

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW NO E055 OF 2020

SIMON AND VINCENT NDUNGU MUNGAI.....
APPLICANT

VERSUS

KIAMBU COUNTY GOVERNMENT..... RESPONDENT

RULING

1. This is a ruling in relation to the Application dated 10th April 2025 wherein the applicant is seeking the following orders:

i. Spent.

ii. That the 2nd and 3rd Respondents be held in contempt of court for having failed to comply with the certificate of Order against Government dated 7th July 2020 and the order of mandamus in JR. Misc Application No. EO55 of 2022 delivered on 3rd February 2022.

iii. That the 2nd and 3rd Respondents do show cause why they should not be committed to civil jail for such a period as shall be determined by this Honourable Court for failure to comply with the Certificate of Order against Government dated 7th July 2020 and the order of mandamus in JR. Misc. Application No. E055 of 2022 delivered on 3rd February 2022.

iv. Spent.

v. Spent.

vi. That the 2nd and 3rd Respondents pay the costs of this application.

2. It is the Applicant's case that by a ruling dated 31st January 2011 which was delivered in the High Court in Nairobi Civil Suit No. 67 of 2008, the court ordered the 1st Respondent to pay the plaintiffs Kshs. 2,000,000 as damages for the unlawful eviction, cost of the suit and interest on the awarded sum at court rates as set out in the Decree dated 20th February 2012.
3. On the 27th July 2019, the Chief Officer Finance Kiambu County Government was served with the demand letter dated 3rd July 2019, the Decree dated 12th February 2012 issued in Nairobi High Court Civil Suit No. 67 of 2008 and the Ruling dated 31st January 2011 as demonstrated in the copy of the Affidavit of Service sworn on 16th July 2019.
4. A certified, signed copy of the Certificate of Order against the County Government of Kiambu extracted on 27th July 2020 was also served upon the 1st Respondent on 28th July 2020.
5. The Applicant then filed Judicial Review Miscellaneous Application Case Number E055 of 2020 in the High court seeking orders of Mandamus to be issued compelling the 2nd and 3rd Respondents to honour the decree dated 31st January 2011. A Judgment was delivered on 3rd February 2022 in the applicant's favour on 3rd August 2023.

6. The 2nd and 3rd Respondents were served with the Certificate of Order Against Government dated 27th July 2020 and the Ruling in J.R Misc. Application No. E 055 2020 as demonstrated in the Affidavit of Service sworn on 20th August 2023.
7. The applicant in his submissions relies on the Black's Law Dictionary 9th Edition, which defines contempt as:

"The act or state of despising: the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature because such conduct interferes with the administration of justice."

8. The Applicant also relies in the case of **Samuel M. N. Mweru & Others vs National Land Commission & 2 others [2020] KEHC 9233 (KLR)** where the court observed as follows:

"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:-

- i. the terms of the order for injunction or undertaking) were clear and unambiguous and were binding on the defendant:*
- ii. the defendant had knowledge of or proper notice of the terms of the order:*
- iii. the defendant has acted in breach of the terms of the order: and*
- iv. the defendant's conduct was deliberate.*

9. On its part the Respondents does not dispute that the aforementioned decree and that a Certificate of Order Against the Government were served.
10. It is their case that the failure to settle the claim has not been deliberate or in disregard of the court orders. The delay in settling is due to budgetary constraints and the statutory financial procedures that govern county finances under the Public Finance Management Act, 2012 approvals, budgeting, and appropriation by the County Assembly, which are annual processes has not been done. This is beyond the immediate unilateral control of the Respondent.
11. They argue that the said decree had not been budgeted for in the financial year 2024/2025, and can only be budgeted for in the next financial year. Once the budget is approved and funds are made available, the judgment debt shall be settled according to the Respondents.
12. An order of mandamus compelling the County Government to pay immediately would amount to circumventing the legal financial procedures, particularly those entrenched under Articles 201 and 206 of the Constitution and the Public Finance Management Act, which require proper authorization and appropriations of public funds according to them.
13. It is their case that the Respondents are not unwilling to settle the judgment debt, and are committed to honoring lawful court orders subject to availability and approval of funds.

Analysis and determination;

The issue for determination is whether or not the application has merit.

14. **In South Bucks District Council vs. Flanagan [2002] EWCA Civ. 690 [2002] WLR 2601 at [18]** it was held that:

“Legitimate expectation involves notions of fairness and unless the person making the representation has actual or ostensible authority to speak on behalf of the public body, there is no reason why the recipient of the representation should be allowed to hold the public body to the terms of the representation. He might subjectively have acquired the expectation, but it would not be a legitimate one, that is to say it would not be one to which he was entitled.”

15. When the Applicant secured a judgement, extracted a Decree, a Certificate of Order and the time for lodging an appeal lapsed, then the Applicant had a legitimate expectation that the Respondent would settle the claim during its next budgetary cycle at the minimum. Such is the case before me. The applicant has a legitimate expectation that the respondents would settle his claim. The decree holder remains clinging on a decree that is yet to translate into funds. This has to come to an end.

16. **In Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex parte Fredrick Manoah Egunza [2012] eKLR** the court observed as follows:

“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. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act. The only requirement which serves as a condition precedent to the satisfaction or enforcement of decrees for money issued against the Government is found in Section 21(1) and (2) of the Government Proceedings Act (hereinafter referred to as the Act) which provides that payment will be based on a certificate of costs obtained by the successful litigant from the court issuing the decree which should be served on the Hon Attorney General. The certificate of order against the Government should be issued by the court after expiration of 21 days after entry of judgment. Once the certificate of order against the Government is served on

the Hon Attorney General, Section 21(3) imposes a statutory duty on the accounting officer concerned to pay the sums specified in the said order to the person entitled or to his advocate together with any interest lawfully accruing thereon. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.” [Emphasis mine].

Order;

- i. An order is hereby issued compelling the 2nd and 3rd Respondents to attend court on 25.6.26 to show cause why they should not be held in contempt for failure to comply with the Certificate of Order against government dated 7th July 2020 and the order of mandamus in JR. Misc. Application No. E055 of 2022 delivered on 3rd February 2023.
- ii. The prayer that the 2nd and 3rd Respondents be held in Contempt of Court for having failed to comply with the Certificate of Order Against Government dated 7th July 2020 and the order of mandamus in JR. Misc. Application No. E 055 of 2022 delivered on 3rd February 2023 will abide by the outcome of order 1 above.

Dated, Signed and Delivered Virtually in Eldoret this 21st April 2026.

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J. CHIGITI (SC)

JUDGE

ORIGINAL