

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT GARISSA

ELCJR NO. E001 OF 2023

**ABDULLAHI SHEIKH AHMED APPLICANT/DECREE
HOLDER**

VERSUS

MANDERA COUNTY GOVERNMENT RESPONDENT/JUDGEMENT DEBTOR

AND

CECM FINANCE,

**MANDERA COUNTY GOVERNMENT 1ST
CONTEMNOR**

THE COUNTY SECRETARY,

MANDERA COUNTY GOVERNMENT 2ND CONTEMNOR

RULING/DIRECTIONS

***[RE-ISSUE OF WARRANTS OF ARREST FOR CONTEMNORS & NOTICE OF
MOTION DATED 20TH FEBRUARY 2026]***

1. When this matter came up on 23rd February 2026, Mr. Ayieko, learned counsel for the Applicant/Decree Holder, submitted that the matter was being mentioned to confirm whether the Respondent/contemnors had purged the contempt by paying the decretal sum. He submitted that as the respondent/contemnors are yet to pay the decretal sum, then warrants of their arrests should be issued so that they could be brought to court for sentencing.
2. On his part, Mr. Otieno, learned counsel for the Respondent/Judgement debtor/contemnors, submitted that pursuant to the instructions received from his client, he had on the morning of 23rd February 2026, filed and served through email, a notice of motion dated 20th February

2026, seeking for the respondent/contemnors to be allowed to purge the contempt by depositing the decretal sum with the court, as provided for under *Order 22 Rule 1* of the Civil Procedure Rules, awaiting the completion of investigations initiated through the DCI.

3. In reply, counsel for the applicant submitted that though the respondent/contemnors' duty is to ensure the decretal sum was paid, they have been taking the court in circles, and their application to be allowed to deposit the amount in court is neither here nor there, and has no purpose. That the contemnors had raised similar issues of investigations in their previous application that was dismissed. That as the judgement and contempt orders have not been appealed against, the warrants of arrests should be re-issued. I reserved my ruling/directions to today so as get time to understand the matter and peruse the application dated 20th February 2026 that was reportedly filed on that morning seeking for an order to deposit the decretal sum through the court.
4. I have confirmed from the record, especially the copy of decree, and certificate of order against the County Government dated 30th December 2020, and 24th February 2023 respectively, that are attached to the verifying affidavit to the notice of motion dated 18th July 2023, that:
 - a. The judgement was delivered on 27th November 2020 in Garissa ELC Case No. 27 of 2018, *Abullahi Sheikh Ahmed versus Mandera County Government*. The judgement has a total of six (6) orders were issued in favour of the plaintiff/decreed holder and against the defendant/respondents/judgement debtors. The orders are that:

- i. Declaration issued that plaintiff is the legal and registered owner of the suit property No. 13139/680 Grant I.R No. 5287.
 - ii. A declaration issued that the acquisition of the suit property No. 13139/680 Grant I.R No. 5287 by the defendant and any development thereon was fraudulent, illegal and unlawful.
 - iii. Order issued compelling the defendant, its officers, assigns, agents or institutions to vacate and surrender the suit property No. 13139/680 Grant I.R No. 5287 to the plaintiff within six (6) months failing to which the defendant, its officers, assigns, agents or institution(be) forcefully evicted therefrom.
 - iv. In the alternative, the defendant to pay the plaintiff a reasonable compensation of a sum of Kshs.7,000,000 (seven million) being financial compensation for the current market value of the parcel of land known as L.R No. 13139/680 Grant I.R No. 5287.
 - v. Interest at court rates from the date of judgement till payment in full.
 - vi. Costs of this suit.
- b. The following are also discernible from the record:
- i. The certificate of taxation dated 24th February 2023 confirms the Party and Party costs were on 21st February 2023 taxed at Kshs.402,400 (Four hundred thousand four Hundred).
 - ii. That during the mention of 27th September 2023, Mr. Omar for respondents informed the court as follows:

“The County Government has agreed to pay the decretal sum. They need about six months to do the payment.”

Though the counsel for the applicant was absent, the court proceeded to order as follows:

“The respondents to pay the decretal sum within the next 4 months failing which they will be adjudged to be in contempt. Mention on 26th February 2024 to confirm compliance and / or for further directions.”

