

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**ELRC JUDICIAL REVIEW NO. E082 OF 2025**  
***(Before Hon. Lady Justice Hellen Wasilwa, J)***

**REPUBLIC.....**  
**APPLICANT**

**VS**

**DR. WALTER ONGETI, THE C.E.O OF**  
**KENYA ACCREDITATION SERVICE.....**  
**.....RESPONDENT**

**AND**

**JOHN MBURU KAMAU.....EX PARTE**  
**APPLICANT**

**JUDGMENT**

- 1 The Exparte Applicant filed a substantive Notice of Motion dated 19<sup>th</sup> December 2025 seeking orders **THAT**: -
  1. *The Respondent, DR. WALTER ONGETI, THE C.E.O and Accounting Officer of KENYA ACCREDITATION SERVICE (KENAS) do appear before this Honourable Court and Show Cause why he should not be cited for contempt of court for failing to pay the Ex Parte Applicant Kshs. 6,040,746.52/= being the amount that is payable to the Ex Parte Applicant pursuant to the ruling of the court in Nairobi ELRC MISC. APPLICATION No. E347 of 2024 dated 30th June 2025.*

2. *The Honourable Court be pleased to find and hold that DR. WALTER ONGETI, THE C.E.O and Accounting Officer of KENYA ACCREDITATION SERVICE (KENAS) is in contempt by disobeying the order of the court issued in Nairobi ELRC MISC. APPLICATION No. E347 of 2024 dated 30th June 2025.*
3. *DR. WALTER ONGETI, THE C.E.O and Accounting Officer of KENYA ACCREDITATION SERVICE (KENAS) be punished for contempt of court and be committed to civil jail for a period that the court deems fit.*
4. *The costs of the Application be provided for.*

### **Applicant's Case**

- 2 The Applicant avers that he was at all material times gainfully employed by Kenya Accreditation Service (KENAS) as the Chief Manager, Corporate Services.
- 3 It is the Applicant's case that on 8<sup>th</sup> April 2023, while in the course of performing his lawful duties, he was involved in a workplace accident in which he slipped on a slippery surface and sustained severe low back pain associated with lower limb paraesthesia and weakness. He was promptly taken to hospital for treatment, and the accident was duly reported to the Director of Occupational Safety and Health (DOSHS), which conducted the requisite assessment pursuant to the law.

- 4 The Applicant avers that following the assessment, DOSH recommended compensation in the sum of Kshs. 6,040,746.52. Despite several reminders and the clear statutory obligation under Section 26(4) of the Work Injury Benefits Act to settle the assessed award within ninety (90) days, KENAS refused, failed and/or neglected to pay the said amount.
- 5 Consequently, the Applicant states that he was constrained to move the Court by filing Nairobi ELRC Miscellaneous Application No. E347 of 2024, wherein the Court, by a ruling delivered on 30<sup>th</sup> June 2025, adopted the DOSH assessment and directed KENAS to pay the Applicant Kshs. 6,040,746.52.
- 6 The Applicant avers that after the delivery of the ruling, he duly obtained a Certificate of Order Against the Government, which was served upon KENAS on 27<sup>th</sup> August 2025 and upon the Attorney General on 9<sup>th</sup> September 2025, demanding settlement of the decretal sum. Notwithstanding proper service, the decretal amount was not paid.
- 7 The Applicant avers that by a letter dated 27<sup>th</sup> October 2025, addressed to Dr. Walter Ongeti, the Chief Executive Officer and Accounting Officer of KENAS, he formally reminded the Respondent of its obligation to comply with the court order and demanded settlement within seven (7)

days, failing which contempt proceedings would be instituted. The letter was received by KENAS on the same date.

