

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI HIGH COURT**  
**JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW APPLICATION NO. E120 OF 2023**

**IN THE MATTER OF: AN APPLICATION BY HIGHPOINT AGENCIES LIMITED FOR JUDICIAL REVIEW ORDER OF MANDAMUS TO COMPEL THE PRINCIPAL SECRETARY MINISTRY OF WORKS AND URBAN DEVELOPMENT TO PAY HIGHPOINT AGENCIES LIMITED THE DECRETAL SUM AND CERTIFIED COSTS IN THE AGGREGATE SUM OF KSHS. 6,406.982.41/= AS EMBODIED IN THE DECREE AND CERTIFICATE OF ORDER DATED 1<sup>ST</sup> DECEMBER 2022, ISSUED IN HCCOMARD NO. E001 OF 2021.**

**IN THE MATTER OF: NAIROBI HCCOMARD NO. E001 OF 2021 BETWEEN HIGHPOINT AGENCIES LIMITED VS. THE PRINCIPAL SECRETARY MINISTRY OF WORKS AND URBAN DEVELOPMENT**

**AND**

**IN THE MATTER OF: SECTIONS 8 & 9 LAW REFORM ACT.**

**AND**

**IN THE MATTER OF: THE GOVERNMENT PROCEEDINGS ACT**

**AND**

**IN THE MATTER OF: ORDER 53 OF THE CIVIL PROCEDURE RULES**

**REPUBLIC ..... APPLICANT**

**-VERSUS-**

**PRINCIPAL SECRETARY MINISTRY OF PUBLIC WORKS AND URBAN DEVELOPMENT .....RESPONDENT**

**-AND-**

**HIGHPOINT AGENCIES LIMITED .....EXPARTE APPLICANT**

**RULING**

1. This Ruling determines the Notice of Motion Application dated 28<sup>th</sup> January 2026 filed pursuant to Section 5 of the Judicature Act and Order 51 Rules 1 of the Civil Procedure Rules 2010. The *ex-parte* Applicant seeks the following prayers: -

- (1) *THAT leave be granted to Highpoint Agencies Limited to commence contempt of court proceedings the Principal Secretary Ministry of Transport, Infrastructure, Public Works and Urban Development.*
- (2) *THAT summons do issue to the Principal Secretary Ministry of Transport, Infrastructure, Public Works and Urban Development to personally attend court and show cause why he/she should not be cited for and held in contempt of court for failing to comply with the Decree dated 31<sup>st</sup> October 2024, requiring him to pay Highpoint Agencies Limited the decretal sum and certified costs in the aggregate sum of Kshs. 6,406,982.41 embodied in the Decree and Certificate of Order dated 1<sup>st</sup> December 2022.*
- (3) *THAT upon failure to show sufficient cause, the Principal Secretary Ministry of Transport, Infrastructure, Public Works and Urban Development be and is hereby cited for and held in contempt of court and is hereby committed to civil jail for a period of six (6) months.*

2. The Application is supported by the affidavit of **RICHARD MATU MACHARIA**, a director of Highpoint Agencies Limited, sworn on even dates and is premised on the grounds on the face of it. It is averred that the *ex-parte* Applicant sued the Respondent in Arbitral proceedings and a final award dated 12<sup>th</sup> January 2021 was issued against the Respondent by a Court Order dated 29<sup>th</sup> June 2021, where the *ex-parte* Applicant was granted leave to enforce the Award as a judgment of the Court.
3. It is averred that a Certificate of Order against the Government dated 1<sup>st</sup> December 2022 was issued and served upon the Respondent and an Order of Mandamus dated 31<sup>st</sup> October 2024 was subsequently issued directing the Respondent to pay the decretal sum embodied in the Order. The *ex-*

*parte* Applicant avers that the Respondent has blatantly failed, refused and/or willfully declined to settle the decretal sum as ordered, calling for the filing of the present Application since the *ex-parte* Applicant is desirous of enjoying the fruits of their judgment.

