

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
JUDICIAL REVIEW CASE NO. E008 OF 2024

REPUBLIC

.....**APPLICANT**

VS

GARISSA COUNTY GOVERNMENT.....1ST

RESPONDENT

COUNTY EXECUTIVE COMMITTEE IN CHARGE

OF FINANCE GARISSA COUNTY.....2ND

RESPONDENT

CHIEF OFFICER IN CHARGE OF

FINANCE GARISSA COUNTY.....3RD

RESPONDENT

GAMADID TRADING COMPANY LTD.....EXPARTE

APPLICANT

RULING

1. Vide a Motion dated 24.07.2025, brought pursuant to the provisions of Section 5(1) of the Judicature Act, Cap 8, Sections 1A, 1B and 3A of the Civil Procedure Act, the ex-parte applicant seeks the following reliefs:
 - i. **Spent.**
 - ii. **That a notice to show cause do issue against the County Secretary of Garissa County Government, County Executive Committee Member in charge of finance Garissa County and chief officer in charge of finance Garissa County to show cause why they**

should not be cited for contempt for disobeying the orders of this court given on 30.04.2025.

- iii. That the County Secretary of Garissa County Government, County Executive Committee Member in charge of finance Garissa County and chief officer in charge of finance Garissa County be committed to civil jail for a period of six months or such period as the court may deem fit or any other sanction as this court may deem fit and appropriate punishment to be meted out upon the contemnors for disobeying the orders of this Honourable Court.**
2. The application is based on the grounds set out on the face of it and further amplified by the content contained in the affidavit of even date sworn by Aden Haji Gamadid, the director of the ex parte applicant who deponed that; by the judgment of this Honourable Court delivered on 30.04.2025, this court issued a mandamus order compelling the respondents to pay the ex parte applicant a sum of Kes. 36, 798,200/- plus costs of the application and interest thereon.
3. That the order was issued in the presence of counsel for the ex parte applicant and that of the respondents who have declined to comply with the said order despite being served on them personally.
4. In response to the Motion, the County attorney, m/s Khadija on behalf of the respondents filed a replying affidavit deposing that

pursuant to a consent adopted on 04.08.2020 in Garissa High Court Civil Case No. 3 of 2016, the respondents were to pay the decretal sum of Kes. 36,798,200/-. That upon verification, the respondents found that the ex parte applicant has been paid Kes. 34,845,932/- and therefore, only Kes. 1,952,268/- remains unpaid. That following the discovery, the respondents filed a motion before court but the same was dismissed on 20.11.2025.

5. That the respondents have not declined to pay the amount due only that the same needs to be budgeted for. That in the circumstances, the application herein ought to fail. According to the county attorney, the applicant failed to demonstrate violation and/or disobedience on the part of the respondents to warrant issuance of the orders sought herein. She urged the court to dismiss the application with costs for want of merit.
6. The court directed parties to file their submissions. However, the respondent opted to adopt their response to the application.
7. The ex parte applicant filed submissions dated 29.12.2025 urging that there is no doubt that the respondents are in contempt of court. To support that position, reliance was placed on the case of **Samuel M.N. Mweru & Others vs National Land Commission & 2 Others [2020] eKLR** where Mativo J. (as he was then) set down the test for contempt of court as follows:

“It is an established principle of law that 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”.**

8. That in this case, the court ordered the respondents on 30.04.2025 to pay the ex parte applicant the decretal amount of Kes. 36,798,200/- together with interest and costs. That it cannot be alleged that the said order could not be understood; that the respondents have been aware of the orders as the same is buttressed by the fact that the 2nd and 3rd respondents were personally served on 10.06.2025 with the order issued on 30.04.2025. Further, learned counsel opined that the respondents were represented by an advocate who has been actively participating in the proceedings herein and therefore, it cannot be denied that the respondents were not aware of the orders herein.
9. In the end, this court was urged to allow the motion with costs.
10. The respondents did not file their submissions as they chose to rely on the replying affidavit already filed.
11. There is no doubt that the current position with respect to contempt as guided by the Judicature Act is that the requirement for obtaining leave to initiate contempt proceedings does not

apply in cases where committal is sought for a breach of a court judgment, order, or undertaking. [See the Court of Appeal decision in **Christine Wangari Gachege vs Elizabeth Wanjiru Evans & 11 Others [2014] eKLR**].

12. In light of the foregoing, and upon consideration of the pleadings and submissions thereof, the issue that arise for determination is whether the ex parte applicant has proved the act of contempt against the respondents?
13. Section 21(3) of the Government Proceedings Act under the head 'satisfaction of orders against the Government' provides that:

“(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon...”

