

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**JUDICIAL REVIEW MISCELLANEOUS APPLICATION NO. E390 OF**  
**2025**

REPUBLIC ..... APPLICANT

-VERSUS-

COUNTY GOVERNMENT OF KAJIADO.....1<sup>ST</sup> RESPONDENT

CHIEF OFFICER – TREASURY (FORMERLY FINANCE AND  
ECONOMIC PLANNING, KAJIADO COUNTY, MORRIS PUTITA  
KAAKA.....2<sup>ND</sup> RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER – TREASURY  
(FORMERLY FINANCE AND ECONOMIC PLANNING, KAJIADO  
COUNTY, MICHAEL SEMERA.....3<sup>RD</sup> RESPONDENT

AND

KILIMANJARO SAFARI CLUB LIMITED..... EX PARTE APPLICANT

**RULING ON CONTEMPT OF COURT APPLICATION**

1. The Application before the Court is a Notice of Motion dated 20<sup>th</sup> November 2025 predicated on Section 5 (1) of the Judicature Act Cap 8 Laws of Kenya, Sections 1A and 1B of the Civil Procedure Act, Cap 21 Laws of Kenya, Rule 81.4, Section 2 Part 81 of the Civil Procedure (Amendment No. 2) Rules 2012 of the Senior Courts of England and Wales County Courts, England and Wales and all other enabling provisions of the law and procedure.
2. The *ex-parte* Applicant seeks the following orders: -

- (1) THAT the Honourable Court be pleased to order that the holders of the offices of the County Secretary, the County Executive Committee Member – Finance and Economic Planning and the County Attorney in the 1<sup>st</sup> Respondent are in breach of the Order of the Court of Hon. Justice G.V. Odunga made on 30<sup>th</sup> May 2016.**
- (2) THAT this Honourable Court be pleased to punish the holders of the offices of the County Secretary, the County Executive Committee Member - Finance and Economic Planning and the County Attorney in the 1<sup>st</sup> Respondent for their wilful and deliberate contempt of the Order of the Court of Hon. G.V. Odunga made on 30<sup>th</sup> May 2016 by making an order for their committal to civil jail until they purge their contempt by paying the ex-parte Applicant the sum of Kshs. 1,066,651,089.41/= being the decretal amount together with the accrued interest as at 30<sup>th</sup> September 2025.**
- (3) THAT in the alternative to prayer No. 2 above, the holders of the offices of the County Secretary, the County Executive Committee Member Finance and Economic Planning and the County Attorney in the 1<sup>st</sup> Respondent be fined for their wilful and deliberate contempt of the Order of the Court of Hon. G.V. Odunga made on 30th May 2016 in the sum of Kenya Shillings**

*One Million (Kshs. 1,000,000/=) each, every month until they purge their contempt by paying the ex-parte Applicant the sum of Kshs. 1,066,651,089.41/= being the decretal amount together with the accrued interest as at 30<sup>th</sup> September 2025.*

- (4) THAT this Honourable Court be pleased to summon the holders of the offices of the County Secretary, the County Executive Committee Member- Finance and Economic Planning and the County Attorney in the 1<sup>st</sup> Respondent to appear before this Honourable Court and show cause why they should not be committed to civil jail and/or fined for their wilful and deliberate contempt of the Order of the Court of Hon. Justice G.V. Odunga made on 30<sup>th</sup> May 2016.*
- (5) THAT this Honourable Court be pleased to grant any other relief as it may deem fit.*
- (6) THAT the costs of this Application be borne by the cited contemnors.*

3. The Application is supported by the Grounds enlisted on the face thereof and the supporting affidavit of Sandeep Rajnikant Desai, the *ex-parte* Applicant's General Manager sworn on 6<sup>th</sup> October 2025 and a further affidavit sworn by the same deponent on 15<sup>th</sup> December 2025.

## The Background

4. The background to this matter is set out in the grounds and affidavits in support of the Application. The matter emanated from an arbitral award delivered by John. M. Ohaga on 5<sup>th</sup> November 2009 which was adopted by the Court on 13<sup>th</sup> December 2011. The *ex-parte* Applicant's case is that following a Ruling delivered by Hon. E.K. Ogola J. on 30<sup>th</sup> May 2013, the 1<sup>st</sup> Respondent (formerly County Council of Kajiado) obtained a stay of execution against the Ruling delivered on 13<sup>th</sup> December 2011, in which the Court ordered the respondents to deposit a third of the entire decretal sum with costs of Kshs. 105,000,000/=, whichever was higher, within 45 days.
5. However, the respondents failed to comply with the said order which failure precipitated the filing of a Chamber Summons Application by the *ex-parte* Applicant dated 14<sup>th</sup> October 2014 seeking *inter alia*, leave to commence Judicial Review proceedings to obtain orders of Mandamus to compel the satisfaction of the Decree of 13<sup>th</sup> March 2011.
6. Upon being granted leave, the *ex-parte* Applicant filed the substantive Notice of Motion dated 20<sup>th</sup> November 2014 before this Court (differently constituted – Hon. G.V. Odunga J.) where judgment was delivered on 30<sup>th</sup> May 2016 (the Mandamus Judgment). The learned Judge issued judicial review order of Mandamus compelling the Kajiado County and the Chief

