



Republic v Clerk, County Assembly of Mombasa & 3 others; Khalid (Exparte Applicant) (Judicial Review Application E003 of 2023) [2025] KEELRC 323 (KLR) (6 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 323 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
JUDICIAL REVIEW APPLICATION E003 OF 2023**

M MBARŪ, J

FEBRUARY 6, 2025

BETWEEN

REPUBLIC APPLICANT

AND

CLERK, COUNTY ASSEMBLY OF MOMBASA 1ST RESPONDENT

**CHIEF OFFICER, FINANCE, COUNTY GOVERNMENT OF
MOMBASA 2ND RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF MOMBASA 3RD
RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE, COUNTY
GOVERNMENT OF MOMBASA 4TH RESPONDENT**

AND

WALID KHALID EXPARTE APPLICANT

RULING

1. The ex parte applicant filed an application dated 8 November 2024 under the provisions of Section 5(1) of the *Judicature Act*, Section 103(3) and 148(4) of the *Public Finance Management Act*, Section 63(c) and (e) of the *Civil Procedure Act*, Rule 47 of the Employment and Labour Relations Court (Procedure) Rules and seeking orders;

1. Spent

2. The clerk of the County Assembly of Mombasa and the County Executive Committee Member – Finance of the County Government of Mombasa, have disobeyed and are in



contempt of the orders of this court dated 14 March 2024, directing the payment of the sum of Ksh.13, 404,913.33 to the ex parte applicant.

3. The Clerk of the County Assembly of Mombasa and the County Executive Committee Member – Finance of the County Government of Mombasa be committed to civil jail, for a term not exceeding six months, for contempt of court orders dated 14 March 2024.
4. The respondents are to bear the costs of this application.
2. The application is supported by the ex parte application through his Supporting Affidavit and aver that he obtained a decree in Mombasa ELRC Petition No.342 of 2024 against the respondents from which a Certificate of Order against the Government dated 22 September 2023 for the sum of Ksh.12, 800,000 was issued. A further Certificate of Order for costs against the government dated 18 September 2023 for Ksh.604, 913.33 was issued.
3. Despite serving the respondents, they have failed to satisfy the Certificate of Orders against the government. The ex parte application commenced Judicial Review proceedings seeking orders of mandamus to compel the respondents to settle the Certificates of Order against the Government dated 18 and 22 September 2023. The court delivered a ruling on 14 March 2024 compelling the respondents to settle the Certificate of Order against the government within 21 days from 14 March 2024. Despite service, the respondent has refused and neglected to settle the decretal sum of Ksh.13, 404,913.33 as directed by the court and they are in contempt of court orders.
4. The refusal by the respondents to settle the sum of Ksh.13,404,913.33 as ordered by the court undermines the rule of law and the authority of the court hence exposing the court to ridicule.
5. The ex parte applicant aver in his affidavit that the 1st respondent, Clerk of the County Assembly of Mombasa under Section 148(4) of the [Public Finance Management Act](#) is designated as the Accounting Officer of the County Assembly. The 4th respondent, /county Executive Committee Member – Finance of the County Government of Mombasa under Section 103(3) of the [Public Finance Management Act](#) is designated as the head of the county Treasury and responsible for finance and fiscal matters of the County.
6. Both respondents are responsible for the satisfaction of the court orders and decrees on payment of money owed by the County Assembly of Mombasa and the County Government of Mombasa respectively. Despite being aware of the court orders dated 14 March 2024, the respondents have failed to settle the decretal sum and have wilfully and intentionally disregarded the court orders. In the circumstances, the Clerk of the County Assembly of Mombasa and the County Executive Committee Members – Finance of the County Government of Mombasa are in contempt of court orders and should be punished by committal to civil jail.
7. There is evidence of service upon the respondents of the orders herein and all the matters stated.
8. Previously, the respondents through The Office of the County Attorney an advocate for the respondents attended and filed Grounds of Opposition dated 14 February 2024 that;
 1. The County Secretary is not liable to pay under Section 148(3) of the [Public Finance Management Act](#) and Article 226(2) of [the Constitution](#).
 2. The ex parte applicant has not complied with the statutory demand the 1st, 2nd, 3rd and 4th respondents were never served with any pleadings, and entry of judgment was never served upon them as per section 21(1) and (2) of the [Government Proceedings Act](#).



