

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW MISCELLANEOUS APPLICATION NO. 390 OF**  
**2014**

**REPUBLIC..... APPLICANT**  
**VERSUS**  
**COUNTY GOVERNMENT OF KAJIADO .....1<sup>ST</sup> RESPONDENT**  
**CHIEF OFFICER - TREASURY**  
**FORMERLY FINANCE & ECONOMIC PLANNING -**  
**KAJIADO COUNTY.....2<sup>ND</sup> RESPONDENT**  
**COUNTY EXECUTIVE COMMITTEE MEMBER -**  
**TREASURY FORMERLY FINANCE & ECONOMIC PLANNING -**  
**KAJIADO COUNTY.....3<sup>RD</sup> RESPONDENT**  
**EX PARTE: KILIMANJARO SAFARI CLUB LIMITED**

**RULING**

1. These proceedings commenced in 2014. I have just taken over, from my predecessors. The background is that a final arbitral award was made, in favour of the *ex parte* applicant, on 5<sup>th</sup> November 2009, by an arbitrator, and costs were assessed on 21<sup>st</sup> January 2011. The final award, together with the assessed costs, was made an order of the court, on 13<sup>th</sup> December 2011. These judicial review proceedings were thereafter initiated, culminating in the judicial review order of *mandamus*, of 30<sup>th</sup> May 2016, compelling settlement of the arbitral award and the costs, by the Chief Officer for Finance and Economic Planning, Mr. Kaaka and Mr. Mapena, the responsible County Executive Officer.

2. The *mandamus* order was served on the respondents. At the time of service, the County Executive Officer for Finance and Economic Planning was Mr. Mapena. He exited office after the 2017 general elections, and was replaced by Mr. Semera, who was served afresh with the relevant court process. Even after that, there was no compliance, and contempt proceedings were initiated, vide an application dated, 14<sup>th</sup> December 2018. Proceedings were conducted on that application, which culminated in the orders made on 10<sup>th</sup> July 2019, where the 2<sup>nd</sup> respondent, Mr. Kaaka, the Chief Officer at the time, responsible for Finance and Economic Planning, was convicted for contempt of court. The sentencing exercise, which should have followed the conviction, was suspended for 1 year, from the date of the ruling, to enable him purge the contempt.
3. The matter then came up for directions, on 28<sup>th</sup> September 2020, for the court to receive proof that the contempt had been purged. It transpired that it had not, hence the matter was fixed for mention on 16<sup>th</sup> November 2020, to get a date for the sentencing of the 2<sup>nd</sup> respondent, but still leaving room for him to purge the contempt. When the matter was mentioned next, on 8<sup>th</sup> June 2021, it transpired that the parties had been negotiating, and it was alleged that they had reached a settlement on payment, and, so, the matter was put off for a further mention. The effect was that a date for sentencing had not been fixed. Nothing came out of those alleged negotiations, and on 21<sup>st</sup> June 2023, the matter was fixed for sentencing, on 11<sup>th</sup> July 2023. On 11<sup>th</sup> July 2023, it was indicated that Mr. Semera was no longer holding the position for which he was to

be sentenced, and the matter was put off again. It was mentioned several times thereafter.

4. Eventually, an application was filed, dated 22<sup>nd</sup> July 2024, where several issues were argued, including on whether the sentencing was to be stayed, and whether the *ex parte* applicant could be involved in the budgeting process at the 1<sup>st</sup> respondent. It was ruled, on 27<sup>th</sup> May 2025, that the *ex parte* applicant could not be involved in the budgeting process of the 1<sup>st</sup> respondent. It was further ruled that the court could not insist on sentencing a person who had ceased to be an officer of the 1<sup>st</sup> respondent. The ball was thrown back to the *ex parte* applicant, to establish who the current accounting officer would be, so that the orders could be enforced against him or her, for the court could not demand the sentencing of a person who was no longer in office.
5. Another application was mounted, dated 20<sup>th</sup> November 2025, seeking to have the County Secretary, the County Executive Committee Member Finance and Economic Planning and the County Attorney cited for contempt of court, and to be sentenced to jail, or to pay fines. There was also a prayer that the said officers be summoned to show cause. It was ordered, in the ruling delivered on 9<sup>th</sup> March 2026, that the respondents be issued with a notice to show cause, slated for 20<sup>th</sup> April 2026, when mitigation was to be taken from them, followed by sentencing.
6. It transpired, that by 20<sup>th</sup> April 2026, that the Judge who was seized of the matter had been transferred from the Judicial

Review Division, Milimani, Nairobi, and I had been transferred into it, and the matter fell into my hands.