Officer Finance and Economic Planning Mr. Morris Putita and the County Executive Committee Member to satisfy the decree and certified costs issued in High Court at Nairobi Misc. Application No. 442 of 2011 – Kilimanjaro Safari Club Ltd vs. the Governor – Kajiado County and Others, delivered on 13<sup>th</sup> December 2011. It is these orders that are yet to be complied with.

7. The *ex-parte* Applicant then filed another Notice of Motion Application dated 14<sup>th</sup> December 2018 which sought to cite the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents for contempt of court for non-compliance with the Mandamus Judgment, which application was heard and allowed by Hon. Nyamweya J (as she then was) on 10<sup>th</sup> July 2019 wherein the 2<sup>nd</sup> Respondent Mr. Morris Kaaka was found guilty of contempt of court for non-settlement of decree for mandamus. The Court however suspended the sentencing for one year to allow the Respondents to purge the contempt. It is alleged that the contemnor left employment of the 1<sup>st</sup> Respondent leaving the *ex-parte* Applicant to pursue the Mandamus judgment with the 3<sup>rd</sup> Respondent who was still employed by the 1<sup>st</sup> Respondent. This forms the background of the present Application.

**The *ex-parte* Applicant's case**

8. The notice of motion is supported by an affidavit sworn by Sandeep Desai, the *ex-parte* applicant's General Manager in which he deposes that the cited

contemnors had actual knowledge of the terms of the Mandamus Judgment and had a duty based on their official roles to comply with the court's judgment. It is the applicant's case that the Respondents had wilfully, deliberately and contemptuously failed and refused or neglected to comply with the Court's Mandamus Judgment. Further, that the *ex-parte* Applicant had executed a Settlement Deed dated 9<sup>th</sup> April 2021 with the Respondents from which the first instalment of Kshs. 100,000,000/= was paid by the 1<sup>st</sup> Respondent on 19<sup>th</sup> May 2021, but the second instalment was not paid, necessitating them to pursue the sentencing proceedings against the 3<sup>rd</sup> Respondent.

9. According to the applicant, the matter proceeded before Hon. Ngaah J. on 20<sup>th</sup> May 2024, wherein warrants of arrest were issued against the 3<sup>rd</sup> Respondent as a consequence of the 1<sup>st</sup> Respondent's non-compliance. That the 1<sup>st</sup> Respondent then filed an affidavit challenging the arrest warrants on the basis that the 3<sup>rd</sup> Respondent was no longer an employee of the 1<sup>st</sup> Respondent. That later, the 1<sup>st</sup> Respondent again filed a Notice of Motion Application dated 22<sup>nd</sup> July 2024 seeking *inter alia* that this Court to orders the *ex-parte* Applicant to participate in the Kajiado County Government 2023 -2024 Budget making proceedings as the matter concerned contingent liability. This Application was dismissed by this Court with no orders as to costs on 27<sup>th</sup> May 2025.

10. The Applicant pleaded that failure by the cited contemnors to comply with the judgment was a wilful disobedience of a lawful order and was contemptuous of the dignity and authority of the court; that it was equally a disregard of the rule of law and undermined the administration of justice.
11. Additionally, it is averred that the necessary elements for contempt proceedings had been duly established being that the Mandamus Judgment was clear, unambiguous and unconditional, requiring the 1<sup>st</sup> Respondent to pay the *ex-parte* Applicant the sums due and owing as arising from the award, and that unless the contemnors were compelled by the honourable court to comply, the said contempt would persist, since the *ex-parte* Applicant had no other remedy other than to seek the court's intervention through the contempt proceedings.
12. The *ex-parte* Applicant contends that the notice period in their advocates' demand letter of 13<sup>th</sup> June 2025 had long- lapsed and that the 1<sup>st</sup> Respondent and cited contemnors had not made any efforts whatsoever to comply with the judgment or communicate with their legal counsel regarding the same. That consequently, it would only be in the interests of justice and maintenance of the rule of law that the cited contemnors were found to be in contempt of court and be appropriately sanctioned for their wilful disobedience of court orders, to avoid undermining the authority and dignity of the Court and bringing the rule of law to disrepute.