4. It is the applicant's case that the Respondent is obliged by law to settle the decretal sum and that they are in breach of **Section 21 (3) of the Government Proceedings Act** and the Decree of the Court, contrary to the Applicant's legitimate expectation that the Respondent will abide by the outcome of a lawful judicial process. The *ex-parte* Applicant asserts that the Respondent's contumelious failure to pay the decretal sum amounts to an illegal deprivation of property contrary to **Article 40 (3) of the Constitution**.
5. The Respondent filed the Replying Affidavit of **Osiri Nyakundi**, the Senior Chief Finance Officer from the State Department for Public Works dated 9<sup>th</sup> March 2026, opposing the motion. He avers that the *ex-parte* Applicant had been contracted to undertake completion works for NYS Gilgil WP item **No. D123 RV/NKU/1601/JON NO. 0428G**, which project belonged to the National Youth Service (NYS) while the State Department for Public Works was merely a project manager and client for the said contract.
6. He avers that the State Department for Public Works had prepared payment vouchers for the stated decretal sum for NYS to pay the same and that they had on several occasions written to the client seeking monies to complete the said project. He states that they wrote to the Attorney General's Office on 30<sup>th</sup> May 2024 forwarding the claim by the *ex-parte* Applicant to the Pending Bills Committee for processing and the matter was also flagged by the Auditor General via letter dated 27<sup>th</sup> December 2024 Ref. **OAG/LHPR&T/SDOPW/SSF/2023/2024(23)** as an audit query on why they had not finalized the payment of the said bill,

7. Mr. Nyakundi deposes that they responded in their Management letter that they will strive to clear the pending bills and forwarded a list of the same to National Treasury for budgetary support, which included the present decree by the *ex-parte* Applicant. It is further deposed that the Pending Bills Verification Committee wrote to them on 24<sup>th</sup> July 2025 vide **PBCV/CL.1.VOL.1(95)** upon a request by the *ex-parte* Applicant for settlement of the decretal sums and they equally gave their response on 18<sup>th</sup> August 2025 vide letter reference **PW/A/100/37** dated 18<sup>th</sup> August 2025 to which they now awaited a response.
8. It is reaffirmed by Mr. Nyakundi in his affidavit that the State Department for Public Works is keen on settling the said decree and court award as they have raised the issue with the Auditor General severally and he has further denied that the Respondent has refused or neglected to pay the monies owing to the *ex-parte* Applicant.
9. When the parties appeared before this Court on 29<sup>th</sup> January 2026, they took directions to canvass the Application by way of oral submissions. Subsequently, on 10<sup>th</sup> March 2026, Mr. Munjira Counsel for the Applicant submitted that their Application dated 28/1/2026 sought leave of court to institute contempt proceedings and summons to issue against the Permanent Secretary to show cause why he should not be punished for disobeying the order of mandamus to settle decree. He informed the Court that Mandamus was issued on 31<sup>st</sup> October 2024 and served on the Permanent Secretary & Attorney General together with letters requesting settlement but there has been no response from the Respondents. It is his submission that they are disadvantaged by the Respondent's inaction and do not have any other remedy against the Respondent, hence were deserving of the orders sought.
10. On their part, Mr. Kariuki, Counsel for the Respondent submitted that Ministry has forwarded a list of pending bills seeking budgetary allocation

from the National Treasury and the funds are yet to be received for onward transmission to the Decree holder. He stated that the delay is regretted and is not willful, affirming that the funds are obtained from the tax payer's money and reiterating that they have not refused to pay. He submitted that the Arbitration award was recognized/adopted on 29<sup>th</sup> June 2021 as aptly explained in their affidavit dated 9<sup>th</sup> March 2026.

### **Analysis and Determination**

11. From the foregoing, the issue for my determination is ***whether the Application is merited and whether the prayers sought ought to be granted.***
12. The law on contempt of court is predicated on **Section 5(1) of the Judicature Act** which 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. I have considered the grounds of the Application together with the parties' averments in their respective supporting and replying affidavits. I find it necessary to consider each prayer separately as set out in the Notice of Motion.
14. The *ex-parte* Applicant seeks leave of this court to commence contempt of court proceedings. The law on contempt in Kenya is governed by section 5 of the Judicature Act as reproduced above and the English law applicable in England at the time the alleged contempt is committed. In this regard, I have considered whether it is necessary for such a party to seek leave to commence contempt of court proceedings where there is non-settlement of a judgment debt or a decree. The case of **Akoyo vs. Permanent Secretary, State Department for Devolution; Attorney General (Interested Party)**

