

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
ELRC JUDICIAL REVIEW NO. E062 OF 2024
(Before Hon. Lady Justice Hellen Wasilwa, J)

REPUBLIC.....
APPLICANT

VS

NAIROBI COUNTY GOVERNMENT.....1ST
RESPONDENT

THE COUNTY EXECUTIVE MEMBER,
FINANCE.....2ND
RESPONDENT

AND

AGGREY OUTA ONG'ANG'O.....EX-PARTE
APPLICANT

JUDGMENT

1 The Applicant filed a Notice of Motion dated 1st October 2025 seeking orders that: -

1. *this Honourable Court be pleased to issue orders compelling the Respondents to pay the amount owed to the Applicant of Kshs. 683,465/=.*
2. *the 2nd Respondent's the County Executive Member, Finance be committed to civil jail for a term of six months for contempt of court having deliberately disobeyed orders of this court issued on 3rd July,2025.*

3. *the court issues any other or further orders of the court geared towards protecting the dignity and authority of the court and to ensure compliance of the court order of 3rd July, 2025.*

Applicant's Case

- 2 The Applicant avers that judgment was entered in his favour on 16th February, 2023 in ELRC Cause No. 205 of 2018, wherein the Court awarded him a decretal sum of Kshs. 511,125, together with costs and interest from the date of judgment until payment in full.
- 3 Following the judgment, the Applicant's Party and Party Bill of Costs was taxed on 13th April, 2023 at Kshs. 172,340, thereby bringing the total decretal sum to Kshs. 683,465. A decree and Certificate of Taxation were duly issued by the Court.
- 4 The Applicant further states that on 15th and 16th October, 2024, this Honourable Court issued a Certificate of Order against the Government and a Certificate of Order of Costs against the Respondents, which were served upon the Respondents on 28th and 30th October, 2024 respectively.
- 5 Despite proper service, the Respondents refused, failed and/or neglected to honour the decree and settle the decretal sum, thereby prompting the Applicant to file a Judicial Review Application seeking, inter alia, an order of

mandamus to compel the Nairobi County Government and the County Executive Member for Finance to satisfy the decree issued in ELRC Cause No. 205 of 2018 together with the Certificate of Taxation.

- 6 The Judicial Review Application was heard and allowed, and on 3rd July, 2025, this Court issued an order of mandamus compelling the Respondents to pay the decretal sum of Kshs. 683,465. The said order was duly extracted and served upon the Respondents and their advocate on record.
- 7 The Applicant avers that the order of mandamus has not been set aside, stayed, varied or discharged and remains valid and enforceable to date.
- 8 Notwithstanding the foregoing, the Respondents have continued to deliberately disobey the court order, resulting in prejudice to the Applicant in that the decretal sum remains unpaid, continues to accrue interest, and despite requesting for a decree to facilitate settlement, which was availed, they have still failed to comply.
- 9 The Applicant contends that the Respondents' continued disobedience of lawful court orders undermines the dignity and authority of this Honourable Court and ought not to be countenanced.

- 10 It is the Applicant's case that unless this Court intervenes, he will continue to suffer prejudice, and the decretal sum will continue to accrue unnecessary interest. He urges the Court to compel payment of the decretal sum and to commit the 2nd Respondent, the County Executive Member for Finance, to civil jail for contempt of court.

Respondents' Case

- 11 In opposition to the application, the Respondents filed a replying affidavit dated 11th March 2025, sworn by Asha Abdi, the Chief Officer- Finance, Nairobi City County.
- 12 The Respondents aver that the notice of motion is defective, an abuse of the court process and/or incompetent as the Applicant failed to point out in the required manner how the 1st Respondent failed to honour his payment.
- 13 It is the Respondents' case that the ex-parte Applicant served them the Certificate of Order on 23rd October 2023, which was towards the close of the second quarter of the financial year thus there were no available funds to make the payment. The County had already fully utilised all the amounts allocated for payment of legal fees and decretal for the Financial Year 2023/2024.

- 14 The Respondents aver that the 1st Respondent is funded through allocation of funds by the County Assembly and it can only be able to determine how much decretal sums it can pay based on the allocations for the financial year.
- 15 It is the Respondents' case that the ex-parte Applicant did not follow the procedure provided under Section 21 (4) of the Government Proceedings Act, Cap 40, Laws of Kenya which provides that no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.
- 16 The Respondents aver that the 2nd Respondent is not individually liable under any order for payment by government and that the 1st Respondent as a public institution dealing with public funds, is constrained by the Public Finance Management Act among other legislation regarding county expenditure.
- 17 The Respondents aver that 1st Respondent cannot commit funds unless budgeted for and approved by the County Assembly.