- 8 The Applicant states that the Respondent replied vide a letter dated 30<sup>th</sup> October 2025, offering reasons which the Applicant considers unsatisfactory, and crucially failing to provide a definite timeline for settlement of the decretal amount.
- 9 It is the Applicant's case that the Respondent has wilfully and defiantly refused, failed and/or neglected to comply with the lawful court order issued on 30<sup>th</sup> June 2025, and is consequently in contempt of court.
- 10 The Applicant further avers that the continued non-payment of the decretal sum has occasioned him grave prejudice, as he requires urgent medical attention arising from complications of the workplace accident and is presently unemployed.
- 11 The Applicant avers that despite the clear and unequivocal court order issued on 30<sup>th</sup> June 2025, the Respondent has made no attempt whatsoever to settle the decretal amount, either in whole or in part, for a period exceeding six (6) months. Such prolonged inaction demonstrates bad faith and a deliberate disregard of the authority of the Court by Kenya Accreditation Service (KENAS).

- 12 The Applicant contends that the Respondent's conduct amounts to contempt of court, as there has been neither partial payment nor any proposed payment plan that would evince a genuine intention to comply with the court order.
- 13 The Applicant avers that the Respondent cannot justify non-compliance merely by alleging lack of funds or inability to settle the entire decretal sum at once, in the absence of any tangible steps taken towards compliance.
- 14 It is the Applicant's case that the Respondent's reliance on an alleged pending supplementary budget is unsubstantiated. The Respondent has not placed any documentary evidence before the Court to demonstrate that a supplementary budget providing for the decretal amount has been concluded at the National Treasury level or that it is awaiting approval by Parliament.
- 15 In the circumstances, the Applicant maintains that the Respondent's explanations are mere allegations incapable of proof, and that the continued failure to comply with the court order is wilful, unjustified, and contemptuous, warranting the intervention of this Court.

### **Respondent's Case**

- 16 In opposition to the application, the Respondent filed a replying affidavit dated 5<sup>th</sup> January 2025.

- 17 The Respondent admitted the existence of a valid court order issued by this Court in Nairobi ELRC Miscellaneous Application No. E347 of 2024, wherein a ruling delivered on 30<sup>th</sup> June 2025 adopted the award of the Director of Occupational Safety and Health (DOSHS) and directed Kenya Accreditation Service (KENAS) to pay the *Ex Parte* Applicant Kshs. 6,040,746.52; and a Certificate of Order Against the Government was duly served upon KENAS as alleged.
  
- 18 It is however the Respondent's case that the allegation of wilful disobedience or deliberate disregard of the court order is false, misleading, and legally untenable.
  
- 19 The Respondent avers that KENAS is a State Corporation whose financial operations are strictly governed by the Constitution of Kenya, 2010, the Public Finance Management Act, 2012, the State Corporations Act (Cap. 446), the Public Audit Act, 2015, and binding circulars issued by the National Treasury pursuant to statute.
  
- 20 The Respondent avers that as the Accounting Officer, he bears a personal statutory obligation under Sections 43(1), 68(1), and 196(1)(d) of the Public Finance Management Act, 2012 to ensure that all expenditure is authorized,

properly budgeted for, and incurred strictly within the approved estimates for each financial year.

- 21 Additionally, Section 11(1) and (2) of the State Corporations Act expressly prohibits the incurrence of unbudgeted or excess expenditure without prior approval of the relevant Cabinet Secretary with the concurrence of the National Treasury.
- 22 The Respondent further relies on National Treasury circulars issued pursuant to Section 12(1)(g) of the State Corporations Act, which reiterate that no public entity may lawfully incur expenditure outside its approved budget, and that any such expenditure constitutes unauthorized expenditure attracting personal liability on the Accounting Officer.
- 23 It is the Respondent's case that the national budget for the Financial Year 2025/2026 was approved on 30<sup>th</sup> June 2025, being the same date the ruling giving rise to the present proceedings was delivered. Consequently, the decretal sum could not be factored into the approved budget for that financial year, as it arose after the budget formulation and approval process had already concluded.
- 24 The Respondent avers that this situation was further aggravated by a 29% reduction in KENAS' budgetary

allocation from the National Treasury for the FY 2025/2026, which significantly constrained its fiscal capacity. In the circumstances, the Respondent contends that immediate settlement of the decretal amount through internal reallocations would amount to unlawful and unauthorized expenditure, contrary to express statutory provisions.

