

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. E280 OF 2024**

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW  
ORDERS OF MANDAMUS**

**BETWEEN**

**ISMAIL RAHIMTULLAH REGISTERED TRUSTEES....1<sup>ST</sup>  
APPLICANT**

**SONY HOLDINGS LIMITED.....2<sup>ND</sup>  
APPLICANT**

**VERSUS**

**THE JUDICIARY.....RESPONDENT**

**RULING ON CONTEMPT OF COURT APPLICATION**

1. On 24<sup>th</sup> June, 2025, this Court delivered judgment in which it issued the following orders:

- a. *An Order of Mandamus is hereby issued, compelling the accounting officer Chief Registrar of The Judiciary to settle decree in HCCOM MISC E014 of 2023 as per certificate of order against the government dated 5<sup>th</sup> March 2024.*
- b. *Mention on 30<sup>th</sup> September 2025 to confirm settlement.*
- c. *The applicant will have costs of this mandamus application assessed at kshs 50,000.*
- d. *Decree to issue.*

2. The Certificate of order dated 5<sup>th</sup> March, 2024 issued in *HCCOM MISC E014 of 2023* followed an arbitral award adopted by consent for:

***Kshs 111,707,914.46 being outstanding rent plus accrued rent, costs incurred in the preparation and registration of the Deed of Surrender of the lease, Kshs 36,300 legal fees and stamp Duty, reinstatement, repairs and re letting premises Kshs 20,182,918.83 and interest together with costs of the reference to the Arbitrator.***

3. The decree for mandamus was served upon the respondent who has not settled the same hence the application dated 20<sup>th</sup> October, 2025 seeking to have the Chief Registrar of the Judiciary, who is the accounting officer held to be in contempt of court decree and that she be committed to civil jail for a period of six months or such longer period as the court may determine. The applicant also seeks for costs of the application.
4. The grounds in support of the application as supported by the affidavit sworn by Alex Trachtenberg on 29<sup>th</sup> October 2025 all give the history of this matter as contained in the arbitral award and as per the mandamus application hence there is no need to reproduce them, save to state that the decree issued by this court has not been settled and since the applicant has no other known remedy, the only available mechanism for enforcing mandamus is contempt of court proceedings.
5. Opposing the application, the respondent filed a replying affidavit sworn by Fridah Boyani Mokaya the Chief registrar of the Judiciary and accounting officer of the Judiciary, the respondent herein, on 25<sup>th</sup> November, 2025 in which she acknowledges the decree for mandamus and all the processes

leading up to this contempt application, further acknowledging that the Judiciary has not settled the decree but that the delay has not been willful disregard of lawful court orders but because of lack of budget allocation to settle the award.

6. The deponent states that the judiciary is funded entirely by the exchequer through annual appropriations by the National Assembly and that therefore its expenditure has to be strictly in accordance with the appropriation as well as the annual workplans, failure to which the accounting officer may be charged in court for flouting the Public Finance Management Act.
7. That during the preparations for the 2025/2026 budget cycle, the respondent asked for a budget of kshs 44.9 billion but was allocated 22.78 billion, which shortfalls had persisted over a period of time from 2022/2023 financial years all the way to date, as a result of which the judiciary has been unable to meet all its expenditure for the years, including settlement of the subject decree herein emanating from an arbitral award adopted by consent.
8. Further, that the outstanding amount is significant and the judiciary is unable to raise it until the National Assembly appropriates such amount. That she had written to the National Assembly requesting for an allocation to settle the decree herein in full as shown by the letter dated 10<sup>th</sup> November, 2025 addressed to the National Treasury and that as soon as the funds are availed, the decree shall be settled. Finally, that the judiciary has respect for the court

and remains committed to settling the decree once funds are available through appropriation.

9. The applicant filed a further affidavit reiterating the history of this matter from the time of recognition and adoption of the arbitral award, matters which are not denied by the respondent.

10. Parties' counsel made oral submissions on 20<sup>th</sup> January 2026 reiterating their respective positions.

11. I have considered the application as pleaded and the response thereto together with the oral submissions. The issue for determination is whether the applicant has shown that there is willful brazen disobedience of the mandamus order to warrant grant of the orders sought.

