



**Republic v County Government of Nairobi & 2 others; Chogo & another (Ex parte Applicants) (Judicial Review Miscellaneous Application 219 of 2024) [2026] KEHC 5280 (KLR) (Judicial Review) (22 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5280 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 219 OF 2024**

**RE ABURILI, J**

**APRIL 22, 2026**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF MANDAMUS UNDER ORDER 53 OF THE CIVIL PROCEDURE RULES AND SECTIONS 8 AND 9 OF THE LAW REFORM ACT, CAP 26 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTION 21 OF THE GOVERNMENT PROCEEDINGS ACT, CAP 40 LAWS OF KENYA**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY GOVERNMENT OF NAIROBI ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE & ECONOMIC PLANNING ..... 2<sup>ND</sup> RESPONDENT**

**THE CHIEF OFFICER, FINANCE, COUNTY GOVERNMENT OF NAIROBI ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**JOSEPH ONYONO CHOGO ..... EX PARTE APPLICANT**

**FRIDAH ACHUTI ..... EX PARTE APPLICANT**



## RULING

1. This Ruling determines the Notice of Motion dated 14<sup>th</sup> January 2024 brought under Section 5 (1) of the *Judicature Act*, Cap 8 Laws of Kenya and seeks the following Orders:
  1. That the County Executive Member Finance and Economic Planning – County Government of Nairobi and the Chief Officer Finance, Nairobi County be cited for contempt of this Honourable Court Decree/Order made on 30<sup>th</sup> June 2025.
  2. That the County Executive Member Finance & Economic Planning- County Government of Nairobi and the Chief Officer Finance- Nairobi County be committed to civil jail and detained in person for a term of six (6) months of such period as this Honourable Court will deem fit or all be fined and imprisoned for contempt of this Honourable Court Decree/Order made on 30<sup>th</sup> June 2025.
  3. That costs of this Application be provided for.
2. The Application is predicated on the grounds on the face thereof and is further supported by the Affidavit of Fridah Achuti & Joseph Onyono the ex-parte Applicants herein sworn jointly on the even date in which they reiterate the grounds in support of the Application and they depose that the Respondents have disobeyed and refused to comply with a lawful mandamus Decree and lawful Orders of this Court.
3. It is the ex-parte Applicants' case that on 2<sup>nd</sup> November 2022, judgment was entered in their favour in CMCC No. E086 of 2022 Fridah Achuti & Joseph Onyono Chogo vs. Mama Lucy Kibaki Hospital, County Government of Nairobi and 2 Others against the Defendants jointly and severally for the sum of Kshs. 5,043,300/= comprising of Kshs. 5,000,000/= in General Damages and Kshs. 43,300/= in Special Damages plus costs and interest. That party and party costs were assessed at Kshs. 308,182.50/=.
4. It is averred that on 25<sup>th</sup> April 2024, the ex-parte Applicants extracted the Certificate of Order against the Government and on 3<sup>rd</sup> May 2024, the Respondents were duly served with a copy of the Judgment Decree and Certificate of stated Costs and Certificate of Order against the Government.
5. That despite being duly served and requests for payment being made, the Respondents have refused to release the sums owed to the ex-parte Applicants and that the applicants had no other alternative but to file an application seeking Mandamus compelling the Respondents to settle the Decretal sum.
6. It is stated that on 30<sup>th</sup> June 2025, this Court allowed the said Mandamus Motion compelling the Respondents to settle the decretal sums, which decision was duly served upon the Respondents on 4<sup>th</sup> July 2025.
7. The ex-parte Applicants depose that Section 103 of the *Public Finance Management Act* No. 18 of 2012 establish the County Treasury comprising the County Executive Committee Member of Finance, the Chief Officer Finance and the departments of the County Treasury responsible for finance and fiscal matters. Further, that the Act provides that the 2<sup>nd</sup> Respondent is the head of Treasury and is therefore the 1<sup>st</sup> Respondent's accounting officer



together with the 3<sup>rd</sup> Respondent and that as such, they are jointly responsible for the satisfaction of Court Orders and Decree owed by the 1<sup>st</sup> Respondent.

8. The applicants further depose that every citizen regardless of their status must obey the law and comply with court orders for the maintenance of the rule of law and good order in the administration of justice. That no other remedy is available to the ex-parte Applicants to enforce the court's orders.