- 18 It is the Respondents' case that Section 125 of the Public Finance Management Act provides for the budget making process and the settlement of funds owed by the county must comply with Sections 117, 125, 129, 131 and 133 of the Public Finance Management Act.

- 19 The Respondent avers that the decision to pay involves various stakeholders and the many department of the County responsible for financial and fiscal matters. In the instant case involving human resource, the department has been informed to prioritize and budget for it in the next financial year.

- 20 The Respondents aver that the Applicant has not satisfied the requirements of execution as per the Public Finance Management Act and the Government Proceedings Act, therefore, he should not be granted the orders sought.

Applicant's Submissions

- 21 The Applicant submitted on four issues: Whether there exists a valid and enforceable court order issued on 3rd July 2025; Whether the Respondents were duly served with or had knowledge of the said order; Whether the Respondents are in contempt of court; and whether the orders sought should issue.

- 22 On the first issue, it was submitted that judgment was entered in his favour in ELRC Cause No. 205 of 2018, awarding a decretal sum of Kshs. 683,465, comprising the principal sum, taxed costs, and accrued interest. Following the Respondents' persistent refusal to honour the decree, this Court issued an order of mandamus on 3rd July, 2025, compelling the Respondents to satisfy the decree.
- 23 The Applicant submitted that the law is settled that an order of mandamus issues to compel a public body or officer to perform a statutory or public duty which they have failed or refused to perform. Reliance was placed upon ***Republic v Kenya National Examinations Council ex parte Gathenji & Others [1997] eKLR***, where the Court of Appeal held: "*A mandamus will issue to compel the performance of a public duty where there is a statutory obligation, and the authority or officer has failed or refused to perform it. The remedy is available to ensure that public duties are lawfully discharged and that the rule of law prevails.*"
- 24 It is the Applicant's submission that the order of 3rd July, 2025 has not been stayed, discharged, varied, or appealed against and remains valid, binding, and enforceable against the Respondents.
- 25 On the second issue, the Applicant submitted that the order of mandamus was duly served upon the

Respondents, as demonstrated by annexed evidence. He contends that assuming, without conceding, that personal service is disputed, knowledge of a court order is sufficient for the purposes of contempt. He cited ***Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR***, where the Court of Appeal held: "*The threshold for contempt is knowledge of the order. It is not necessary that the order be served personally if the person concerned has knowledge of it. Ignorance of the order is no excuse where the person has participated in the proceedings that led to its issuance.*"

- 26 The Applicant submitted that the Respondents, having actively participated in the proceedings leading to the issuance of the order of 3rd July, 2025, cannot feign ignorance and are liable for disobedience.
- 27 On the third issue, the Applicant submitted that contempt of court is established where there is a valid court order, the alleged contemnor has knowledge of the order, and there is deliberate disobedience; as was restated ***Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] eKLR***.
- 28 It is the Applicant's submission that all the above elements are satisfied in the present case. Despite service and full knowledge of the order, the Respondents have failed, refused, and neglected to comply. No payment has

been made, no explanation has been tendered, and no steps have been taken towards settlement.

- 29 On the final issue, the Applicant submitted that public entities are not exempt from compliance with court orders and that County governments and their accounting officers have a statutory duty to satisfy court decrees. He placed reliance upon ***Republic v County Secretary, Nairobi City County & another Ex Parte Wachira Nderitu Ngugi & Co. Advocates [2016] eKLR***
- 30 It was submitted that the continued refusal by the Respondents to pay the decretal sum is illegal, unreasonable, and procedurally unfair, and that this Honourable Court must intervene to enforce compliance.
- 31 The Applicant submitted that committal for contempt is coercive, not punitive, and is intended to compel compliance with court orders while preserving the dignity of the Court. The 2nd Respondent, being the County Executive Member for Finance, is the accounting officer responsible for payment and has deliberately failed to act. Unless this Court enforces its authority through committal, the Applicant will continue to suffer prejudice, as interest accrues and the decree remains unsatisfied.
- 32 It is the Applicant's submission that he has satisfactorily demonstrated that a valid and subsisting court order

exists, that the Respondents had full knowledge of the order, and that the Respondents have deliberately and wilfully disobeyed the same, thereby undermining the dignity, authority, and sanctity of this Court.

33 I have considered the averments and submissions of the parties herein. There is no denial by the respondent that they owe the applicant the amount claimed only contending that the amount could not be paid unless budgeted for.

34 It is therefore the finding of this court that the amount claimed is payable. I therefore allow the application and enter judgment of the application to the tune of kshs 683,465/- plus costs and interest with effect from the date of this judgment.

Dated, Signed and Delivered Virtually at Nairobi this 25th Day of February, 2026.

**HELLEN WASILWA
JUDGE**