- c. On 26th February 2024, the counsel for the applicant reported that the orders of 27th September 2023 had not been complied with, and therefore the respondents were in contempt. The counsel for the respondents informed the court that there has been discovery of new evidence that the suit land does not belong to the applicant. The court then ordered as follows:

“The court issues a NTSC to the respondents to be heard on 23rd April 2024 to show cause why they should not be held to be in contempt of court.”

On the 23rd April 2024, the counsel for the respondents informed the court that they had filed an application dated 22nd April 2024 seeking to review the judgement. The court directed inter alia that the said application be served for inter parties hearing on 29th May 2024. Then on 19th June 2024, the court gave directions for the filing and exchanging submissions on the application and fixed the matter for mention on 23rd September 2024, when a ruling date of 30th October 2024, was fixed. In the ruling delivered on 30th

October 2026, the respondents' application dated 22nd April 2024 was found "....devoid of merit and dismissed with costs...."

- d. During the subsequent mention of 25th February 2025, the court heard counsel for the applicant, and ordered that the:

"CEC, Finance, Mandera County and the County Secretary, Mandera County be served with summons to appear in court on 28th April 2025 personally and/or through a duly authorised person to show cause why they should not be held in contempt of court for failure to pay the decretal sum to the applicant. Failure to attend court as ordered warrants of arrest will issue, unless the decretal sum will have been paid and evidence of payment furnished."

- e. The record shows that on the 28th April 2025, the respondents did not attend court, and after hearing counsel for the applicant, the court directed as follows:

"The CEC Finance and County Secretary Mandera County were served with summons to attend court today and have not appeared either personally and/or through a duly authorised agent. I hold them to be in contempt of court and order that they be arrested and escorted to court at Garissa ELC on 25th June 2025 for sentencing. The said officers may purge the contempt if they pay the decretal sum on/or before that date in which case the warrants of arrest would stand lifted and they would be discharged from being in contempt. The warrants of arrest to be effected by the OCPD Mandera East Sub-County."

- f. On the 25th June 2025, counsel for both sides were present and upon addressing the court on among others, an application dated 13th June 2025, the court ordered as follows:

“The 1st & 2nd contemnors have filed the N/M dated 13th June 2025 which Mr. Ayieko says has not been served on him. The effect of the application is to scuttle the sentencing of the contemnors who were found to be in contempt. The court has to hear and determine the application as it raises competency and jurisdiction. I direct the same be served upon Mr. Ayieko forthwith who should file a response within the next 21 days from today. The application to be canvassed by way of brief submissions. The applicant to file and serve their submissions within 15 days of being served with the response. The decree holder shall file submissions within 15 days of being served with applicants submissions. Mention on 18th September 2025 to take a ruling date. In the meantime the warrants of arrest are lifted pending the ruling.”

The record confirms that the ruling was delivered on 13th November 2025, dismissing the application with costs. The matter was then placed for mention on 27th January 2026, and subsequently mentioned on 9th December 2025, and placed for mention on 23rd February 2026, when today’s date for ruling was fixed.

- g. The notice of motion dated 20th February 2026 was filed on 23rd February 2026 at 8:46:23, a few minutes before the virtual court

session commenced at 9:00 am. I have perused it and it seeks for the following orders:

- i. *That pursuant to Order 22 Rule 1 of Civil Procedure Rules, the court to direct that the sum of Kshs.11,730,733.33 be deposited in court by the Mandera County Government within a period to be fixed by the court, in satisfaction of the decree issued herein.*
- ii. *That upon such deposit, the said deposit does constitute compliance with the decree issued in Garissa ELC 27 of 2018 Abdullahi Sheikh Ahmed versus Mandera County Government for purposes of contempt proceedings herein.*
- iii. *That upon compliance with the first prayer, the contempt against the 1st & 2nd contemnors be deemed purged and the sentencing proceedings consequent upon non payment be vacated or, in the alternative, be held in abeyance pending the outcome of the ongoing criminal investigations concerning the authenticity of the title documents relating to Lr No. 13139/680 Mandera Municipality.*
- iv. *That the costs be in the cause.*

The application is supported by the affidavit by the County Attorney, Mandera County Government, sworn on 20th February 2026, to which is attached among others, a copy of undated surveyors report, copy of a letter dated 9th June 2025 to the County Criminal Investigation Officer, Garissa, and a letter to the Secretary, Land Surveyors Board dated 30th May 2024. Despite the application having been filed on the morning of the mention date, and the decree holder not having at least three (3) clear days to

file and serve their replies, as anticipated under *Order 51 Rule 14* of Civil Procedure Rules, the counsel did not seek for time to reply, but submitted that the application was another attempt to delay the payment. He termed the application as having no purpose and as being neither here nor there.