## Response

9. In response to the Application, the Respondents filed a Replying Affidavit dated 29<sup>th</sup> January 2026 sworn by Asha Abdi in her capacity as the Chief Officer Finance, Nairobi City County Government opposing the Application for several reasons. She deposes that Article 207 (2) and (3) of *the Constitution* provides for the manner in which revenue accounts of the County Government shall be operated and that they prepare budget documents every financial year beginning 1<sup>st</sup> July of the present year to 20<sup>th</sup> June of the coming year.
10. She further deposes that the County is funded through allocation of funds by the County Assembly and that the County Government cannot commit funds unless budgeted for and approved by the Nairobi City County Assembly. It is averred that the County Government can only determine how much decretal sums it can pay based on the allocation made for each financial year and that as a public institution, they worked on strict budgetary allocation as guided by Sections 125, 129 and 131 of the *Public Finance Management Act, 2012*.
11. The 3<sup>rd</sup> Respondent deposes that the ex-parte Applicants' claim shall be factored in the current financial year's budget and confirmed that the Respondents were ready and desirous to settle the decretal sum once it was allocated for and approved by the County Assembly. She denies that the Respondents have consented to commit contempt of court as they believe in the rule of law and urged the Court to take judicial notice of the fact that the decision to pay involves various stakeholders, and it would only be in the interests of justice that the Court allows for budgeting allocation and approval of the amounts in the decree through the procedures stipulated in the County Government Act.
12. Finally, the 3<sup>rd</sup> respondent asserts that the ex-parte Applicants have not satisfied the requirements of execution as per the *Public Finance Management Act* and *Government Proceedings Act* and that therefore, the application for contempt of court is an abuse of the Court process and granting it would be prejudicial to the City County Government of Nairobi.
13. On 29<sup>th</sup> January 2026, this Court gave directions to the parties to canvass the Application orally and on 18<sup>th</sup> March 2026, the application was heard and reserved for today's ruling.

## Submissions

14. Mr. Gomba, Counsel for the ex-parte Applicants submitted that there were four elements to be proved in establishing contempt and that in the present case, the Respondents had acknowledged their indebtedness, that the Order was clear and was served upon them. Counsel submitted that the Respondents claimed that they would factor the debt in the next financial year's budget yet there was no evidence of payment vouchers.
15. Counsel contended that the Respondents were employing delaying tactics and relied on Section 103 of the *Public Finance Management Act* stating that the 2<sup>nd</sup> Respondent is the head of Treasury. It is their position that the Respondents' excuses for non-payment were unacceptable and that the matter was a prolonged issue deserving of the Orders sought.



16. Ms. Kemunto Counsel for the Respondents submitted that they were willing to settle the decree once the funds were available and informed the Court that the Respondents awaited a supplementary Budget once it was passed by the County Assembly.
17. In rebuttal, Mr. Gomba submitted that there is no indication of the promises being fulfilled and that the Respondents had maintained the same narrative throughout the entire period of non-payment. He submitted that the Respondents ought to prove that they do not have any funds and reiterated that no sufficient reasons were adduced for non-compliance with the Court order.

### **Analysis and Determination**

18. I have considered the Application and the arguments in support and in opposition together with the oral submissions by counsel for the respective parties. The only issue for my determination is whether the Orders sought ought to be granted.
19. The applicants seek orders to cite the respondents to be in contempt of court decree of mandamus made on 30<sup>th</sup> June 2025 which compelled them to settle the decree of this Court arising from the primary decree and certificate of order against the government in Milimani CMCC No. E086 of 2022 Fridah Achuti & Joseph Onyono Chogo vs. Mama Lucy Kibaki Hospital, County Government of Nairobi and 2 Others.
20. Section 5 (1) of the *Judicature Act* which makes provision for contempt of court 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 that power shall extend to upholding the authority and dignity of subordinate courts.
21. Contempt is also defined by Black's Law Dictionary (9<sup>th</sup> Edition) 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.”
22. In *Stewart Robertson vs Her Majesty's Advocate*, 2007 HCAC63 (Scotland), Lord Justice Clerk aptly expressed himself on what constitutes contempt as follows: -
 

“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.”
23. The elements of contempt of court are now well-established. In *Johari School Limited vs. Rosemary Wamburu t/a Johari School* [2021] eKLR the elements of contempt of court were stated to be:
  - a. the existence of a valid court order whose terms are clear, unambiguous and binding on the Respondent,
  - b. proof that the Respondent had knowledge or proper notice of the terms of the order,
  - c. proof that the Respondent acted in breach of the terms of the order and
  - d. that the conduct of the Respondent was deliberate or wilful.”



24. This Court in *Republic vs. Registrar of Societies & 7 others; Lafa & another (Interested Parties)* (Judicial Review Application E131 of 2024) [2026] KEHC 4031 (KLR) (Judicial Review) (25 March 2026) (Ruling) also elucidated the elements of contempt at paragraph 54 as follows: -

54. ... An applicant must demonstrate the existence of a clear and unambiguous court order, knowledge of that order by the alleged contemnor and, most critically, wilful and deliberate disobedience of the court order....”