25 Notwithstanding the foregoing constraints, the Respondent avers that KENAS has not been indolent, defiant, or disobedient of the court order.

26 It is the Respondent's case that on 8<sup>th</sup> October 2025, KENAS formally wrote to the National Treasury through the Principal Secretary, State Department for Industry, seeking an additional budgetary allocation to enable settlement of the decretal sum.

27 The Respondent further avers that the supplementary budget process for FY 2025/2026 has since been concluded at the National Treasury level and escalated to Parliament for approval. However, Parliament is currently in recess and is expected to resume in February 2026, at which point the request will be considered.

28 It is also the Respondent's case that, in a bid to facilitate prompt settlement, KENAS previously demanded payment

from Pioneer General Insurance Company, being its Work Injury Benefits Act (WIBA) underwriter at the time the occupational accident occurred. The insurer's failure to honour the claim has necessitated the pursuit of an indemnification claim against it.

29 The Respondent avers that the letter dated 30<sup>th</sup> October 2025 addressed to the *Ex Parte* Applicant's advocates was written in good faith to explain the prevailing legal and financial constraints, and not as an attempt to evade compliance with the court order.

30 It is therefore the Respondent's case that the delay in settling the decretal amount is neither deliberate, contumacious, nor in defiance of the authority of this Court, but is solely occasioned by mandatory statutory obligations governing public finance management. The Respondent contends that contempt of court requires proof of wilful and deliberate disobedience, which has not been demonstrated in the present case.

31 The Respondent avers that he has at all material times acted in good faith, with utmost respect for the authority of this Court, and strictly within the confines of the law. He further contends that committing an Accounting Officer to civil jail for adhering to statutory expenditure controls would place public officers in an impossible conflict

between obedience to court orders and compliance with express provisions of statute.

32 In the premises, the Respondent prays that the Notice of Motion dated 19<sup>th</sup> December 2025 be dismissed, that this Court finds that no contempt has been established against the Respondent, and that such further orders be made as are just.

33 Without prejudice to the foregoing, and only in the alternative, the Respondent prays that should the Court be inclined to grant any relief in favour of the Applicant, it be pleased to grant the Respondent reasonable time to comply with the decree, subject to approval of the supplementary budget allocation in February 2026 or within the Financial Year 2026/2027 budget cycle.

### **Applicant's Submissions**

34 The Applicant submitted that in ***Hadkinson v Hadkinson (1952) 2 All ER 56*** “*It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it unless and until it was discharged and disobedience of such an order would as a general rule result in the person disobeying it being in contempt and punishable by committal or attachment and in an*

*application to the court by him not being entertained until he had purged his contempt.”*

- 35 The Applicant submitted that failure by an accounting officer to comply with court orders amounts to contempt of court as held in ***Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County Ex Parte Stanley Muturi [2018] eKLR*** wherein the court held: *“In my view the failure by the accounting officer of a State organ, government department, ministry or corporation to put into motion steps necessary for the settlement of or obedience of court decisions or facilitation of such settlement is prima facie evidence of neglect.”*
- 36 The Applicant submitted that the reason why courts will punish for contempt of court is to safeguard the rule of law. Further, a court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection as affirmed in ***Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] eKLR***.
- 37 On the constitutional and statutory responsibility of the Respondent, the Applicant submitted that Article 226 of the Constitution designates accounting officers in public entities and vests in them accountability for financial management.

- 38 It is submitted that the Respondent, being the Chief Executive Officer and Accounting Officer of Kenya Accreditation Service (KENAS), acknowledged the decretal amount as due as of 30th June 2025, yet has failed to pay any portion thereof.
- 39 The Applicant submitted on the necessity of punishment for contempt by relying on the Supreme Court decision in **Republic v Mohammed & another [2018] KESC 51 (KLR)**, which affirmed that courts must not condone deliberate disobedience of their orders, as such conduct undermines both the authority of courts and the rule of law.
- 40 On the standard of proof, the Applicant relies on **Mutitika v Baharini Farm Ltd [1985] eKLR**, where the Court of Appeal held: *“In our view, the standard of proof in contempt proceedings must be higher than proof on the 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, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”*
- 41 It is the Applicant’s submission that obedience of court orders is a grave matter. Any failure in the enforcement of court orders invites a total breakdown of law and order and the rule of law, whose inevitable result would be

anarchy and an erosion of the country's social fabric. The courts are under an obligation to guard against such a contingency and it can only achieve this by ensuring compliance with court orders.