14. Similarly, the Supreme court in **Republic v Mohammed & another (Petition 39 of 2018) [2019] KESC 47 (KLR) (15 March 2019) (Ruling)** had this to say;

“An act in contempt of the court constituted an affront to judicial authority; the court had the liberty and empowerment to mete out penalty for such conduct in a proper case. The object was:

- a. to vindicate the court's authority;
- b. to uphold honourable conduct among advocates in their standing as officers of the court; and
- c. to safeguard its processes for ensuring compliance so as to sustain the rule of law and the administration of justice".

15. Noting that the Contempt of Court Act, 2016 was declared unconstitutional vide the case of **The Kenya Human Rights Commission vs Attorney General & Another [2018] eKLR**, the substantive law governing contempt proceedings is the Judicature Act. Section 5 of the Act provides as follows:

“(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 such power shall extend to upholding the authority and dignity of subordinate courts.

(2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”

16. It is trite that Courts do not act in vain and their orders must at all times be obeyed. This position was well articulated by the Court of Appeal in **Shimmers Plaza Limited vs National Bank of Kenya Limited [2015] eKLR** as follows:

“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 26th 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.”

17. It follows therefore that contempt proceedings are quasi-criminal in nature due to the severe consequences they attract. As a result, the standard of proof is higher than that of the balance of probabilities as provided in civil cases and equally, not as high as beyond reasonable doubt as stipulated in criminal cases. In the case of **Mutitika vs Baharini Farm Limited [1985] KLR 229, 234** the Court of Appeal held that:

“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.”

18. The rationale for applying this heightened standard is that contempt proceedings, when they seek committal to jail, directly affect the liberty of the alleged contemnor. Because imprisonment is such a serious consequence, the evidentiary threshold must be higher than that applied in ordinary civil cases. The court’s power to deprive a person of freedom must be exercised with the greatest caution and only as a measure of last resort. It is therefore essential that the applicant demonstrates that the contemnor’s conduct was intentional—that is, a willful and deliberate act of disobedience to the court’s order.
19. In order to succeed in civil contempt proceedings, the applicant has to prove that the terms of the order were clear, unambiguous and binding on the respondent; Knowledge of these terms by the respondent; failure by the respondent to comply with the terms of the order; and deliberate conduct by the respondent.
20. It is not in dispute that on 04.08.2020, parties herein entered a consent that judgment be entered against the 1st defendant/respondent for Kes. 36,792.200 all-inclusive and that the money was to be paid by instalments based on the availability of money. Each party was to bear its own costs. On

30.04.2025, the court issued Mandamus orders in favour of the ex parte applicant.

21. Looking at the first test, there is no doubt that the court's orders were clear and precise calling upon the respondents to ensure settlement of the decretal sum due to the ex parte applicant.
22. On the aspect of knowledge, the ex parte applicant has demonstrated that the orders were personally served upon the respondents and further, in their replying affidavit sworn on 11.12.2025, the county attorney on behalf of the respondents deposed that they were aware of the court order and that, they had every intention to comply with the same except that the amount was not budgeted for.
23. Therefore, this court has no doubt that indeed knowledge by the respondents of the court order aforesaid is not disputed by the respondents.
24. It is also admitted that the decree is yet to be settled. The respondents pleaded that the reason for not honouring payment was due to non-availability of funds and the need to budget for the same. The Court in **Republic vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza [2012] eKLR** while discussing a similar contention noted:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the

decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree...”

25. The court concurs that non-allocation of funds and/or the need to have the decretal sum budgeted is not a justifiable excuse for non-payment of the same. Additionally, the respondents have not indicated what steps if any, they have taken to effect payment of the amount owed.
26. The court therefore finds that the respondents having willfully and intentionally failed to honour the claim, they have deliberately disobeyed the Court Order and are therefore in contempt of court.
27. Accordingly, the Motion dated 24.07.2025 is hereby allowed and orders granted in respect thereof as hereunder:
 - i. The respondents are hereby found to be guilty and in contempt of the impugned court order/s and therefore ordered to appear before this court to show cause why they should not be detained in prison for a period of six months or such period as the court may deem fit or any other sanction as**

this court may find reasonable and appropriate punishment to be meted out upon the contemnors for disobeying the orders of this Honourable Court.

ii. That costs of the Motion to be borne by the respondents.

iii. Mention on 16-4-2026

Dated, signed and delivered virtually this 18th day of March 2026

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J. N. ONYIEGO
JUDGE