**(Application 440 of 2018)[2023] KEHC 23189 (KLR) (Judicial Review) (6 October 2023) (Ruling)** is relevant where Hon. Ngaah J. stated thus:

*“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. Similarly, in **Katsuri Limited v Kapurchand Depar Shah [2016] KEHC 6447 (KLR)** Mativo J. cited the Court of Appeal’s decision in **Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & Others, Civil Case No. 456 of 2011** in explaining the question of whether leave was necessary, and stated that:

*“In the above cited case of Christine Wangari Gachege the Court of Appeal correctly pointed out that leave, now called "permission" is not required where committal proceedings relate to a breach of a judgement, order, or undertaking. However, leave is still a requirement for applications under Rules 81.12 & 81.17 cited above.*

***After evaluating the above Rules, the Court of Appeal in the above cited case concluded that:***

***"we find that on the basis of the new Civil Procedure Rules (of England) contained in the Second Supplement to the 2012 White Book, no leave is required before bringing an application, like the one before us, for committal for contempt relating to breach of this court's order..."***

***On that basis, I find that it was not necessary for the applicant to seek leave before filing this application, hence this application is properly before the court."***

16. From the above persuasive judicial pronouncements, I find and hold that the first prayer in the Notice of Motion Application seeking leave to file contempt proceedings is unnecessary and superfluous. I therefore decline to grant the same.
17. On the second prayer, the *ex-parte* Applicant seeks summons to issue to the Principal Secretary Ministry of Transport, Infrastructure, Public Works and Urban Development to personally attend court and show cause why he/she should not be cited for and held in contempt of court for failing to comply with the Decree dated 31<sup>st</sup> October 2024, requiring him to pay Highpoint Agencies Limited the decretal sum and certified costs in the aggregate sum of Kshs. 6,406,982.41 embodied in the Decree and Certificate of Order dated 1st December 2022.
18. It is not controverted or disputed that there exists an award made by the Court on 29<sup>th</sup> June 2021 and a Certificate of Order Against the Government in compliance with section 21 of the Government Proceedings Act dated 1<sup>st</sup> December 2022, for which the Respondent was compelled to pay and settle the above decretal sum for Kshs. 6,406,982.41/= in favour of the *ex-parte*

Applicant on 31<sup>st</sup> October 2024. I note that this judgment has not been appealed against and therefore, it remains in force awaiting satisfaction of the judgment debt.

19. However, it is a settled principle of law that parties are bound by their pleadings, and a court of law cannot grant reliefs which have not been specifically sought. This position is particularly significant in contempt proceedings, which are quasi-criminal in nature and therefore demand strict adherence to procedural propriety.

20. In the present case, the applicant has moved this court seeking the issuance of a notice to show cause. Notably, the applicant has not sought an order to have the respondent cited for contempt of court. A notice to show cause is not an end in itself, but rather a consequential step that ordinarily follows a finding, or at least a properly instituted application and prayer for citing an alleged contemnor for contempt of court.

21. By seeking a notice to show cause in the absence of a substantive prayer for a finding of contempt, the applicant has effectively invited this Court to take a premature procedural step. This, the court cannot do. To grant such an order would amount to the court descending into the arena of litigation and framing a case for the parties, which is impermissible.

22. Accordingly, I decline to issue the notice to show cause as prayed, the same having been sought prematurely and without a foundational prayer for contempt.
23. The same fate falls on the applicants' third prayer for committal of the Respondent to civil jail. This court having made the finding in the second prayer that there is no prayer seeking to cite the alleged contemnor for contempt of court, I find that it is premature to commit the Respondent to civil jail before requiring proof of contempt, a finding of guilt and an opportunity for a convicted contemnor to mitigate or purge the contempt if convicted. I therefore decline to grant the prayer for committal to civil jail as it is prematurely sought against the alleged contemnor.
24. In the final analysis, I find all the prayers sought by the applicant against the alleged contemnor to be premature and incompetent. The application dated 28<sup>th</sup> January, 2026 is hereby struck out. The applicant is at liberty to make a proper application for consideration on merit.
25. I make no orders for costs.
26. Mention before the Deputy Registrar on 1<sup>st</sup> May 2026 to confirm the status of settlement.
27. I so order.

**Dated, Signed and Delivered virtually at Nairobi this 15<sup>th</sup> Day of April, 2026**

**R.E. ABURILI  
JUDGE**