

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. E086 OF 2024

KAY CONSTRUCTION COMPANY LIMITED.....APPLICANT

VERSUS

CHIEF ACCOUNTING OFFICER,

KENYA RURAL ROADS AUTHORITY.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

RULING ON CONTEMPT OF COURT APPLICATION

1. The Notice of Motion dated 11/12/2025 seeks orders that the 1st Respondent be cited for contempt of court for disobedience of mandamus orders of this court made on 24th June, 2025. The applicant also prays that the 1st respondent be imprisoned for 6 months or such other period as the court will determine, until the satisfaction of the decree dated 14th June, 2025 issued on 5th November, 2025 by the High Court in HCCCOM Arb No. E005 OF 2023.
2. The grounds upon which the application is predicated are that this court issued mandamus order on 24th June, 2025 compelling the 1st and 2nd respondents to settle the outstanding balance of Kshs 40,943,088.45 exclusive of further accrued interest at commercial rates of 13% per annum as per order 5 of the decree issued on 14th April 2023 in HCCCOMArb No. E005 of 2023 and the said respondents to file in court within 60 days of the date of judgment a

progress report indicating steps taken to comply. The Court also awarded minimal costs of kshs 50.000 to the applicant. .

3. It is asserted that the interest accrued as at the time of filing the application for contempt was Kshs 10,645,203 but that the respondents had ignored or neglected to comply with the mandamus order which they were well aware of and which order is clear and unambiguous.
4. The applicant avers that the dignity of the court is under attack if court orders are violated with impunity hence it is in the interest of justice and preservation of the rule of law that this court intervenes to punish for contempt to ensure compliance and respect for due process of law and maintain public administration of justice.
5. The application is supported by the affidavit sworn by Hasmita Patel the director of the applicant company annexing copies of judgment and decree for mandamus rendered on 24th June 2025, certificate of order against the government in the primary suit and reiterating the grounds on which the application is predicated.
6. The respondents were given the opportunity to file a response to the application but they did not and on 28th January, 2026, parties appeared and argued the application orally, with the respondents' counsel being allowed to submit on behalf of the client despite not filing any written response.

7. Mr. Shikanda counsel for the applicant submitted, reiterating the pleadings and the supporting affidavit of the applicant's director. He submitted that the 1st Respondent was aware of the clear orders and only 27/1/2026 that they shared with a payment advise slip of Kshs. 14,663,532. However, that the amount was yet to reflect in the account as at the morning of the hearing. That there was no guide or proposal on when and how the remainder sums plus interest accrued shall be settled. Counsel submitted that the law on contempt of court is clear that once court orders are issued, the parties have a duty to obey or apply to set aside and that disobedience of court orders undermines that rule of law.
8. Counsel submitted that the terms of the orders were clear and binding on the 1st Respondent who was in court when the judgment was delivered and that the applicant only filed the application for contempt after the 1st Respondent disobeyed the court order. He maintained that the conduct of the 1st Respondent was deliberate because they never filed any response explaining their circumstances that made it impossible for them to settle the decree. Counsel prayed that the 1st Respondent be found to be in contempt of court.
9. In response, Mr. Rapando counsel for the respondents submitted that he had instructions to inform the court that on that very morning, the 1st Respondent filed a report on efforts being made to settle decree and that he had told Counsel for the applicant that Kshs. 15 million had been paid the previous day to the

Applicant's Counsel. He submitted that the Government and the National Treasury had put in place a framework for settling monies due to contractors including the applicant, which information, according to counsel, had been communicated to the applicant.

10. Counsel submitted that the 1st Respondent only requested for waiver of interest of 25% but the applicant never responded to the request and that there are efforts for settling the decretal sum which was about 41 million, out of which, 10 million was paid before the filing of judicial Review Proceedings leaving 31 million out of which 15 million had been paid the previous day. He maintained that the Respondent is willing to settle the decree.
11. Further submission was that the policy framework requires consultations between the 1st Respondent, the Ministry and Treasury.
12. After submitting, Mr. Rapando then asked for 7 days to put in a substantive response on the efforts made to settle decree, arguing that there is no deliberate disobedience of the court decree as demonstrated in the report filed in court.
13. In a rejoinder, Mr. Shikanda for the applicant submitted that he was not in possession of the report alluded to but that the court had directed that the report be filed within 60 days of the date of judgment. He denied being served with the report alluded to by Mr. Rapando in his submissions from the bar.