12. The significance of complying with court orders or court decrees was stated in the case of **Shimmers Plaza Limited v National Bank of Kenya Limited [2015] KECA 945 (KLR)** in which the Court of Appeal, after setting out the circumstances under which contempt of court orders may issue stated as follows:

*“It cannot be gainsaid that the duty to obey the law by all individuals and institutions is paramount in the maintenance of the rule of law, good order and the due administration of justice.*

*As stated by Romer, L.J. In Hadkinson –vs- Hadkinson, (1952) ALL ER 567,*

*“It is the plain and unqualified obligation of every person against, or in respect of, whom 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. Lord Cottenham, L.C., said in Chuck –vs- Cremer (1) (1 Coop. temp.Cott 342):*

*“A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.”*

*Further, this Court in Refrigeration and Kitchen Utensils Ltd. –vs- Gulabchand Popatlal Shah & Another, -Civil Application No.39 of 1990 held,*

*“ ... It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts is upheld at all times.”....*

*Government institutions, State officers, banks, and all and sundry are enjoined by law to comply with Court orders. We must deprecate in the strongest terms possible the worrying trend in this country where court orders are treated with tremendous contempt by persons and institutions which think wrongly of course, that they are above the law.*

*We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26<sup>th</sup> President of the United States of America once said:-*

*“No man is above the law and no man is below it; nor do we ask any man’s permission to obey it. Obedience to the law is demanded as a right; not as a favour”.*

*The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by*

*the Constitution. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy. We think we have said enough to send this important message across.”*

13. In this case, the respondent has not raised any issue with the existence of the order for mandamus, whether it was unclear, whether she was aware of it or was served with the said order. She has admitted all the circumstances leading to these contempt of court proceedings. Her explanation for non-settlement of the decree is that the judiciary which is funded entirely through exchequer and appropriations by the National Assembly has never been allocated the budget presented to enable it meet the budgeted for items and therefore its hands are tied. The accounting officer denies being in deliberate disobedience of the mandamus orders of this Court.

14. This leads this court to examine other decisions of similar nature and determine whether the threshold for contempt of court has been fully met in this case.

15. Mativo J (as he then was) in **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR)** elaborately discussed the ingredients for contempt of court orders and settled as follows:

*“40. It is an established principle of law that<sup>[45]</sup> in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of*

the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.<sup>[46]</sup> Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand*<sup>[47]</sup> who succinctly stated:-

"There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

(a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;

(b) the defendant had knowledge of or proper notice of the terms of the order;

(c) the defendant has acted in breach of the terms of the order; and

(d) the defendant's conduct was deliberate.

41. It is the last test in paragraph (d) above that warrants detailed consideration. Unfortunately, the applicant's counsel never addressed it

*at all. On the face of our transformative constitution with an expanded Bill of Rights, a pertinent question warrants consideration. Do constitutional values permit a person to be put in prison to enforce compliance with a civil order when the requisites are established only preponderantly, and not conclusively? In my view, a high standard of proof applies whenever committal to prison for contempt is sought because contempt of Court is quasi-criminal in nature.*

*42. Two principles emerge. The first is liberty:- it is basic to our Constitution that a person should not be deprived of liberty, albeit only to constrain compliance with a court order, if reasonable doubt exists about the essentials. In this regard, I am not satisfied that wilful disregard of the court order has been established.*

*43. The second reason is coherence. It is practically difficult, and may be impossible, to disentangle the reasons why orders for committal for contempt are sought and why they are granted. in the end, whatever the applicant's motive, the court commits a contempt respondent to jail for Rule of Law reasons; and this high public purpose should be pursued only in the absence of reasonable doubt. Accordingly, it is impermissible to find an alleged contemnor guilty of contempt in the absence of conclusive proof of the essential elements. The requisite*

elements must be established beyond reasonable doubt. In such a prosecution the alleged contemnor is plainly an 'accused' person.

