES 3&4 OF THE CIVIL PROCEDURE RULES**

**BETWEEN**

**REPUBLIC.....  
APPLICANT**

**VERSUS**

**HOMA BAY COUNTY ASSEMBLY**

**SERVICE BOARD.....1<sup>ST</sup>  
RESPONDENT**

**THE CLERK,**

**HOMA BAY COUNTY ASSEMBLY.....2<sup>ND</sup>  
RESPONDENT**

**HOMA BAY COUNTY ASSEMBLY.....3<sup>RD</sup>  
RESPONDENT**

**AND**

**OTIENO RAGOT & COMPANY**

**ADVOCATES.....EX PARTE  
APPLICANT**

**RULING**

**[1]** On the 18<sup>th</sup> February 2025, the Court delivered a ruling in respect of the *ex parte* applicant's Notice of Motion dated 4<sup>th</sup> June 2024 and issued the following orders:

**[a]** That Notice to Show Cause be and is hereby issued to the Clerk/Accounting Officer of the County Assembly of Homa Bay to attend court for the purpose of showing cause why he/she should not be appropriately punished for refusing, neglecting and/or failing to comply with the order of this Court dated 22<sup>nd</sup> February 2024.

**[b]** That the costs of the contempt proceedings be borne by the respondents.

**[2]** Consequently, the matter was fixed for Notice to Show Cause on 24<sup>th</sup> March 2025 and the Accounting Officer of the 3<sup>rd</sup> respondent notified accordingly. In response to the Notice to Show Cause, the Acting Clerk who is the 2<sup>nd</sup> respondent herein, filed a Replying Affidavit sworn by him on 13<sup>th</sup> March 2024, contending that the 2<sup>nd</sup> respondents had fully complied with the orders of the Court and had settled the entire decretal sum amount to Kshs. 2,288,020.40 owing to the applicant. The 2<sup>nd</sup>

respondent proceeded to set out the particulars of the payments made as follows:

**[a]** Kshs. 1,000,000/= paid on 6<sup>th</sup> June 2024 per Payment Voucher No. 8805

**[b]** Kshs. 1,288,020/= made on 2<sup>nd</sup> October 2024 vide Payment Voucher No. 8713

**[3]** The 2<sup>nd</sup> respondent attached copies of the two Payment Vouchers to his affidavit as Annexures HD-1 and HD-2 and urged the Court to find that the allegations by the applicant of deliberate failure to pay are unfounded, misleading and without merit.

**[4]** The applicant also filed a Replying Affidavit, sworn by **Mr. Jude Ragot** on 4<sup>th</sup> June 2025. It averred that it sued and obtained the order of conviction for contempt against the respondents herein for having failed to comply with the order of Mandamus issued against them. According to the applicant, the computation presented by the respondents is erroneous. It averred that in the original suit, namely, **Homa Bay High Court Miscellaneous Civil Application No. 1 of 2019: Otieno Ragot & Company Advocates v Homa Bay County Assembly**, its fees for legal services rendered had been taxed and allowed against Homa Bay County Assembly at Kshs. 996,958.80 as per the Certificate of Costs issued thereon dated 2<sup>nd</sup> July 2019. The applicant explained that the Certificate of Costs was duly adopted as a Judgment and

Decree of that court dated 13<sup>th</sup> July 2022 and issued on 1<sup>st</sup> December 2022.

**[5]** The applicant further averred that a Certificate of Order against Government was thereafter issued against the Homa Bay County Assembly dated 1<sup>st</sup> December 2022; and explained that the documents were produced in these proceedings as Annexures JR/1 and JR/ 3 (a) and (b) to the Verifying Affidavit as filed along with the *Ex parte* Chamber Summons application dated 19<sup>th</sup> January 2023. It was on the basis thereof that this instant Judicial Review application for Mandamus was premised.

**[6]** The applicant averred that upon failure by the respondents to make good the decretal sum, it filed contempt proceedings vide its Notice of Motion application dated 4<sup>th</sup> June 2024, in which the Decree on Mandamus, Certificate of Order against the Government, Certificate of Costs, and Ex parte Applicant's letter dated 12<sup>th</sup> March 2024 forwarding all the documents relating to this claim due, to the respondents, were attached. They were referenced at paragraphs 2 and 3 of the Affidavit in support thereof and marked as Annexures JR/ 1 (a) and (b) and JR/ 2, respectively.