14. Mr. Shikanda also confirmed receiving settlement proposals which were unacceptable to his client as the respondents asked for 35% interest waiver which terms were unjustifiable, as the applicant did the construction and used the money in construction. He submitted that the Kshs.10 million paid but was used to offset interest awarded, maintaining that by the time that the mandamus application was lodged, the sum outstanding was after payment of 10 million. He also submitted that the amount allegedly paid by the respondents the previous day, which had not hit their account was not even the Kshs 15 million submitted on by the respondents' counsel.

Analysis and determination

15. I have considered the application as filed and argued orally. The only issue for determination is whether the orders sought are available and if so, on what terms.

16. It is not in doubt that this court delivered judgment on 24th June, 2023, compelling the respondents herein to settle decree and certificate of order against the government issued in HCCOMArb E005 of 2023. It is not in doubt that both judgments and decree have never been challenged before any other superior court or a review of the same sought before the court that issued the decrees.

17. From the submissions of the respondents' counsel, the respondent waited until a day to the hearing of the contempt application which was served on then a while back to attempt paying part of the decretal sum and to file into court efforts being made to settle decree. That alleged payment had not even been reflected in the applicant's counsel's account and there is contradiction in the submissions by counsel for the applicant as to how much money was sent to the applicant's counsel.
18. In the Judgment of 24th June, 2025, this court directed the respondents to file into court a progress report showing efforts being made to settle decree and certificate of order against the government as per the mandamus order. Sixty days ended on 24th July, 2025 but no report was filed into court.
19. The law on contempt is now settled, that Court orders are not mere suggestions. They are binding and once issued, every party against whom they are directed is duty-bound to obey them unless and until they are lawfully set aside.
20. Public officers may be cited personally for contempt where they willfully disobey court orders issued against the institutions that they lead or represent. In this case, it is the accounting officers that the law holds responsible for settling decrees issued by courts of competent jurisdiction. Additionally, disobedience of a court order fundamentally undermines the rule of law, on which the administration of justice is founded.

21. It is not in contention that the Respondents herein are aware of the mandamus order made on 24th June 2025 and the directive to file a progress report in court within 60 days of the mandamus order, on the steps being taken toward settlement of decree. The respondents were ably represented in court by counsel who now submits, without any affidavit on oath, that steps are being taken towards settlement of the decree and certificate of order against the government.

22. The conduct of the Respondents in failing to file any progress report in court, even if there was no money to pay for the settlement of the decree within that period is evidence of deliberate, reckless and unlawful disobedience of a court order.

23. Courts have on several occasions reiterated that the value of the shilling depreciates daily, and that the continued accrual of interest occasioned by the Respondents' lack of due care imposes an increasing and undue burden on the taxpayer, particularly in a matter such as the one presently before this Court, which involves of millions of shillings.

24. The law places the duty to settle decrees on the accounting officers. This is what section 21 of the Government Proceedings Act provides and there is no contrary evidence that the 1st respondent herein is the accounting officer of the respondent Authority, a statutory body established under the Roads Act.

25. Furthermore, section 32 of the Roads Act provides for various sources of the Authority's funds and it has not been shown that the Authority has not manages to raise any funds from its own sources which it could seek approval to settle the decree herein. The section provides:

31. Funds and resources of the Authority.

The funds and resources of each Authority shall consist of—

- (a) monies paid to it from the Road Fund;*
- (b) any other money appropriated by Parliament for the purposes of the respective Authority;*
- (c) in the case of the Rural Roads Authority and the Urban Roads Authority taken together, thirty per cent of the funds from the Local Authorities Transfer Fund or such higher portion of such funds as the Cabinet Secretary for Finance may direct;*
- (d) funds accruing from investments made by the Authority;*
- (e) grants, loans, gifts or donations from the Government or any other source, made with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for finance;*
- (f) revenue earned from the activities of the Authority under this Act; and*
- (g) any other funds received by the Authority in the performance of its functions under this Act.*

26. Section 68 of the Kenya Roads Act restricts execution against property of the Authority and it provides:

68. Restriction on execution against property of Authority
Notwithstanding anything to the contrary in any law—

(a) where any judgment or order has been obtained against an Authority, no execution or attachment, or process in the nature thereof, shall be issued against such Authority or against its property, but the Director-General shall, without delay, cause to be paid out of the revenue of the Authority such amounts as may, by the judgment or order, be awarded against the Authority;

(b) no property of an Authority shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the Director-General.