### **The Respondents' Response**

13. In response to the Application, the Respondents filed a Replying Affidavit sworn by Alais Kisota, the County Executive Member Finance and Economic Planning County Government of Kajiado, dated 4<sup>th</sup> December 2025. He deposes that the County Attorney briefed them on the Court's decision and he confirmed that the 1<sup>st</sup> Respondent was willing and committed to settle the decretal sum. That the matter was deliberated at the County Executive Committee meeting and since the said decretal sum was never budgeted for in the current county's fiscal year, the County Treasury was tasked by the Committee to budget for it as a contingency liability in the next fiscal year so that it could be cleared.
14. According to the respondent, the County Government made the decretal sum a priority expenditure item to be included in the County Fiscal Strategy Paper and Debt Management Strategy for the next financial year. He states that the County Executive was willing to settle the decretal sum notwithstanding the financial constraints and fiscal challenges currently in the counties.
15. Mr. Kisota deposes that since contingency liabilities touched on the liabilities of defunct local authorities, the County Government had made a

down payment of Kshs. 100,000,000/= previously toward the settlement of the decree. That the Treasury was the one responsible for the monitoring, evaluation and overseeing of public finances and economic affairs of the County Government including the management of its public debt and ensuring the development of a framework of debt control for the county.

16. He urges that the budget process for County governments was an annual continuous process that began on 30<sup>th</sup> August of every year on a cyclic basis, with various stages and that Section 118 of the Public Finance Management Act 2012 stipulated the budget process for the county governments with a circular containing guidelines for the budgeting processes for the fiscal year.
17. Further deposition is that the County Government of Kajiado could only budget and pay the outstanding amount of the decretal sum in the financial year 2026/2027, which begins on 1<sup>st</sup> July 2026, because the amount had to be reflected in the County Fiscal Policy documents and appropriated by the County Assembly.
18. Finally, he deposes that the County Government needed to subject the settlement of the decretal sum to public participation, consideration and approval by the County Assembly in order to clear the remaining Kshs. 292,000,000/=, which would only be feasible in the next financial year 2026/2027. That under the circumstances, it would be unfair and unjust to find the Respondents in contempt as the failure to settle the decretal

amount is due to factors beyond their personal control and reiterated that the 1<sup>st</sup> Respondent was committed to settling the decretal sum. It was their prayer that they be allowed to settle the same in the next fiscal year 2026/2027.

**Rejoinder by the *ex-parte* Applicant**

19. In a rejoinder, the *ex-parte* Applicant filed a further affidavit sworn by Sandeep Desai, its General Manager, on 15<sup>th</sup> December 2025 who deposes that on 2<sup>nd</sup> December 2025, this Court directed that the contempt Application be disposed through oral hearing but the Respondent requested for more time to file their response to the said Application, which request was granted for 7 days on condition that the Respondents would pay the court adjournment fees of Kshs. 4,000/= and the Applicant's Counsel's attendance costs. Further, that neither the Applicant nor its advocates were aware if the said court payments had been made and that the applicant's advocates' costs for attendance were also yet to be paid.
20. It is deposed that leave had been granted for 7 days, which leave was to lapse on 9<sup>th</sup> December 2025, and that within that time, no response had been served upon them, but that they later discovered on the Case Tracking System that a Replying Affidavit sworn by Mr. Kisota had been filed on the said date. Mr. Sandeep further deposes that Mr. Kisota's confirmation of his role as the CEM Finance and Economic Planning affirmed his

responsibility to comply with the terms of the Mandamus Judgment for settlement of the Decretal sum due to the *ex-parte* Applicant, failure to which he would be culpable of punishment as prayed for in the contempt Application.

21. He further states that the Replying Affidavit was replete with promises for the settlement of the decretal sum with no evidence annexed to demonstrate any decision or approved commitment by the 1<sup>st</sup> Respondent to settle. That there is no evidence adduced to show that the Mandamus Judgment was deliberated at the County Executive Committee Meeting as alleged, such as the date of the meeting or the minutes and that issues of budgetary constraints cannot be an excuse to fail to settle a lawful decree.
22. The deponent asserts that there is no evidence adduced to support the allegation of an intended inclusion of a proposal to settle the decretal sum in the County Fiscal Strategy Paper and Debt Management Strategy for the next Fiscal Year and that as such, Mr. Kisota was merely alleging without supporting evidence. That the alleged financial and fiscal constraints did not suffice as justifications for the failure by the 1<sup>st</sup> Respondent to settle the decretal sum.
23. He states further that no explanation was given by the 1<sup>st</sup> Respondent and the cited contemnors for their failure to settle the balances to date and that the courts have held previously that budgetary non-allocation was not a justification for a county government to fail to settle a decree. The *ex-parte*

