

**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW APPLICATION NO. E212 OF 2025**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**THE NATIONAL TREASURY AND PLANNING, OFFICE**

**OF THE PRINCIPAL SECRETARY.....2<sup>ND</sup> RESPONDENT**

**AND**

**KOBBY TECHNOLOGIES LIMITED.....EX PARTE APPLICANT**

**KINGSWAY BUSINESS SYSTEMS LIMITED.....INTERESTED PARTY**

**RULING ON CONTEMPT OF COURT APPLICATION**

1. The application before this court for determination is the Amended Notice of Motion dated 3<sup>rd</sup> March 2026. The application is supported by the statutory statement dated 30<sup>th</sup> January 2026 and the affidavit of Mercy Nduta Mwangi sworn on even date. The application is further supported by a supplementary affidavit sworn by Mercy Nduta Mwangi on 3<sup>rd</sup> March, 2026.
2. The application seeks for this Court to cite Dr. Chris K. Kiptoo CBS, the Principal Secretary and accounting officer of the National Treasury and Planning for contempt of court for failure to comply with the decree of

this Honourable Court dated 31<sup>st</sup> December 2025. It also seeks that the Dr. Chris K Kiptoo CBS be committed to civil jail for a period not exceeding six (6) months.

3. The Applicant's case is that on the 31<sup>st</sup> December 2025, this Honourable Court issued an order of Mandamus compelling the 2<sup>nd</sup> Respondent's accounting officer to settle the decree and certificate of order and costs against Government and as per the Garnishee Order Absolute dated 24<sup>th</sup> February 2025 issued in Milimani Commercial High Court COMMARB/E063/2022, together with the costs of the Garnishee proceedings and the costs in HCJRE212/2025 which were assessed at kshs.80,000/=.
4. That the alleged contemnor who is the accounting officer has been appraised of the progress of this matter since the Garnishee Order Absolute was issued on 24<sup>th</sup> February 2025 but has done nothing to obey the various court orders and continues to persist in defying valid court orders.
5. It is urged that on 26<sup>th</sup> February 2025, after the Applicant was issued with the Garnishee Order Absolute, it served the same upon the 2<sup>nd</sup> Respondent together with a letter dated 24<sup>th</sup> February 2025 which also gave instructions of where payment was to be made.

6. That since instituting the suit herein, the Applicant's Advocates have at all material times copied all communication on the same to the Principal Secretary through his official email address namely: ps@treasury.go.ke.
7. Further, that when the Judgment in the instant matter was delivered on 31<sup>st</sup> December 2025, the 2<sup>nd</sup> Respondent was represented by Mr. Munene Wanjohi, state counsel and as such, presence of the State Counsel on the said date is a confirmation that the 2<sup>nd</sup> Respondent was aware of the Judgement upon its being delivered.
8. On 15<sup>th</sup> January 2026, the alleged contemnor, Dr. Chris K. Kiptoo CBS, is said to have been electronically served through his email at ps@treasury.go.ke, with a demand letter dated 15<sup>th</sup> January 2026, the Judgment dated 31<sup>st</sup> December 2025, the decree dated 31<sup>st</sup> December 2025, the Amended Final Arbitration Award and Additional Award on costs dated 17<sup>th</sup> October 2022.
9. According to the Applicant, personal service upon the alleged Contemnor, Dr. Chris K. Kiptoo, CBS, was repeated on 16<sup>th</sup> January 2026. That on 20<sup>th</sup> January 2026, personal service of the Penal Notice dated 19<sup>th</sup> January 2026, and the Judgment and decree was again effected upon Dr. Chris K. Kiptoo CBS who acknowledged receipt of the same by affixing his official rubber stamp.
10. It is urged that on 28<sup>th</sup> January 2026 the Applicant's advocate wrote a letter to Dr. Chris K. Kiptoo, CBS, requesting for his response to the

demand for payment, but that the letter has remained unanswered to date and no payment has been forthcoming.