42 The Applicant further submitted that once a decree is issued, a decree holder acquires a proprietary interest in the subject matter of the decree. Non-payment by a government entity therefore amounts to unlawful deprivation of property, contrary to Article 40 of the Constitution. He contends that persistent failure to honour court decrees by public bodies erodes constitutional values of accountability, transparency, and respect for rights.

43 The Applicant submitted that the Respondent has not made any attempts to settle any amount since the court made the order to do so on 30<sup>th</sup> June 2025 which is more than 6 months hence demonstrating bad faith in settling the amount ordered by the court.

44 It is the Applicant's submission that there has been no partial payment which would have shown good faith in complying with the court order and using the excuse of lacking funds to settle the entire decretal sum at once is not justifiable. Moreover, there is no proposal of a payment plan by the Respondent and the only thing presented by the Respondent is hoping to factor in the

decretal amount in the next financial year. The Respondent has not provided any evidence of supplementary budget that provides for the decretal amount being concluded at the National Treasury level and awaiting parliamentary approval hence the same remains allegations that cannot be proved.

- 45 Reliance is placed on the decision in ***Republic v Independent Electoral & Boundaries Commission; Scanad Kenya Limited (Ex parte Applicant) [2025] KEHC 8246 (KLR)*** “However, the respondent seeks to justify its failure to comply with the court order by alleging that it has not deliberately refused to pay but was awaiting funding from the National Treasury. This Court finds such reasoning untenable. It is on record that the National Treasury, far from withholding direction or funds, advised the respondent to organize and settle its obligations, including the subject decree, from its annual budgetary allocations. It is further noted that the respondent, as a government entity, an extremely important independent Constitutional Commission, receives Government funding annually and has not demonstrated that these funds have been entirely exhausted or that no provision could be made for the settlement of the outstanding decree. The respondent has also not made any formal application before this Court seeking staggered or alternative payment arrangements. In the absence of such effort, this Court finds no bona fide

*intention on the part of the respondent to satisfy the decree.”*

### **Respondent’s Submissions**

- 46 The Respondent submitted on five issues: whether wilful and deliberate disobedience of a court order has been established; whether absence of partial payment or a payment plan constitutes contempt per se; whether statutory and budgetary constraints negate wilful contempt; whether the authorities relied upon by the Ex Parte Applicant are applicable to the present facts; and whether the contempt jurisdiction of the Court has been properly invoked in the circumstances.
- 47 On the first issue, the Respondent submitted that contempt of court is quasi-criminal in nature and must be proved to a standard higher than a balance of probabilities, though not as high as beyond reasonable doubt. Reliance is placed on ***Mutitika v Baharini Farm Ltd [1985] KECA 60 (KLR)***, where the Court of Appeal held: *“The standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt.”*
- 48 The Respondent submitted that the burden rests with the Ex Parte Applicant to demonstrate wilful, deliberate, and intentional defiance of a clear court order. In the instant suit, uncontested material before Court demonstrates

good faith and absence of deliberate obstruction, in that the Respondent: maintained transparent communication with the Ex Parte Applicant's advocates; formally sought additional budgetary allocation through the parent Ministry and the National Treasury by letter dated 8<sup>th</sup> October 2025; pursued indemnification from the relevant insurer; and explained the statutory impediments to immediate settlement.