- h. *Order 22 Rule 1* of Civil Procedure Rules that the contemnors have relied on in their application provides as follows:

“1. (1) All money payable under a decree or order shall be paid as follows-

- (a) into the court whose duty it is to execute the decree;*
- (b) direct to the decree-holder; or*
- (c) otherwise as the court which made the order directs.*

(2) Where any payment is made under sub-rule (1) (a), notice of such payment shall be sent by the court to the decree-holder and his advocate, if any.”

From the record, especially the proceedings and orders that I have referred to above, it is clear it has never been in doubt that payment of the decretal sum was to be made to the decree holder. That aside, and in the spirit of *Order 22 Rule 1* of Civil Procedure Rules, there has been nothing stopping the judgement debtor from making the payment of the decretal sum through the court. Had that been done, the court would have notified the decree holder and proceeded and transmit/release the same to him.

- i. It is therefore strange, that the respondents/contemnors are through the notice of motion dated 20th February 2026 appearing to make the mode of payment of the decretal sum, as an issue

that requires an application to be filed, replies filed, hearing and determinations, while well aware that the issue of investigations that they base their application on, is not a new matter. It existed even at the time their previous application was heard, and determined on 25th November 2026. The attachments to the supporting affidavit that I have referred to above, pre-dates the ruling delivered on 25th September 2025. The fact of their being investigations going on is incapable of amounting to a stay of execution of the judgement/decree and other clear orders of this court. No wonder the counsel termed the application to be of no purpose and neither here nor there, but the court takes it to be another effort by the respondent/contemnors to delay the day of reckoning further by the time it would take to hear it to determination. If the intention of the judgement debtor/contemnors in seeking to deposit the decretal sum with the court is to ensure the decree-holder does not get access to the decretal sum until after the completion of their investigations, then that cannot be allowed as it was not part of the orders in the judgement and decree thereof.

5. That appreciating that litigation must come to an end, and to avoid any further undue delay in this matter caused by the multiplicity of applications filed by the respondent/contemnors, and in appreciation of the principles in *Article 159(2)(b) & (d)* of the Constitution, *sections 1A & 1B* of Civil Procedure Act chapter 21 of Laws of Kenya on objectives of the Act and duty of the Court, and *section 19(1)* of the Land and

Environment Act No. 19 of 2011, the court find it fair and just to order as follows.

- a. That the respondent is to pay the decretal sum of Kshs.11,730,733.33 directly to the decree-holder, or alternatively pay the said amount by depositing it with the court within thirty (30) days from today.**
- b. That the payment/deposit in (a) above does constitute compliance with the decree issued in Garissa ELC 27 of 2018 Abdullahi Sheikh Ahmed versus Mandera County Government for purposes of the contempt proceedings herein, the contempt against the 1st & 2nd contemnors be deemed purged, and the sentencing proceedings consequent upon non-payment be vacated.**
- c. That upon the payment of the decretal sum to the court, the Deputy Registrar to notify the decree-holder and release/transmit the same to him.**
- d. That should the respondent fail to comply with order (a) above, within the time given, warrants of arrest against the 1st & 2nd contemnors be reissued, and be executed through the OCPD, Mandera East Sub-County, and they be brought to court on 28th April 2026 for sentencing for contempt.**

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 27TH DAY OF FEBRUARY 2026.

S. M. Kibunja, J.
ELC GARISSA.

IN THE PRESENCE OF:

APPLICANT/DECREE HOLDER

RESPONDENTS/CONTEMNORS

MUHAMED-COURT ASSISTANT.

S. M. Kibunja, J.

ELC GARISSA.