11. The Applicant argues that it is evident that the alleged contemnor has no intention of complying with the order of mandamus which he continues to disobey with impunity and that it is now obvious that the alleged contemnor in this matter, Dr. Chris K. Kiptoo CBS does not respect the authority of this Honourable Court.

### **The Respondents' Response**

12. In response, the Respondents filed a replying affidavit sworn on 27<sup>th</sup> February 2026 by Dr. Chris K. Kiptoo CBS. He deposes that the National Treasury contracted consortium of M/s Kingsway Business Systems Limited, M/s Kobby Technologies Limited and M/s Iplenion Eastern Africa Limited under contract number TNT/049/2019-2020 for the provision of onsite support for IFMIS applications, enhancement of IFMIS e-procurement and Independent Integrated Financial Management Information System for semi-autonomous Government Agency for a period of three years with effect from 15<sup>th</sup> February 2021.

13. That the contract was renewable annually upon the client's satisfaction at a contract sum of Kshs. 647,064,000/= inclusive of applicable taxes. The contract is said to have been divided into two broad scope items, IFMIS Application support at Kshs. 418,180,500/= and Enhancement of IFMIS e-Procurement at Kshs, 228,883,500/=.

14. The Respondents state that the IFMIS contract was milestone-based, with all Year 1 deliverables completed and paid, while Years 2 and 3 were not executed and remain unpaid. That although extensions were proposed, the contractor failed to fulfil the required conditions and the contract expired with no sums due. They maintain that no money is owed to the Interested Party and that the National Treasury lacks funds to meet the claimed amount and therefore cannot comply with the Garnishee Order.
15. They further deny any wilful disobedience of court orders and argue that the application is defective as there is no law providing for a Notice to Show Cause as sought, after nullification of the Contempt of Court Act for being unconstitutional.

**The Interested Party's response**

16. The Interested Party filed grounds of opposition dated 25<sup>th</sup> February 2026.
17. The Interested Party contends that since the Contempt of Court Act, 2016 was declared unconstitutional, there is currently no valid legal framework specifying the applicable fines or penalties for contempt of court. As a result, it is contended that the application lacks a legal foundation, is invalid in law and constitutes an abuse of the court process. The Interested Party further asserts that the application improperly seeks to have the court limit a party's fundamental rights under Article 24 of the Constitution, 2010 without any lawful justification.

## Submissions

18. The application was canvassed by way of oral submissions made before this Court on 4<sup>th</sup> March 2026. Ms. Mwangi counsel for the Applicant submitted that the Applicant had complied with all requirements for the issuance of contempt of court orders as per part 81.4 of the Civil Procedure of England.
19. She submitted that the orders in the decree are clear and unequivocal requiring the PS to effect payment in accordance with the Garnishee order absolute and certificate of order against the Government as issued.
20. Further, that despite being served with this court's decree, the PS has defiantly refused to comply with the same as is evidenced in his replying affidavit where he is said to have stated that all money due under the tender with the Interested Party had been paid out. Ms. Mwangi also submitted that no plausible reason has been provided in the affidavit for non-compliance.
21. Counsel submitted that contrary to the allegations that the application is defective as the Contempt of Court Act was repealed, the application does not refer to the said Act as the relevant provision is section 5 of the Judicature Act. She relied on the case of **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR** which she submitted, set the standards to be met by an applicant for civil contempt. Counsel also relied on **R vs. County Chief Officer, Finance**

**& Economic Planning NCC Ex parte David Mugo Mwangi** where the court is said to have observed that Court orders are not made for cosmetic purposes.

22. In response, Mr. Munene counsel for the Respondents opposed the application restating that there is no money owing to the Interested Party as the contract was terminated for non-performance. He urged that there is no willful disobedience of the order.

23. Further, that the order issued by the court is the subject of a Garnishee order and that there is no direct payment money to the applicant.

24. Mr. Mtange counsel for the Interested Party submitted that there is no substantive legislation on contempt of court and that section 5 of the Judicature Act has no guidelines on meting out punishment in contempt.