44. Third, accidental or unintentional disobedience is not sufficient to justify one for holding guilty of contempt. It is further relevant to bear in mind the settled law on the law of contempt that casual or accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy, would amount to a contempt in theory only and does not render the contemnor liable to punishment.

45. It should be noted that developing the common law thus does not require the prosecution to lead evidence as to the accused's state of mind or motive: once the three requisites mentioned earlier have been proved, in the absence of evidence raising a reasonable doubt as to whether the accused acted willfully and mala fide, all the requisites of the offence will have been established. And as O'Regan J pointed out, the power to imprison for coercive and non-punitive purposes is 'an extraordinary one':-

'The power to order summary imprisonment of a person in order to coerce that person to comply with a legal obligation is far-reaching. There can be no doubt that indefinite detention for coercive purposes may involve a significant inroad upon personal liberty. Clearly it will

*constitute a breach of s 12 of the Constitution unless both the coercive purposes are valid and the procedures followed are fair. In this case there seems no doubt that the purpose is a legitimate one. It also seems necessary and proper, however, for the exercise of the power to be accompanied by a high standard of procedural fairness.’<sup>[48]</sup>*

*46. Contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest.<sup>[49]</sup>*

*47. Applying the principles discussed herein above to the facts of this case, I am not persuaded that the applicants have demonstrated that the Respondents willfully failed, refused and or neglected to obey the court order. It was stated by that second Respondent that a new Board was inaugurated in July 2019. This application was filed barely weeks after its inauguration. Put differently, the applicants have failed to demonstrate the tests for contempt which are a pre-requisite to granting the orders sought.”*

16. Applying the principles articulated in the above decision to this case, though persuasive but good law, it is evident that although the Respondent has yet to satisfy the decree arising from the mandamus order issued pursuant to the consent arbitral award as adopted by the Court, there is no material before this Court to demonstrate deliberate or contumacious disobedience of its orders.
17. Importantly, this court observes that the Respondent did not challenge the arbitral award at any stage. It equally did not oppose the application for mandamus, nor has it disputed its obligation to settle the decretal sum. On the contrary, the circumstances presented demonstrate that the Respondent acknowledges its duty but is constrained in its ability to comply.
18. The Respondent arm of government, from the affidavit sworn by Hon. Fridah Mokaya, the accounting officer, is operating under serious financial limitations, noting that it does not generate its own revenue and all its expenditure is funded by exchequer through allocations by the National Treasury through Parliamentary appropriations.
19. It is also no secret that the Judiciary has consistently sought and begged for budgetary allocations and funding to discharge its mandate and function effectively, knowing the heavy and unique constitutional mandate bestowed on it in the administration of justice. From the replying affidavit sworn by the Chief Registrar of the Judiciary, year in year out, the Judiciary's budgetary allocations have been substantially reduced, reportedly by more

than half, thereby financially strangulating the Judiciary operations. In these circumstances, the failure to settle the mandamus decree issued by this Court, though regrettable, cannot readily be attributed to deliberate, willful or brazen disdain of this Court's orders.

20. It is, however, true, that budgetary allocation or lack thereof is not a defence as far as issuance of mandamus order is concerned and this Court did issue mandamus order on that understanding. However, when it comes to a finding of contempt, the standard of proof is higher, to the extent that there must be proof of deliberate, brazen and willful disobedience of court orders.

21. In the letter addressed to the National Treasury which is dated 10<sup>th</sup> November, 2025, the Chief Registrar of the Judiciary sought for a supplementary budget support to enable the Judiciary settle the decretal sum due on the mandamus decree herein.

22. For this Court to find that the Respondent's accounting officer is in contempt of the mandamus order issued by this court, it must interrogate the conduct of the alleged contemnor and determine whether such conduct amounts to willful and deliberate disobedience of the Court's order compelling settlement of decree and certificate of order against the government, arising from the arbitral award as adopted by the Court.

23. Contempt of court is not to be lightly inferred; it must be demonstrated that the non-compliance was intentional, brazen, and without justifiable cause.