**[7]** The applicant further explained that when the contempt application dated 4<sup>th</sup> June 2024 was filed, the amount due had increased to Kshs. 2,522,706.40 on account of 14% annual interest as per the Decree, as calculated in paragraph 3 of the supporting Affidavit. Reference was also made by the applicant to

the Replying Affidavit by one **Hana Awino Ager**, expressed to have been sworn on 17<sup>th</sup> July 2024 in reply to the application dated 4<sup>th</sup> June 2024, to demonstrate that the respondents did not dispute the amount due on the decretal sum as computed, but asked for 60 days to pay the decretal sum.

**[8]** The applicant also pointed out that the respondents had attached to the affidavit aforementioned a Payment Voucher dated of Serial No. 8805 marked as Annexure AA/3 in proof of payment of Kshs. 1, 000,000/=. It averred that on the face of that voucher it was indicated that there was a balance due of Kshs. 1, 288,020.40. Accordingly, the applicant challenged the fact that the respondents have purported to rely the same Payment Voucher as part payment of the balance of the decretal sum.

**[9]** The applicant further deposed that, at that time when the respondents first produced that same Payment Voucher, it was expressly produced and explained as proof of their good faith and not as proof of payment or part payment of the instant decretal sum. It stated that it immediately responded by clarifying in its Supplementary Affidavit sworn by **Jude Ragot** on 26<sup>th</sup> August 2024 that the said payment referred to in the Payment Voucher dated 6<sup>th</sup> June 2024 of Serial No. 8805, was not related to this matter at all but was in respect of a separate decree between the same parties, in an unrelated matter, namely, **Kisumu Employment & Labour Relations Court Miscellaneous Civil application No. E004 of 2023** (JR), whose Decree was also in the process of being enforced by a similar contempt proceedings.

**[10]** According to the applicant, the ruling dated 18<sup>th</sup> February 2025 was made with the foregoing explanation in mind; and that even the additional payment of Kshs. 1,288,020.40 set out in the Payment Voucher dated 2<sup>nd</sup> October 2024 of serial No. 8713, now relied upon as payment of the decretal sum herein, was the second installment payment in Kisumu Employment & Labour Relations Court matter, where it was duly acknowledged and its final payment Of Kshs.645,584.55 made vide Payment Voucher Serial No. 6305, dated 22<sup>nd</sup> April 2025; whereupon the ELRC matter marked it as fully settled.

**[11]** The applicant attached as Annexure JR/ Supplementary 2, a copy of the applicant's email dated 4<sup>th</sup> November 2024 forwarding the hard copy letter dated 4<sup>th</sup> November 2024 in which that second installment payment of Kshs. 1,288,020.40 was duly acknowledged by the applicant and accounts rendered thereon to them, showing a balance due of Kshs. 645,584.55. The applicant also annexed a copy of the Payment Voucher of Serial No. 6304 dated 22.4.2025 issued by the respondents in full settlement of that decretal sum in the ELRC matter. The applicant asserted that the ELRC matter was consequently marked as settled in the proceedings of 29<sup>th</sup> April 2025 in the presence of the respondents' instant Counsel, **Mr. Clifford Otieno Obiero.**

**[12]** In conclusion, the applicant averred that the amount now due on this decree stands at Kshs. 2,662,280.40 the computation whereof has been supplied in the applicant's affidavit. The

applicant posited that the respondents are merely out to buy time and delay the execution proceedings.

**[13]** Having carefully perused and considered the documents relied on by the applicant, I am satisfied that the respondents are befuddled in purporting to have fully settled the debt owed to the applicant in this matter yet the said payments were in respect of a separate matter, namely, the ELRC matter between the parties. As was pointed out in **Republic v The Kenya School of Law & another**, Miscellaneous Application No. 58 of 2014:

**“Court orders, it must be appreciated are serious matters that ought not to be evaded by legal ingenuity or innovations. By deliberately interpreting Court orders with a view to evading or avoiding their implementation can only be deemed to be contemptuous of the Court.”**

**[14]** In the result, it is my finding that the respondents have failed to show cause why the Accounting Officer, **Hanington Day**, should not be committed to civil jail for contempt of court. Warrant of Arrest to accordingly issue.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT HOMA BAY  
THIS 19<sup>TH</sup> DAY OF FEBRUARY 2026**

**OLGA SEWE**

**JUDGE**