See also *Mativo J. (as he then was) in Katsuri Limited vs. Kapurchand Devar Shah* [2016] KEHC 6447 (KLR)

25. In the instant case, there is no dispute as to whether there exists a judgement in favour of the ex-parte Applicants for the settlement of a decretal sum of Kshs. 5,043,300/= arising from CMCC No. E086 of 2022 and that from the said Judgment, a Certificate of Order Against the Government dated 25<sup>th</sup> April 2024 was obtained, issued and served upon the Respondents in compliance with Section 21 of the *Government Proceedings Act*.
26. Further, it is not in doubt that Mandamus Judgment exists from this Court dated 30<sup>th</sup> June 2025 together with costs assessed at Kshs. 50,000/= in which the Respondents were compelled to settle the decretal sums. This judgment has not been appealed against and therefore satisfaction of the said decrees remains in force. It is safe to conclude therefore that both the existence of these court orders and the knowledge of the same to the Respondents are elements that have been proved beyond doubt.
27. Turning to the reasons advanced by the Respondents for the non-settlement of the said decretal sums, it is their contention that the said amounts have to be allocated for in the budget and then approved and passed by the County Assembly. The Respondents also state that they are desirous to settle the same and that the claim shall be factored in the current financial year’s budget. They urge this Court to take judicial notice of the fact that the decision to pay involves various stakeholders.
28. The big question here is whether there is wilful/blatant refusal to settle the decree for mandamus which would be tantamount to contempt. I have considered the reasons advanced by the 3<sup>rd</sup> Respondent for non-compliance. While this Court appreciates that payment processes in the Counties entail various approvals from stakeholder departments, that alone should not be reason not to pay. It is not lost to this Court that the primary decree was not issued yesterday. The applicants were compelled to come to this court and incur more costs because the respondents refused to settle the primary decree. Had the respondents budgeted for the decretal amount from the time the decree and certificate of order against the government were issued in the primary decree, they would, by now, have cleared the outstanding sum.
29. I further note that the Mandamus Decree was issued on 30<sup>th</sup> June 2025 which was at the end of the previous financial year. It is expected that such a debt would have been enlisted amongst other claims for settlement in the current financial year at the point of budgeting and in the event that the item which became a pending bill was rejected by the County Assembly, evidence of such budgeting and rejection would be availed to this Court.
30. There is no evidence that this decree was budgeted for but rejected by the County Assembly.
31. The assertion by the 3<sup>rd</sup> Respondent that the Court should take judicial notice of the approvals and payment processes does not hold any water because there has been ample time since the Certificate of Order Against the Government was issued in 2024. There is no other plausible reason advanced to explain the non-satisfaction of the decree. At the same time, no material such as payment vouchers or



Order papers for approval before the County Assembly have been filed as evidence of the Respondents' deliberate steps to settling the decree.

32. In view of the foregoing, I find that there is blatant refusal to pay or reluctance to pay. I reiterate the sanctity of court orders which unless challenged, cannot be wished away or ignored or openly disregarded. I also emphasise that the ex-parte Applicants should not be unduly denied or precluded from enjoying the fruits of their judgment any further. A decree of the court has in it proprietary rights accruing to the decree holder, and refusal to pay denies a decree holder their right to the use of their property as guaranteed under Article 40 of *the Constitution*.
33. Section 21 (3) of the *Government Proceedings Act* stipulates 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:
- Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.
34. In this case, the Chief Officer Finance is the accounting officer and is under a legal obligation to settle the decretal sum. Consequently, I find that the ex-parte Applicants have established a case for finding the 3<sup>rd</sup> Respondent in contempt of Court. I find the 3<sup>rd</sup> respondent to be in contempt of court orders for settlement of decree for mandamus issued by this Court on 30<sup>th</sup> June 2025, and convict her as such. Accordingly, prayer (1) of the Application is found to be merited only to the extent that the Chief Officer, Finance and Economic Planning and not the County Executive Committee Member Finance and Economic Planning is found to be statutorily bound to settle decree, and is hereby allowed.
35. I however decline to grant prayer 2 of the Application as the same entails punishment for contempt. It is premature. It is trite that every person deserves the right to be heard and even if they are found guilty, they must be accorded the opportunity to mitigate or purge their contempt of court orders before being punished. It is the mitigation that would determine the mode of punishment to be meted out by the court, having regard to the circumstances of each case.
36. I however order that this judgment shall not be executed for reasons that when the parties appeared for judgment delivery, they informed the court that the decretal sum had been settled today.
37. Accordingly, this file is closed.
38. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22<sup>ND</sup> DAY OF APRIL, 2026**

**R.E. ABURILI**

**JUDGE**