Applicant's deponent decried the fact that the Respondents were accustomed to presenting arguments of inadequate finances, internal budgetary processes and budgetary constraints before the Courts to avoid settling the decretal sum. He avers that the Respondents did not dispute or challenge the computation of the decretal sum due and owing as at the date of the Contempt Application and that the 1<sup>st</sup> Respondent ensured that it mischievously re-designated the members of its Executive Committee to avoid settling its obligation, which assertion was neither denied nor controverted. He urged the Court to find the present Application merited and to punish the Respondents for their contemptuous actions.

24. The application was canvassed by way of oral submissions on 21<sup>st</sup> January 2026.

#### **The *Ex-Parte* Applicant's Submissions**

25. Mr. Wakhisi, Counsel for the *ex-parte* Applicant submitted that they issued a computation of the amount due and that the Respondents violated the Settlement Deed, which issue the Respondents refused to address even after the *ex-parte* Applicant issued a demand letter through their legal counsel on 13<sup>th</sup> June 2025. That as a result, the settlement deed remained revoked and the computation reverted to the certified Order by the Deputy Registrar.

26. Counsel submitted that the amount due as at the date of the submissions was Kshs. 1,175,657,188.22/= and stated that the Respondents' replying affidavit never controverted the said computations or their responsibility to pay. That consequently, the County Attorney had a responsibility to ensure that the decree was settled. Counsel reiterated that not only was the Replying Affidavit never served upon them, it was also lodged out of time and ought to be struck out.
27. Counsel submitted that should the Court be inclined to allow the Replying Affidavit, it should find that the Settlement Deed is revoked and that despite Hon. Nyamweya J. granting them one year to purge their contempt, there was no willingness to pay as demonstrated by the untruthful allegations that the officers mandated with the task had resigned.

### **The Respondents' Submissions**

28. On behalf of the Respondents Mr. Wena submitted that the Replying Affidavit sworn by Mr. Kisota was filed late because the deponents filed it late. They prayed that the Court pardons the same and allows it to be properly on record in light of Article 159 of the Constitution.
29. Counsel submitted that contempt requires that there be wilful disobedience of court orders and refusal to pay and that in the circumstances, they had adequately explained the reason for non-payment in the current financial year because of the budgetary cycle. Counsel urged that the same would be

provided for in the 2026/2027 cycle which the Respondents committed on oath to settle.

30. Further submission was that the Court should take judicial notice of the fact that the County Governments were struggling to survive and that despite this, the 1<sup>st</sup> Respondent had committed to settle the decree in the next budget cycle. He urged the Court to exercise Solomonic wisdom and allow the same to be paid in the next budget cycle as prayed.
31. Lastly, it was submitted that the debt was not a personal debt and the Court should therefore be slow in punishing the individual Respondents who were the present office holders. He urged the Court to order that the money be paid in the next budget cycle.

### **Analysis and Determination**

32. Having considered the application, the response thereto and the oral submissions by the respective parties' counsel, the only issue for my determination is ***whether the Application by the ex-parte Applicant for contempt is merited and whether the prayers sought ought to issue.***
33. As a preliminary issue, I must state that factually, the substantive arbitral award in this case was made on 5<sup>th</sup> November 2009 while the Mandamus Judgment was rendered on 30<sup>th</sup> May 2016. These are 17 years and 10 years respectively as at the date of writing this ruling.

34. The main prayer in this Application is for the Court to find that the office holders of the Kajiado County Secretary, the County Executive Committee Member - Finance and Economic Planning and the County Attorney are in breach of their mandate to settle a decree that they had been compelled to settle after judgment was obtained in High Court at Nairobi JR Misc. Application No. 442 of 2011 – Kilimanjaro Safari Club Ltd vs. the Governor – Kajiado County and Others, delivered on 13<sup>th</sup> December 2011 (the Mandamus Judgment) and consequently to impose appropriate punishment until the said orders are complied with. In summary, the Applicant seeks punishment for contempt of court orders.
35. I however note that in this very old matter, the *ex-parte* Applicant had previously made an application dated 14<sup>th</sup> December 2018 , because of non-compliance by the Respondents, with the Mandamus Judgment. From my perusal of this file, I found that a Ruling was delivered by Hon. Nyamweya J. on 10<sup>th</sup> July 2019, but the sentencing was subsequently suspended for 1 year to allow the Respondents to undertake further actions to purge the contempt.
36. From the foregoing, it is clear that there already exists a valid finding of contempt of court against the Respondents. This Court finds that there is no necessity to make another finding on the issues of contempt and duplicate already existing orders as the same will have no legal value.