7. Before the appointed date, of 20<sup>th</sup> April 2026, a Motion was filed, by the respondents, dated 15<sup>th</sup> April 2026, seeking stay of the orders of 9<sup>th</sup> March 2026, which required mitigation and sentencing on 20<sup>th</sup> April 2026. The argument was that the persons required to mitigate and to be sentenced, that is to say the County Secretary, the County Executive Committee Member Finance and Economic Planning and the County Attorney were not the designated accounting officers, who would bear responsibility for settlement of the decree. When that application was placed before me, I directed that the same be served, for hearing on 20<sup>th</sup> April 2026, when the notice to show cause was coming up. Come 20<sup>th</sup> April 2026, the parties urged the matter, and I reserved ruling for 8<sup>th</sup> May 2026, giving me time to peruse the entire record.

8. I have read the entire record, and I am now clear in my mind on the issues at hand. I am called upon to oversee the execution or implementation of the orders that were made on 9<sup>th</sup> March 2026. I am not too sure that I understand the purport of the final orders. The application, the subject of that ruling, was directed at the County Secretary, the County Executive Committee Member Finance and Economic Planning and the County Attorney, but the ruling is not clear, on whether the persons to appear, for the notice to show cause, were the County Secretary, the County Executive Committee Member Finance and Economic Planning and the County Attorney. I say so because the said ruling makes orders requiring the

respondent contemnors to attend court for mitigation, and references the orders made on 10<sup>th</sup> July 2019, when there was a conviction for contempt of court, and when the sentencing process was suspended for 1 year.

9. The challenge is that the County Secretary, the County Executive Committee Member Finance and Economic Planning and the County Attorney were not the ones who were convicted on 10<sup>th</sup> July 2019, and whose sentencing was suspended to allow for purging of the contempt. The County Secretary, the County Executive Committee Member Finance and Economic Planning and the County Attorney have never been convicted, in these proceedings, for contempt of court, and the issue of their being punished, before they have been convicted, cannot possibly arise.

10. Secondly, the persons, who were convicted for contempt of court, on 10<sup>th</sup> July 2019, Mr. Kaaka and Mr. Semera, and who should be the ones facing sentencing, and, therefore, the ones who ought to be mitigating, have since ceased to be officers of the 1<sup>st</sup> respondent. This court has excused them from sentencing, in the ruling of 27<sup>th</sup> May 2025, when it was declared that it would be “*superfluous*,” to insist on punishing, for contempt of court, persons who were no longer officers of the 1<sup>st</sup> respondent. The court cannot now go back on the ruling of 27<sup>th</sup> May 2025, and go after Mr. Kaaka and Mr. Semera, after letting them off the hook.

11. Thirdly, the statutory duty to pay moneys decreed by the court, to decree-holders, lies with the accounting officers,

whether in the National or County Government. That duty to pay does not lie with any other officer of the Government, however senior in the establishment or hierarchy. When a *mandamus* order issues, in those circumstances, it would be directed at the accounting officer. That would be the duty-bearer, and the person responsible for compliance, and, in default, that would be the person to target for punishment or sanctioning. The legal basis for this is Article 226(1)(b) of the Constitution of Kenya and section 21 of the Government Proceedings Act, Cap. 40, Laws of Kenya. It has not been demonstrated that the County Secretary, the County Executive Committee Member Finance and Economic Planning and the County Attorney have been designated as accounting officers, for proceedings to be taken against them, in enforcement of the decree herein.

12. Article 226(1)(b) mandates that an accounting officer be designated in every public entity, at both the National and County levels of Government. In its own words, it says:

*“An Act of Parliament shall provide for –*

*(a) ...*

*(b) For designation of an accounting officer in every public entity at the national and county level of government.”*

13. Section 21 provides the mechanism for satisfying court orders against the Government, which process requires a decree-holder to serve a certificate of order against the Government, on the relevant accounting officer, who is then

obligated to settle the payment. In its own words it states, at the most relevant portion, being section 21(1)(3):

*“(1) Where in any civil proceedings by or against the Government, or in proceedings in connexion with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall ... issue to that person a certificate in the prescribed form containing particulars of the order ...”*

*(2) ...*

*(3) If an order provides for 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 ... 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.”*

14. In *Kangara t/a Pinkstone Enterprises vs. Accounting Officer Nairobi City County* [2026] KEHC 2791 (KLR) (Aburili, J), the court described how enforcement of decrees against the Government works in practice. The first step is to obtain a formal certificate of order against the Government, stating the amount due. The second step is to serve the said certificate on the accounting officer of the relevant Government entity, demanding payment, for that would be the officer responsible for payments within Government entities. The third step, should payment not be made as per the certificate, is to apply

to the court for a *mandamus* order. The fourth step follows upon failure to settle the decretal amount, after the *mandamus* order is obtained, which should also be served on the accounting officer, which is to apply for the said accounting officer to be cited for contempt of court. The accounting officer ought to be served with the certificate of order against the Government and the *mandamus* order, before steps are taken to have a citation for contempt of court.