25. In her rejoinder Ms. Mwangi submitted that pursuant to section 107 of the Evidence Act, the burden of proof shifts upon the accounting officer, once the Applicant has met the requirements for contempt of court. She submitted that there is nothing to show the steps taken to terminate the contract. She also stated that the Court had already ruled on this issue and that the same is *res judicata*.

26. It was also her submission that Order 22 of the Civil Procedure Rules provides for committal to civil jail.

### **Analysis and Determination**

27. I have considered the application and the opposition and the oral submissions made by counsel for the respective parties. The only issue for determination is whether the orders sought against the accounting officer are available.

28. I will first define what contempt of Court is. The **Black's Law Dictionary (Ninth Edition)** defines contempt of Court as:

*“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”*

29. Contempt of court encompasses any conduct that undermines the proper and fair administration of justice, extending beyond mere disobedience of court orders. Superior courts are vested with the authority to cite and punish contempt in order to preserve the judiciary's integrity, authority and credibility. In exercising this power, courts not only remedy the harm suffered by a successful litigant but also uphold the broader public interest in the administration of justice, as affirmed in **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR**.

30. In the Scottish case of **Stewart Robertson vs Her Majesty's Advocate, 2007 HCAC63**, Lord Justice Clerk stated that:

*“Contempt of court is constituted by conduct that denotes wilful defiance of or disrespect towards the court or that wilfully challenges*

*or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.”*

31. In **Kenya Tea Growers Association Vs Francis Atwoli and 5 Others** [2012] eKLR, Lenaola J (then serving in the High Court) endorsed the principle established in **Clarke and Others Vs Chadburn & Others** [1985] 1All E.R (PC), 211, where the Court noted:

*“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal.... even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”*

32. Regarding the importance of contempt proceedings, the Court in **Econet Wireless LTD vs. Minister for Information & Communication of Kenya & Another** [2005] eKLR held that:

*“Where an application for committal for contempt of court orders is made the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance, an*

*alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious- a contemnor would have no right of audience in any court of law unless he is punished or purges the contempt.”*

33. It is an established principle of law that contempt proceedings are subtle and quasi-criminal in nature, and courts may impose criminal sanctions if a conviction followed. It follows that the standard of proof for contempt of Court is higher than that in ordinary civil proceedings. It is not merely just on a balance of probabilities. It borders on beyond reasonable doubt.

34. The Contempt of Court Act was declared unconstitutional in Kenya **Human Rights Commission vs. Attorney General & Another (2018) eKLR**. This means that Section 5 of the Judicature Act was reinstated. This is the position taken by the Court in **Republic v Kajiado County & 2 others Ex parte Kilimanjaro Safari Club Limited [2019] eKLR** which decision I concur with and wherein the Court stated that:

*“This section was repealed by section 38 of the Contempt of Act of 2016, and as the said Act has since been declared invalid, the consequential effect in law is that it had no legal effect on, and therefore did not repeal section 5 of the Judicature Act, which therefore continues to apply. In addition, the substance of the*

*common law is still applicable under section 3 of the Judicature Act. This Court is in this regard guided by the applicable English Law which is Part 81 of the English Civil Procedure Rules of 1998 as variously amended, and the requirement for personal service of court orders in contempt of Court proceedings is found in Rule 81.8 of the English Civil Procedure Rules.”*

35. In **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR** Mativo J. (as he then was in the High Court) restated the test for establishing contempt of court and stated that:

*“40. 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 wilfulness 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. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* 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.”*

36. The Applicant herein asserts that the accounting officer of the 2<sup>nd</sup> Respondent, Dr. Chris K. Kiptoo CBS, has wilfully disobeyed the orders of this Honourable Court issued on 31<sup>st</sup> December 2025. Those orders comprised an order of Mandamus compelling settlement of the decretal sum, certificate of order, and associated costs arising from Milimani Commercial High Court COMMARB/E063/2022 (including garnishee and related proceedings), and a Prohibition restraining payment to the Interested Party under Tender No. TNT/049/2019–2020, including its addenda, to the extent of the 2<sup>nd</sup> Respondent's indebtedness to the interested party, as per the decree and certificate of order and costs arising from Milimani Commercial High Court COMMARB/E063/2022 (including the costs of the Garnishee proceedings and costs in HCJRE212/2025).

