

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

**MILIMANI LAW COURTS**

**JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW APPLICATION NO. E042 OF 2025**

**IN THE MATTER OF APPLICATION FOR LEAVE TO COMMENCE  
CONTEMPT OF COURT PROCEEDINGS**

**AND**

**AN APPLICATION TO CITE, IN CONTEMPT OF COURT, THE 1<sup>ST</sup>  
RESPONDENT AND ITS ACCOUNTING OFFICERS, ARREST,  
DETAIN AND COMMIT THE ACCOUNTING OFFICERS TO CIVIL  
JAIL FOR PUNISHMENT**

**AND**

**IN THE MATTER OF: THE JUDICATURE ACT (CHAPTER 8) LAWS  
OF KENYA**

**AND**

**IN THE MATTER OF: THE LAW REFORM ACT (CHAPTER 26) LAWS  
OF KENYA**

**AND**

**IN THE MATTER OF THE GOVERNMENT PROCEEDINGS ACT  
(CHAPTER 40) LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF JUDICIAL REVIEW FOR ORDERS OF  
MANDAMUS**

**-BETWEEN-**

**MULTILINE SERVICE LIMITED..... EX-PARTE  
APPLICANT**

-VERSUS-

NAIROBI CITY COUNTY GOVERNMENT..... 1<sup>ST</sup>  
RESPONDENT

THE COUNTY SECRETARY AND HEAD OF PUBLIC SERVICE, THE  
MEMBER OF THE EXECUTIVE COMMITTEE AND HEAD OF  
FINANCE AND ECONOMIC AFFAIRS AND THE CHIEF FINANCE  
OFFICER (THE ACCOUNTING OFFICERS.....2<sup>ND</sup> RESPONDENTS

**RULING**

1. The Application before the Court is a Chamber Summons dated 31<sup>st</sup> October 2025, premised under Order 44 Rules 1 & 2; Order 53 Rule 1(1) and 1(2) of the Civil Procedure Rules; Rule 3 (1), 3(2) of the High Court Practise and Procedure Rules made under the Judicature Act Chapter 8; Section 7 of the Fair Administrative Action Act 2015; Section 21 of the Government Proceedings Act, Chapter 40; Article 47 (1) 48 and 159 of the Constitution of Kenya 2010 and all other enabling provisions of the law. The Application was also filed pursuant to this Court granting leave to the *ex-parte* Applicant on 28<sup>th</sup> January 2025 in JR No. E017 of 2025.
2. The *ex-parte* Applicant seeks the following orders:

***(1) THAT leave be and is hereby granted to the ex-parte Applicant to, within fourteen (14) days of this Order, commence contempt of Court proceedings against the Respondents and its Accounting Officers named by their respective designations.***

- (2) *THAT leave be and is hereby granted to the ex-parte Applicant to bring and prosecute under this one Chamber Summons Application for Orders for (i) leave to commence contempt of court proceedings and (ii) leave to commence and prosecute citation cause to cite the Respondents as prayed.*
- (3) *THAT the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondents the Accounting Officers by their designation namely (1) the County Secretary and Head of Public Services (2) the Member of the Executive Committee and Head of Finance and Economic Affairs and (3) the Chief Finance Officers of the 1<sup>st</sup> Respondent be and are hereby cited for contempt of court.*
- (4) *THAT consequent to the 1<sup>st</sup> Respondents and its Accounting Officers being cited, the Accounting Officers do hereby stand and remain cited for contempt of court and are hereby ordered to be arrested, detained and committed to serve a civil jail term of sixty (60) consecutive days from the date of their committal, without prejudice to the Decree remaining in force and enforceable even after the expiry of the civil jail or until payment of the decretal sum as set in terms of the Certificate of Order against the Government dated 1<sup>st</sup> July 2019 and any such subsequent Certificate of Order.*
- (5) *THAT to facilitate such committal to civil jail a warrant of arrest be and is hereby issued to be served upon the Respondents and a*

*service to anyone of Respondents shall be deemed to be service to all of them jointly and severally.*

*(6) THAT costs of the Application be provided for, in favour of the ex-parte Applicant against the 1<sup>st</sup> Respondent and/or the 2<sup>nd</sup> Respondents –Accounting Officers.*