27. In **Kenya National Highways Authority v Ahmednassir Maalim Abdullahi** [2021] eKLR Mwita, J (as he then was) held:

“My reading of 68(a) is that the section only places a restriction against attachment as the headnote clearly suggests. It does not make attachment illegal per se. The import of the section is that instead of attaching its assets, the applicant’s Director General is commanded by the section to pay the decretal amount promptly from amounts in its revenue. This view

is informed by the fact that the section uses the word “but” and goes on to state that “the Director-General shall, without delay, cause to be paid out of the revenue of the Authority the amounts awarded against the Authority. The section states in mandatory terms that payment must be made without undue delay. In other words, where payment is to be made without delay, ordinarily there would be no reason to attach against the applicant. The section does not therefore contemplate a successful litigant moving the process towards attachment. That is why the law demands in mandatory terms that the Director General should promptly pay.”

28. P.M.Mulwa J citing the above case stated in **Kay Construction Company Limited v Kenya Rural Roads Authority (Miscellaneous Application 171 & E156 of 2019 (Consolidated)) [2024] KEHC 2267 (KLR) (Commercial and Tax) (7 March 2024) (Ruling)**, Neutral citation: [2024] KEHC 2267 (KLR, a matter between the same parties hereto:

“14.It is therefore not in doubt that the law contemplates that where judgement has been obtained against the Authority judgement debtor, the Director General of the Authority is obligated to act with haste to pay the decretal amount out of the revenue of the Authority. True, the decree holder may not execute against any of the assets of the decree holder but may pursue the Director general to ensure such payment is made.

15. In this case, the Director General of the judgement debtor has failed and/or neglected to make sure the decretal amount is paid despite the fact that the amount has been due and owing from 4th March 2020 when the court issued a ruling enforcing the arbitral award. The annexure marked “HP 8” in the supporting affidavit indicates that the judgement debtor held substantive amounts in its KCB account a clear indication that it is indeed possible for the Director General to ensure that the decretal amount is paid from the revenue of the judgement debtor.

16. The wording of section 68 is couched in mandatory terms; the Director General is commanded by the section to pay the decretal amount promptly from amounts in its revenue. It is not enough for the Director General to casually state that the decree holder ought to be patient for the payments to be processed, yet the decree was issued way back on 8th April 2021.”

59. In this case, there is no evidence that the respondents asked the Ministry of roads and Transport to settle decrees owed to the Contractors. The so-called progress report belatedly filed is in my view a sham and a mockery of justice and the rule of law. There is nothing like a framework or policy framework which can supersede the law as stipulated in section 68 of the Act.

60. In **Teachers Service Commission vs. Kenya National Union of Teachers & 2 others (2013) eKLR**, the court observed as follows:

“The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the Judiciary or the court or even the personal ego of the presiding Judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”

61. In **Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR** the Court of Appeal considered the following on knowledge of existence of a court order:

“Kenya’s growing jurisprudence right from the High Court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings, for instance, Lenaola J in the case of Basil Criticos v Attorney General and 8 Others [2012] eKLR pronounced himself as follows:

‘...the law has changed and as it stands today knowledge supersedes personal service... where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary.’

62. The Respondents have not disputed knowledge of the order of mandamus and neither have they challenged these proceedings from the beginning.

63. The Director General and accounting officer of the Kenya Rural Roads Authority is properly found to be in contempt of Court for willful disobedience of the court order of mandamus issued on 25th February 2019.

64. I hereby direct that the said Director General and accounting officer of the Kenya Rural Roads Authority does appear before this Court on 20th April, 2026 to mitigate and show cause why he should not be punished for contempt of court in accordance with the law.

65. In view of the ever-increasing burden on the tax payer in these matters, I award costs of this application in the sum of Kshs 50,000 to the applicant, to be settled together with the decretal sum due.

66. I so order.

Dated, Signed and Delivered at Nairobi this 3rd Day of March, 2026

**R.E. ABURILI
JUDGE**