15. Fourthly, with outmost respect to what my predecessors have said on the subject, I do not believe that it should be the duty of the *ex parte* applicant, to establish who the accounting officer is, at any given time. The accounting officer holds a position within the Government. The Government, for the purposes of these proceedings, is the 1<sup>st</sup> respondent. It is its officers who would be best placed to know the officer who has been designated as the accounting officer, responsible for such things as the settlement of the decree herein. Those officers ought to disclose, to the court, the name of the accounting officer designated and responsible, without expecting the *ex parte* applicant to go out of its way to do so, so that that accounting officer can be called upon, by the court, to account, for the failure to comply with valid court orders.

16. Section 148 of the Public Finance Management Act, Cap. 412A, Laws of Kenya, empowers the County Executive Committee Member in charge of finance to appoint accounting officers for the sectors and departments within the County Executive. Therefore, the designation of accounting officers, for the various sectors and departments within the

County Government, would be information readily available internally, within the County Government, but not so easily accessible to an outsider, such as the *ex parte* applicant.

17. Section 148 states as follows:

*“148. Designation of accounting officers for county government entities by the County Executive Committee Member for finance*

*(1) A County Executive Committee member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation.*

*(2) Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity.*

*(3) A County Executive Committee member for finance shall ensure that each county government entity has an accounting officer in accordance with Article 226 of the Constitution.”*

18. The principal officer, with respect to matters legal and judicial, within the County Government, should or ought to be the County Attorney, who is an officer of this court. The 1<sup>st</sup> respondent is not a private entity, but a public organ of the State, established under the Constitution of Kenya, and accountable to the people and residents of Kenya. It exists for the purpose of serving the public, and it owes a duty to the public. The information, as to who the relevant accounting

officer is, at any given time, is not private property or private information, in respect of which the County Attorney cannot be compelled to disclose to the court.

19. Fifthly, once accounting officers exit employment of the Government, the relevant court process ought to be served afresh on their successors, to bring the existence of the court decree to their attention, and to place them in a situation where they can be called upon to settle it, and so that they can be called upon to account, upon default, inclusive of being cited for contempt of court, and sanctioned for it. Upon those documents being served or furnished upon the accounting officer, the statutory duty to pay would be incurred. They can only be called upon to account, where the relevant court orders have been brought to their attention, by means that can be exhibited before the court, as proof of service.

20. As it is, without the name of the current or serving relevant accounting officer, who has been served with the relevant court papers, there would be no legal or statutory basis for calling upon anyone to show cause, for what would he be showing cause for, and which orders would he be in contempt of, if he was never served with the relevant papers in the first place. The show cause proceedings, and the mitigation and sentencing, imagined in the ruling of 9<sup>th</sup> March 2026, are, accordingly, premature. The *ex parte* applicant has to go back to the drawing board, and the court had said as much, in its ruling of 27<sup>th</sup> May 2025. That, going back to the drawing board, is about pursuing the accounting officer responsible, and not just any other officer of the 1<sup>st</sup> respondent.

21. To move the matter forward, I hereby direct the County Attorney of the 1<sup>st</sup> respondent, or the person in charge of the legal department of the 1<sup>st</sup> respondent, to file an affidavit herein, in the next 14 days, disclosing the name of the designated accounting officer, within the 1<sup>st</sup> respondent, responsible for settlement of court decrees. Upon that affidavit being filed, making those disclosures, the *ex parte* applicant shall move in the manner indicated above.
22. Let the matter be mentioned, on 3<sup>rd</sup> June 2026, for compliance and further orders. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT  
MILIMANI, NAIROBI, ON THIS 11<sup>TH</sup> DAY OF MAY 2026.**

**W MUSYOKA  
JUDGE**

**Mr. Abdirahman, Court Assistant.**

**Appearances**

**Mr. Wakhisi, instructed by Mohammed Muigai LLP, Advocates for the *ex parte* applicant.**

**Mr. Miller, instructed by Miller & Company, Advocates for the respondents.**

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