37. The Applicant maintains that the alleged contemnor was duly served with the orders of mandamus and prohibition made on 31<sup>st</sup> December, 2025 and supporting documents, both personally and electronically, but that he has failed to comply. That the material before the Court demonstrates that the alleged contemnor had actual knowledge of the orders. It is also the Applicant's case that Mr. Munene State Counsel represented the Respondent at delivery of the judgment. Further, that demand letters dated 15<sup>th</sup> and 16<sup>th</sup> January 2026 and a Penal Notice dated 19<sup>th</sup> January 2026 were personally served and acknowledged by official stamp in the office of the Principal Secretary accounting officer. It is argued that the Respondent's own affidavit addressing the substance of the orders further confirms such knowledge.

38. In response, the 2<sup>nd</sup> Respondent contends that the sums claimed arise from a milestone-based contract (TNT/049/2019–2020) for IFMIS services, and that subsequent contractual stages were not performed, hence no sums are due. It is further asserted that the National Treasury lacks funds to satisfy the decree. The Respondent denies wilful disobedience and challenges the application on the basis that the Contempt of Court Act, 2016 was declared unconstitutional.

39. The Interested Party argues that the application lacks a legal foundation in the absence of a statutory contempt regime and that it improperly limits

constitutional rights under Article 24 of the Constitution, thereby constituting an abuse of process.

40. This Court has already acknowledged that the Contempt of Court Act, 2016 was declared unconstitutional in **Kenya Human Rights Commission v Attorney General & Another [2018] eKLR**. Consequently, contempt jurisdiction is exercised under sections 3 and 5 of the Judicature Act, which sections preserve the Court's inherent authority to uphold the administration of justice and to punish for contempt, including where it is established that there is wilful disobedience of court orders.

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

*“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.”*

42. In addition, section 3 of the Judicature Act incorporates applicable common law principles. Kenyan courts are guided by English practice, including Part 81 of the Civil Procedure Rules (England), particularly Rule 81.4, which governs civil contempt proceedings and emphasises knowledge of the order and deliberate non-compliance.

43. Accordingly, the contention that there is no legal regime and basis for contempt proceedings is without merit. The present application is properly grounded in the Court's inherent jurisdiction and applicable common law principles.

44. The principles governing civil contempt are settled. Contempt encompasses conduct that undermines the administration of justice, including wilful disobedience of court orders. The essential elements are the existence of a clear and binding order, knowledge of that order, breach of its terms and deliberate or willful disobedience conduct. A party cannot justify non-compliance of court orders by disputing the correctness of the order. Rather, the appropriate recourse lies in seeking its variation or discharge.

45. As to whether the accounting officer alleged contemnor is guilty of contempt of court, the element of a Civil Contempt as espoused in a book titled **"Contempt in Modern Newzealand** authored by the **New Zealand Law Commission**. The authors, **Law Commission of New Zealand in their May 2014 Review, Wellington, New Zealand | ISSUES PAPER 36**, defines what civil contempt is as follows:

***"WHAT IS CIVIL CONTEMPT?"***

***Disobeying a court order or judgment***

***It is a civil contempt of court for anyone to refuse or neglect to do an act required by a judgment or order of the court (other than***

*the payment of money to the other party) within the time specified in the judgment or order. It is similarly contempt to disobey a judgment or order requiring a person to desist or abstain from doing something.<sup>299</sup> Civil contempt is not available to enforce monetary awards and the non-payment of money in breach of a judgment. Acting in breach of an undertaking given to the court is also contempt of court.”*