3. The Application is supported by the Verifying Affidavit of **SAMSON MALABA MUNIKAH** sworn on the 22<sup>nd</sup> October 2025 in his capacity as a director of the *ex-parte* Applicant in which he deposes that the Respondents disobeyed and continued to disobey or be in defiance of the terms and conditions of a lawful judgment and orders of the court.
4. The *ex-parte* Applicant's case is that Judgment was delivered on 1<sup>st</sup> July 2019 and a decree issued on 25<sup>th</sup> September 2019 for the sums of Kshs. 8,052,671/= together with certified costs of Kshs. 315,844/=, totalling to Kshs. 8,368,515/=. That this amount was partly settled by a payment on 26<sup>th</sup> July 2021 of Kshs. 7,523,802.50/= leaving an unsettled balance of Kshs. 2,684,693/=.
5. The *ex-parte* Applicant pleads that the balance together with interest, had accrued to Kshs. 4,088,715/= giving rise to the present Application. That a Certificate of Order against the Government had been issued on 1<sup>st</sup> July 2019 by the Chief Magistrate's court where the Respondents were ordered to pay the *ex-parte* Applicant a sum of Kshs. 3,724,058.90/=.

6. It is asserted that the JR Order of Mandamus given by this Court on 16<sup>th</sup> September 2025 was served upon the Respondents on 22<sup>nd</sup> September 2025 directing them to settle the said amount with interest at 12% p.a. until payment of the decretal sum in full, which amount had accrued to Kshs. 4,088,715/= as at 30<sup>th</sup> June 2025 and continued to accrue interest. That further, this Court delivered a judgment on 30<sup>th</sup> June 2025 issuing *inter alia* an order of mandamus compelling the Respondents to settle the outstanding decretal sum of Kshs. 3,724,058/= together with costs assessed at Kshs. 50,000/=.
7. The *ex-parte* Applicant avers that the Respondents had been served with the Judgment, the Certificate of Order against the Government, Decree and Judicial Review Orders of Mandamus on 22<sup>nd</sup> September 2025, but they continued to disobey and defy the said orders.
8. That for the foregoing reasons, the *ex-parte* Applicant was entitled to leave to commence contempt proceedings and to have the Respondents cited for contempt together with warrants of arrest being issued against them as prayed in order to enforce the payment of the said decretal sum, interest and costs.
9. The Respondents did not file any responses in this Application. The application was argued orally on 20<sup>th</sup> January 2026.
10. Mr. Munikah, Counsel for the *ex-parte* Applicant submitted that prayer No. 3 of the Application summed up the other prayers as it would serve the

purpose of the Application until the Respondents pay the balance of the decretal sum. It was his submission that they had been in court over this matter for a very long time and urged this Court to grant the said prayers since the Order of Mandamus had been served upon the Respondents who had blatantly disobeyed.

### **Analysis and Determination**

11. I have considered the application as filed and argued unopposed. The main issue is whether the Application is merited and whether the prayers sought ought to be granted.

12. **Section 5(1) of the Judicature Act** provides that:

***(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.***

13. From the grounds stated on the face of the Application and the averments deponed in the verifying affidavit, I note that the first prayer is for leave to commence contempt of court proceedings. However, there is no requirement for leave to commence contempt of court proceedings for non-settlement of decree. The question is, is leave a mandatory requirement in contempt application for non-settlement of decree?

**14. In Akoyo v Permanent Secretary, State Department for Devolution; Attorney General (Interested Party) (Application 440 of 2018)[2023] KEHC 23189 (KLR) (Judicial Review) (6 October 2023) (Ruling),** Ngaah J answered the question whether it was necessary to seek leave of the court before filing a contempt of court application, particularly in cases involving disobedience of a court order by a government official. The learned Judge, after examining the procedure for applying for contempt of Court in England, since the Contempt of Court Act was declared unconstitutional stated as follows and I concur:

*“57. In the latest rules, it is not in every application that leave would be required in order for an applicant to file an application for contempt. According to rule 81.3 (5) of the rules, it is only in select cases that one has to seek leave. This rule reads as follows:*

*(5) Permission to make a contempt application is required where the application is made in relation to—*

*(a)interference with the due administration of justice, except in relation to existing High Court or county court proceedings;*

*(b)an allegation of knowingly making a false statement in any affidavit, affirmation or other document verified by a statement of truth or in a disclosure statement.*

*58. The applicant's application does not fall into any of this category of cases.*

*59. This then puts to rest the question whether the applicant ought to have sought leave before filing the instant application. The answer is that it was not necessary."*

15. Accordingly, the prayer for leave is found to be superfluous and declined. However, the applicant has also sought orders for citing the accounting officers of the City County of Nairobi for contempt of Court.
16. I now proceed to determine the question of alleged disobedience of the mandamus orders of the Court. There is no dispute that there exists a judgment dated 1<sup>st</sup> July 2019 in favour of the *ex-parte* Applicant, where a decree was obtained for the sum of Kshs. 8,052,671/= together with certified costs of Kshs. 315,844/=, totalling to Kshs. 8,368,515/=. Subsequently, a Certificate of Order against the Government was obtained in compliance with section 21 of the Government proceedings Act, served on the Accounting Officer of City County Government and an Order of Mandamus was issued by this Court to compel the satisfaction of the decretal sum on 22<sup>nd</sup> September 2025.
17. The Judgment for mandamus has not been challenged and therefore what remains is compliance as was compelled by the Court. I also note that the Respondents had partly settled the decree through a payment made on 26<sup>th</sup>

July 2021 in the sum of Kshs. 7,523,802.50/= leaving an unsettled balance of Kshs. 2,684,693/=.