- 49 It is the Respondent's submission that mere lapse of time, without proof of present ability to pay coupled with deliberate refusal, cannot found contempt.
- 50 On the second issue, the Respondent submitted that the *Ex Parte Applicant's* contention that failure to make partial payment or propose a payment plan is, of itself, evidence of contempt has no basis in law.
- 51 The Respondent submitted that there is no statutory or jurisprudential requirement obligating an accounting officer to make partial payment in the absence of budgetary authority in order to demonstrate good faith.
- 52 The Respondent submitted that good faith cannot be inferred from an illegality, and contempt cannot be founded on a refusal to violate statute. Reliance is placed on Sections 43, 68, and 196 of the Public Finance Management Act, 2012, read together with Section 11(2)

of the State Corporations Act, which prohibit incurring expenditure outside approved budgets or without National Treasury approval.

- 53 It is the Respondent's submission that any payment made without appropriation would amount to unauthorized expenditure, exposing the Accounting Officer to personal liability under Article 226(5) of the Constitution.
- 54 On the third issue, the Respondent submits that the decretal obligation arose on 30<sup>th</sup> June 2025, the same date the FY 2025/2026 budget was approved, and therefore could not, as a matter of law and fact, be accommodated within the approved budget for the current financial year. Reliance is placed on ***Republic v County Secretary, Nairobi City County & another; Ex Parte Applicant: Mohamed Tariq Khan [2021] KEHC 7919 (KLR)***, where the Court emphasized that contempt must be grounded on personal culpability rather than institutional constraints, and that public officers should not be punished where non-compliance arises from lawful administrative processes.
- 55 The Respondent further relies on ***MFI Documents Solutions Ltd v County Government of Taita Taveta & 2 others [2025] KEHC 13519 (KLR)***, where the Court held that: *"Courts must take judicial notice of public finance structures and cannot punish public officers for delays occasioned by lawful budgetary processes."*

- 56 It is submitted that the Respondent has demonstrated compliance with lawful procedures by initiating a request for additional budgetary allocation and is awaiting the outcome of that process to facilitate settlement of the decretal sum. In such circumstances, statutory constraints are said to constitute a complete answer to contempt.
- 57 On the fourth issue, the Respondent submitted that the decision in ***Republic v Independent Electoral & Boundaries Commission; Scanad Kenya Limited (Ex parte Applicant) [2025] KEHC 8246 (KLR)***, heavily relied upon by the Ex Parte Applicant, is distinguishable on material facts. It is contended that in Scanad: the Respondent had express advice from the National Treasury to settle the decree from existing allocations; partial payments had already been made, demonstrating budgetary capacity; and there was no effort to seek directions from or engage the Court.
- 58 The Respondent submitted that in the present case there is no Treasury authority to reallocate or pay; there is evidence of active engagement with Treasury and the insurer; and the Respondent has expressly sought reasonable time to comply within the law.
- 59 The Respondent submitted that, as held in ***Republic v County Secretary, Nairobi City County ex parte***

***Mohamed Tariq Khan (supra)***, contempt jurisdiction is fact-specific and should not be applied mechanistically.

60 On the final issue, the Respondent submitted that contempt is a remedy of last resort, particularly where the personal liberty of a public officer is at stake. The present application seeks to short-circuit lawful budgetary processes and to convert what is essentially a debt recovery issue into a penal sanction.

61 It is the Respondent's submission that no wilful or deliberate disregard of the court order has been proved; that lawful steps toward settlement have been initiated and communicated transparently; and that, in the circumstances, the contempt application is premature and amounts to an abuse of the Court's contempt jurisdiction.

62 I have considered all the evidence and submissions of the parties herein. The respondent has not denied owing kshs 6,040,746.52/- to the applicant only indicating that they had not factored the payment in the current budgetary cycle.

63 That being the position, I find for the applicant and direct that the respondent makes good the amount owing in the current budgetary cycles. There is no evidence of wilful disobedience of this court's order in ELRC Misc Appl E349/24 and the issue of contempt of court does not arise. The respondents are however required to appear before

this court and give an indication as to when this payment shall be made. There shall be no order of costs.

**Dated, Signed and Delivered Virtually at Nairobi this 9<sup>th</sup> Day of March, 2026.**

**HELLEN WASILWA  
JUDGE**