24.As aptly observed by Mativo J in the foregoing **Samuel M. N. Mweru & Others v National Land Commission & 2 others** case, citing with approval the decision in **Fakie NO v CCII Systems (Pty) Ltd (653/04) [2006] ZASCA 52; 2006 (4) SA 326 (SCA) (31 March 2006)**, contempt of court serves a purpose that transcends the mere enforcement of court orders. It is a doctrine grounded in the preservation of the authority, dignity and effectiveness of the judicial process.

25.The power of superior courts to commit parties for contempt for failure or refusal to comply with court orders is therefore not exercised solely for the benefit of successful litigants who have been delayed the enjoyment of the fruits of their lawfully obtained judgment. Rather, that power is rooted in the broader imperative of safeguarding the integrity and legitimacy of the justice system itself. In exercising this jurisdiction, the Court acts not only as an arbiter of private rights but also as a custodian of the public interest, ensuring that its orders are respected and that the rule of law is upheld.

26.To that extent, it is not lost to this Court that the Judiciary as a whole, continues to operate under significant financial constrictions. The reality on the ground is that essential tools for the effective administration of justice are often in short supply. From essential infrastructure in terms of court rooms, court chambers for the judicial personnel, to the day-to-day operational resources, the courts are frequently required to function within tight and, at times, inadequate budgetary limits. This state of affairs underscores the

broader fiscal challenges facing such essential public institutions and provides important context when assessing the conduct of parties who are especially, wholly dependent on controlled public funding.

27. In such circumstances, the decree holder is placed in an undeniably difficult and, at times, frustrating position. Having lawfully obtained a judgment in their favour, they are entitled to expect that they will enjoy the fruits of that judgment without undue delay. However, where payment depends on a public body constrained by limited and uncertain budgetary allocations, with no room to generate its own revenue to be applied towards settlement of decrees, the path to satisfaction of the decree may not be as straightforward as has been demonstrated in many of the cases that this court has handled in this Division, where all decrees against the government at both levels and as against public entities are brought for enforcement, in view of the legal bar to execution against them by way of attachment and sale of their assets.

28. More importantly, the Judiciary ought not to be at such cross roads. It is the constitutionally mandated arm of government to administer justice to all. Yet it must set an example of obedience of court orders even as it demands others to obey those orders issued by those that it employs to administer justice. However, if the judiciary is arm strangled by the purse holders, then it cannot meet the obligations so as to remove the shame of being declared to be in disobedience of court orders, then all that it can do is to continue

pursuing the Legislature and Executive arms of government who hold the key to the purse, to advance it money for that purpose.

29. That said, the decree holder is not without recourse. It may continue to engage the Respondent with a view to securing structured or phased settlement, while at the same time keeping the matter within the Court's oversight through appropriate applications. The Court, for its part, retains the ability to issue further directions aimed at facilitating compliance, including requiring periodic reporting or setting timelines within which reasonable steps toward settlement must be demonstrated. Absence of such evidence that the respondent is pursuing funds for settlement of the decree, the obvious conclusion would be a deliberate unwillingness to settle the decree and that is where contempt of court comes in handy.

30. In due course, while the Court must be sensitive to the financial realities facing public institutions, it must also ensure that its judgments are not rendered illusory. The decree holder is therefore entitled to persist in seeking enforcement, even if, in practical terms, satisfaction of the decree may have to be achieved progressively rather than immediately.

31. For all the above reasons, I find that in this case, the conduct of the accounting officer for the Judiciary, the respondent herein, does not demonstrate contempt of court orders of mandamus issued by this Court. I decline to make such a finding of contempt and direct the respondent to

continue engaging with the National Treasury and the National Assembly for allocation of funds to settle this decree which by now must be a pending bill.

32.The applicant is directed to report to this court on a monthly basis the progress made towards securing funds from the National Treasury for settlement of the decree herein.

33.I make no orders as to costs.

34.Mention on 27<sup>th</sup> April, 2026 to report on the progress made towards securing of funds for settlement of the decree for mandamus in this case.

**Dated, Signed & Delivered virtually at Nairobi this 18<sup>th</sup> Day of March, 2026**

**R.E. BURILI  
JUDGE**

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