18. Further, on 27<sup>th</sup> May 2025, Ms. Mutsili, Counsel for the Respondents informed this Court that they had been pushing for payment but had been informed that the payment was not factored in the budget but would be considered in the next financial year. I note that the subsequent financial year from the said date was to commence on July 2025 and terminate in June 2026. There is therefore no plausible reason for the Respondents to rescind their undertaking to settle the debt within this financial year.
19. There is equally no commitment filed into this court respecting the settlement of this decree for mandamus.
20. However, there is a bigger issue with the application herein. The main respondent judgment debtor is the Nairobi City County Government. It is therefore expected that the applicant seeks to cite the accounting officer of the City County Government and not bringing into contempt all persons who appear to be in authority at the City County Government.
21. Section 21 of the Government Proceedings Act only places upon the accounting officer the duty to settle decrees and that is the office holder against whom contempt proceedings can be brought, not contempt at large.
22. The applicant has brought on Board the County Secretary and Head of Public Service of the County Government, the Member of the Executive committee and Head of Finance and Economic Affairs and the Chief

Finance Officer. There is no evidence that these officers are accounting officers. Not even a chief finance officer is an accounting officer and this court has on several occasions directed parties in similar situations to bring the correct persons before Court in contempt proceedings. A chief finance officer is an officer in an organization and not the accounting officer.

23. Although it is not the duty of this Court to advise parties on who the correct parties are, the Court has pronounced itself on the question of who accounting officers are in government Ministries, being Principal Secretaries and in the case of County Governments, the respective Chief Officers depending on the sectors which owe the debts.
24. In this case, it is upon the applicant to identify the correct accounting officer and have them cited for contempt. This court will however be making an error if it was to allow contempt of court proceedings to be initiated against anybody not bound by statute to settle decree, save to state that section 2 of the Public Finance and Management Act, 2012 defines accounting officer as follows:

*In this Act, unless the context otherwise requires—“accounting officer” means—*

*(a)an accounting officer of a national government entity referred to in section 67;*

*(b)an accounting officer of a county government entity referred to in section 148*

(c)...

(d)...

25. On the other hand, section 148 of the Public Finance Management Act, 2012 provides as follows on designation of accounting officers, material to this case:

***148. Designation of accounting officers for county***

***government entities by the County Executive Committee Member for finance***

***(1) A County Executive Committee member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation.***

***(2) Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity.***

***(3) A County Executive Committee member for finance shall ensure that each county government entity has an accounting officer in accordance with Article 226 of the Constitution.***

***(4) The Clerk to the county assembly shall be the accounting officer of the county assembly.***

***(5)A county government may, in order to promote efficient use of the county resources, adopt, subject to approval by the county assembly, a centralised county financial management service.***

26. Section 149 of the Public Finance Management Act, 2012 sets out responsibilities for accounting officers.
27. In other words, the County Executive Committee Member for Finance is merely given the mandate to designate Chief Officers as accounting officers. The County Executive Committee Members are not by themselves accounting officers and neither is one chief officer the accounting officer for the entire County Government. There are several chief officers with each County Government sector or entity being represented by one chief officer as accounting officer for that sector, and as may be designated by the County executive Committee Member.
28. I reiterate that a chief finance officer is not an accounting officer mandated by law as accounting officer of a county government entity or sector.
29. Accordingly, I find the application for contempt of court to be incompetent for misjoinder and non-joinder of the correct party. It is declined.
30. On whether the court can grant other orders which include committal to civil jail, those prayers are premature. Committal to civil jail is a punishment for contempt after mitigation and it is only one of the modes of punishing for contempt. No person can be sent to jail without first being

found to be in contempt, being allowed to mitigate and which mitigation includes purging of the contempt.

31. In the end, and in view of my other findings above on misjoinder and non-joinder, the application dated 31<sup>st</sup> October 2025 is declined and is struck out with no orders as to costs.
32. The applicant is at liberty to file a proper application for consideration by this Court on its merits.
33. I so order.
34. Mention on 27<sup>th</sup> April 2026 to confirm the status of settlement of decree and or for further orders.
35. Orders accordingly.

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

**R.E. ABURILI**  
**JUDGE**