37. Accordingly, I find no need to delve into further analysis of whether or not the Respondents' actions have met the threshold of the ingredients of contempt of court as outlined by Mativo J. (*as he then was*) in the case of **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR)** at paragraph 40 where he cited the authors of "**Contempt in Modern New Zealand**" (Available at [ip36.publications.lawcom.govt.nz](http://ip36.publications.lawcom.govt.nz)) in defining the ingredients of contempt. The application for contempt of court being a replica of another application which is spent and as what is pending is enforcement, it is declined.
38. However, as this Court is vested with residual powers, I find that the appropriate course in such circumstances is to enforce the contempt orders since the respondents have never purged the contempt. I reiterate that that court orders are sacrosanct unless stayed or set aside and must never be unduly disobeyed or toyed around with as if they are mere requests or optional directives. To allow parties to continue disobeying and frustrating the enforcement of valid court orders, such as what the Respondents are praying for in their proposal to settle the decree in the next financial year, 17 years after the decree was issued would be inviting this Court to take part in a brazen assault on the rule of law and advance a contemptuous erosion of it's the court's authority, striking at the very heart of justice.

39. This Court being not only a court law and justice but judicial Review being a constitutional remedy as stipulated in Article 23 of the Constitution, this Court must rise in an unyielding defense of its authority, shunning any contemptuous disregard of its orders as an affront to the rule of law and the very foundation of justice. The respondents have had all the years to settle the decree and certificate of order against the government and purge the contempt as was found against them by P.Nyamweya J (as she then was), who graciously gave them a whole year to purge the contempt.
40. I have further considered the assertions by the respondents that the said debt was never factored into the current financial year. The court cannot entertain such a hollow excuse, which offends not only reason but respect for judicial authority. I say so because, this was not a debt that arose recently. The matter has been pending in Court since 2009 when the award was made. The said debt could have been factored in, in all those financial years that have gone by. Not only so, the Mandamus Judgment that compelled the settlement of the Decree was delivered on 13<sup>th</sup> December 2011. It was still never complied with. As if this was not enough, the parties had previously sought stay of execution before E.K Ogola J. who granted them stay orders on condition that they would deposit 1/3 of the decretal sum, which again they failed to honour.
41. The chronology of events in this file's history depicts the conduct of the Respondents from the onset as reprehensible in the view of this Court and

a demonstration of lack of good faith and faithfulness in resolving the issue of non-settlement of the decree.

42. This court does not gauge any reason why it ought to exercise its discretion in favour of the respondents and allow the prayer to settle the debt in the coming financial year. If anything, no evidence, as rightfully pointed out by the Applicant, was even tendered to show that indeed the Respondents had discussed about this Decree and were making concerted efforts to settle the debt. What is before the Court are mere promises which have been broken in the past seventeen (17) years and cannot now be believed.

43. I anchor the above position in the case of **GULABCHAND POPATLAL SHAH & ANOTHER CIVIL APPLICATION NO. 39 OF 1990**, (unreported), where the Court of Appeal said:-

***“..... It is essential for the maintenance of the Rule of Law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors .....*”**

44. Similarly, in **HADKINSON –V- HADKINSON (1952) 2 All ER. 567**, it was held that:

***“It is plain and unqualified obligation of every person against or in respect of, who an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The***

***uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”***

45. The runaway and back-passing in this matter must stop with this Court. No longer can this Court entertain flimsy excuses on non-compliance by the Respondents who have no good faith or conscience at all. The decree holder continues to carry a barren decree.
46. For the above reasons, I find that the Respondents cannot continue to play cat-and-mouse with the Court and the *ex-parte* Applicants by taking parties round in circles and giving old/stale and fresh excuses each time, they are called upon to settle the decree.
47. Accordingly, I hereby recall the post contempt orders process which was suspended by this Court (differently constituted by Nyamweya J.) and I proceed to issue a Notice to Show Cause for the Respondents contemnors to appear before this Court to mitigate and furnish reasons why they should not be committed to civil jail.
48. The costs of this Application shall be borne by each of the parties, to avoid imposing further financial burden on the residents of Kajiado County.
49. Mitigation on 20<sup>th</sup> April, 2026. The contemnors to attend the virtual court session upon which the court will determine whether they should attend a physical court session.
50. Orders accordingly.

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

**R.E. ABURILI  
JUDGE**