

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT JUDICIAL REVIEW APPLICATION NO. 7 OF 2013

**WILSON KAMAU MAINA (Legal representative of the late
BILHAR WANGUI MAINA).....APPLICANT**

-VERSUS-

**THE PRINCIPAL SECRETARY MINISTRY OF LAND, HOUSING
AND URBAN DEVELOPMENT**

THE HONOURABLE ATTORNEY GENERAL.....

RESPONDENTS

RULING

1. Before this Court is the Notice of Motion application dated **30th April 2024** by which the Applicant **WILSON KAMAU MAINA** (legal representative of the late **Bilhar Wangui Maina**) seeks the following orders;-

**“1. That the Court be pleased to cite for
contempt of**

**Court the Principal Secretary Ministry of
Transport and Infrastructure and the**

Principal Secretary Ministry of lands, Housing and Urban Development for failure to pay Kshs. 74,765/= being the outstanding costs in this matter.

2. That upon the granting of prayer (1) above and on

failure by the respondent to purge the contempt, the Court be pleased to issue a warrant of arrest for committal to Civil jail of the Principal Secretaries Ministry of Transport and Infrastructure and Ministry of Lands, Housing and Urban Development for a period of 6 months or such other period as the Court may find appropriate.

3. That the costs be provided for.”

2. The application which was premised upon Section 5(1) of the

Judicature Act Cap 8 and Sections 1A, 1B, 3A and 63 (e) of the

Civil Procedure Act and all other enabling provisions of the law and

was supported by the Affidavit of even date sworn by

JEREMEIAH

MBUTHA an Advocate of the High Court of Kenya.

3. The Respondents **THE PRINCIPAL SECRETARY MINISTRY OF OF**

TRANSPORT AND INFRASTRUCTURE and THE PRINCIPAL SECRETARY MINISTRY OF LAND HOUSING AND URBAN

DEVELOPMENT despite having been properly served with the application failed and/or neglected to file any response to the same.

4. The Court directed that the application be canvassed by way of written

submissions. The Applicant filed the written submissions dated **18th**

August 2025 whilst the Respondent again having been properly served

failed to file any submissions.

BACKGROUND

5. This is a matter which has largely been settled. The High Court on **14th**

June 2013 issued orders of Mandamus compelling the Respondents to

pay the Applicant a sum of **Kshs. 253, 333** which had been awarded to

the late **Bilhar Wangui Maina** in Nyeri **CMCC No. 341 of 1998**.

6. The Respondents did settle the principal sum however the Applicant

claims that the sum of **Kshs. 74,765/=** representing costs is yet to be

settled. The matter has come up severally and the Respondents have

made several promises to pay but to date no payment has been

forthcoming. The Applicant submits that the Respondents are in

contempt of Court orders and urges that the Respondents be cited for

contempt and be pleased to commit the Respondents to Civil Jail for a period of six (6) months.

7. As stated earlier the Respondent did not file any reply to the application.

ANALYSIS AND DETERMINATION

8. I have carefully considered the application filed before this court as well

as the submissions filed by the Applicants. The Applicant is seeking to

have the Respondents cited for contempt of Court.

9. The jurisdiction of this Court to punish for contempt is found in

Section

5 of the **Judicature Act** which provides:-

(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.”

10. Thus in **Econet Wireless Kenya Ltd v Minister for Information &**

Communication of Kenya & Another [2005] KLR 828,

the

obligation to obey court orders was well explicated thus:-

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified

obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void.” [Own emphasis]

11. In the premises, the elements that the Respondent herein needed to prove are:-

a) that the Order in question was clear, unambiguous and binding on the respondent;

b) that the Applicant had proper notice or knowledge of the terms of that Order;

c) that the Applicant has deliberately failed to obey the terms of the Order;

(see **Katsuri Limited v Kapurchand Depar Shah [2016] eKLR**)

12. The Standard of proof applicable in contempt applications, is on a balance of probabilities, given the criminal connotations of contempt proceedings. In **Gatharia K. Mutikika v Baharini Farm Ltd [1985] KLR 227** the Court of Appeal stated as follows:-

“.....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 offence which can be said to be quasi-criminal in nature.”

13. It is important that the court satisfy itself that the person being accused of disobeying courts orders had knowledge/notice of said court orders. In **OILFIELD MOVERS LTD -VS- ZAHARA OIL & GAS LIMITED [2020] eKLR** the court stated as follows:-

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.....”

14. In this case I do find that the terms of the order directed to the

Respondents were clear and unambiguous. The Respondents did have

notice of the said orders. This is evidenced by the fact that the matter

came up on several occasions for Notice to show cause and each time

the Respondents made promises to pay which promises remained

unfulfilled.

15. The record indicates that this issue of costs has been dragging in the

court since **2018**. The Respondents were at all times represented by

counsel until **7th November 2023**, when in spite of sufficient service

the Respondents stopped attending court.

16. The power of courts to cite and punish for contempt is a discretionary

power - one which the courts ought to exercise very sparingly and only as a last resort. However I find that this is a clear cut case - one in which the Respondents blatantly continue to disregard valid court orders.

17. In the present case I am satisfied that the terms of the order to pay

costs are clear and unambiguous. I am further satisfied that there has been willful disobedience of that order. Accordingly I do allow this application and make the following orders:-

(1) That the Principal secretary, Ministry of land, Housing and Urban Development be and is hereby committed to civil jail for a term not exceeding three (3) months for disobeying the courts orders issued on 14th October 2016.

(2) That the said committal to civil jail may be dispensed with upon prompt payment to the ex-parte Applicant or his advocates on record of the sum of Kshs. 74,765/=.

(3) No orders on costs.

Dated in Nyeri this 10th day of April, 2026.

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MAUREEN A. ODERO
JUDGE