46. In the introduction, the authors state as follows:

*“Public confidence in the justice system is essential for the courts to exercise their constitutional role of upholding the law and dispensing justice. In *Siemer v Solicitor-General*, Elias CJ recently described contempt proceedings as follows:*

*The “great coercive powers of proceedings for contempt” are common law jurisdiction possessed by courts to punish, including by imprisonment, conduct which risks undermining the administration of justice.*

*Celebrated English Judge Lord Diplock said the three requirements of the due administration of justice are that all citizens should:*

*have unhindered access to courts for the determination of disputes as to their legal rights and liabilities; be able to rely on the courts being free from bias against any party and for*

*decisions based only on facts to be proved on evidence properly adduced; and once the dispute has been submitted to a court, be able to rely upon there being no usurpation by any other person of the function of the court to decide it according to law.”*

47. On the elements of contempt of court, the authors state:

*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 conduct was deliberate.*

48. These four elements must be proved to make a case for Civil Contempt.

Although the proceedings are civil in nature, it is well established that the degree of prove is almost that beyond reasonable doubt but definitely higher than on balance of probability.

49. Considering the four elements set out hereinabove, I find that the terms of the order were clear, the alleged contemnor was served with the said order, and that he acted in breach of the terms of the order and his conduct was deliberate. The conduct of the accounting officer

demonstrates willful defiance in that all through the litigation process from the Commercial Court to these proceedings, the superior Courts made specific orders including garnishee and mandamus orders, which it has not challenged or obtained stay of enforcement. He has not filed any material before this Court to show that the contract with the interested party regarding the tender in question was breached and or terminated for non-performance or that the interested party was paid all monies due to it on the performed contract.

50. The contractual issues raised by the accounting officer, regrettably, were addressed by this court in its judgment of 31<sup>st</sup> December 2025 and cannot be re-litigated in these proceedings. There has been no challenge to that judgment. Relying on such matters as a defence to contempt is therefore misplaced and amounts to abuse of court process as the issues were closed.

51. Further, the decree comprised both Mandamus and Prohibition orders, and non-compliance with either constitutes a breach. The Respondents' reliance on contractual disputes or financial constraints does not excuse compliance with valid court orders.

52. Albeit the respondents do not owe the applicant money directly, having been cited through garnishee proceedings, and there being no challenge to the judgment of the court directing that they pay to the applicant the monies owed to the interested party, to the extent of the judgment sums,

the accounting officer is under a legal duty to obey orders of the Court or file into court evidence demonstrating that the orders are incapable of being complied with. No such evidence was placed before this court.

53. Accordingly, this Court is satisfied that the orders issued on 31<sup>st</sup> December 2025 are clear and binding, that the alleged contemnor had full knowledge of the said orders and that there has been brazen non-compliance with the said orders.

24. I find and hold that the Applicant has established the elements of civil contempt. The defences raised may be considered in mitigation but do not negate liability since the respondents never challenged the judgments of the Court right from the Commercial Court to this court and neither have they demonstrated as to when they paid the interested party what was due to it on the contract, what the balance is and or whether the contract was terminated for nonperformance and when.

25. In the circumstances, this Court finds that the accounting officer of the National Treasury and Planning, Dr. Chris K. Kiptoo CBS, is in contempt of court for brazenly defying this court's orders issued on 31<sup>st</sup> December 2025 and he is hereby convicted for being in contempt of court.

26. The notice to show cause and committal prayers are premature. They are declined at this stage.

27. Consequently, the contemnor, Dr, Chris Kiptoo is directed to appear in court, represented by counsel, for mitigation and for appropriate orders as to punishment for contempt of Court on the 6<sup>th</sup> May, 2026.

28. Costs of the application assessed at Kshs 50,000 shall be borne by the National Treasury.

29. It is so ordered.

**Dated, Signed & Delivered virtually at Nairobi this 9<sup>th</sup> Day of April, 2026**

**R.E. ABURILI  
JUDGE**

ORIGINAL