9. On the instant application, the Parties were directed to attend a hearing on 15 January 2025. Only the ex-parte applicant attended. There were written submissions filed.
The respondents did not attend.
10. The ex parte applicant submitted that under leave granted on 17 January 2024, the ex parte applicant filed the substantive motion dated 26 January 2024 seeking orders of judicial review by way of mandamus to direct and compel the respondents to satisfy the Certificate of Order against the Government dated 22 September 2023 for the sum of Ksh.12, 800. This comprised the decree dated 26 July 2013 issued in Mombasa ELRC petition No.342 of 2014, judgment and Order of the Court of Appeal dated 25 September 2020 in Mombasa Count of Appeal Civil Appeal No.155 of 2018.
11. The exparte applicant obtained a Certificate of Order for Costs against the Government dated 18 September 2023 for Ksh.604, 913.33 comprising the Certificate of Costs dated 4 November 2021 issued in Mombasa ELRC Petition o.342 of 2014.
12. The ex parte applicant submitted that through the Judicial Review Application herein, orders of mandamus against the respondent were issued compelling the respondent to pay him but they have refused and neglected to do so. An order of mandamus will compel a person who has failed to perform the duty to the detriment of a party who has a legal right to respect the duty to be performed. The order of mandamus is a judicial command requiring the performance of a specified duty which has not been performed as held in *Republic v County Secretary – Nairobi City County & another ex parte Tom Ojienda & Associates* [2019] eKLR.
13. Herein, the ex parte applicant obtained the Certificate of Order against the Government on 22 September 2023 and the Certificate of Order against the Government dated 18 September 2023. The respondents were served through their advocates through a letter dated 25 September 2023 with a demand for payment. They did not comply.
14. The decretal sum is still outstanding. There is a refusal to pay. The ex parte applicant is owed ksh.13, 404,913.33 and given the refusal to pay, the orders sought should be issued.
15. The ex parte applicant submitted that the respondents have filed objections to the application but under Section 148(4) of the *Public Finance Management Act*, the 1st respondent has been sued as the accounting officer of the County and is answerable for the operations of the County Assembly. The 2nd respondent was issued under Section 103 of the *Public Finance Management Act* which establishes the County Treasury under the County Executive Member of Finance. The 3rd respondent was issued under Section 44 of the County Government Act as the secretary to the County Executive Committee responsible for county operations and also head of Public Service. The 4th respondent was issued under Section 103 of the *Public Finance Management Act* that establishes the County Treasury comprising such office.
16. As noted above, the respondent did not attend or file any submissions. There is evidence of service and Ground of Opposition to the application indicating knowledge of the instant application.

Determination

17. The essence of the instant application is the refusal and disobedience of court orders issued on 14 March 2024 compelling the respondents to pay Ksh.13, 404,913.33 to the ex-parte applicant. For the disobedience, the ex parte applicant is seeking that the respondents as the accounting officers for the respondents, be found in contempt of court and committed to civil jail for a term not exceeding six months.



18. The respondents have previously filed Grounds of Opposition dated 14 February 2024.
19. There are several Affidavits of Service to confirm service upon the respondents.
20. The Grounds of Opposition herein demonstrate that the respondents are aware of these proceedings, and have been served but opted not to attend or address as directed by the court.
21. Proceedings herein commenced through Mombasa ELRC petition 342 of 2024 where the ex parte applicant obtained a judgment against the respondents on 26 July 2018.
22. Aggrieved, the respondents filed Mombasa Court of Appeal Civil Appeal No.155 of 2018. Judgment was delivered on 25 September 2020 with an award of Ksh.8, 000,000.
23. Following these proceedings, the ex parte applicant obtained the Certificate of Order for Costs against the government dated 18 September 2023 for ksh.604, 913.33.
24. There is the Certificate of Costs dated 4 November 2021.
25. There is a Certificate of Order for Costs against the government dated 18 September 2023 for Ksh.13, 404,913.33 and the respondents have been served and failed to pay.
26. On 14 March 2024, the ex-parte applicant obtained orders directing the respondents to pay the decretal sum. These orders are served, and returns are filed.
There is no compliance.
27. The respondents have failed and neglected to attend court to state why there is no obedience to the court orders issued herein and as outlined above.
28. The Supreme Court of Kenya in *Githiga & 5 Others v Kiru Tea Factory Company Ltd* [2023] KESC 41 (KLR) confirmed that Courts possess the inherent power to enforce compliance with their lawful orders.
29. The Court of Appeal in *Republic v Ahmad Abolfathi Mohammed & another SC Criminal Application No 2 of 2018* [2018] eKLR held that contemnors demean the integrity and authority of courts and deride the rule of law. This must not be allowed to happen. We are also conscious of the standard of proof in contempt matters.
30. In this case, the respondents upon being served with the orders herein know of the terms but have failed to comply. The payment to the ex parte applicant of the decretal sum of Ksh.13, 404,913.33 as directed on 14 March 2024. The requirement to comply with court orders is imperative upon the party served with such orders as held in *Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 Others*
31. To this extent, the court is satisfied that the respondents have wilfully and deliberately disobeyed orders herein issued on 14 March 2024 despite being aware of their existence.
32. In light of the above matters, the inevitable conclusion is that the respondents and cited officers; the clerk of the County Assembly of Mombasa and the County Executive Committee Member – Finance of the County Government of Mombasa are found in contempt of court orders issued on 14 March 2024.
33. The court has the power to punish an individual for defying its orders to enforce respect for the rule of law.
34. In the premises and in order to ensure respect for the rule of law, it is only proper that a penalty be imposed for this continued defiance.



35. Accordingly, the application dated 8 November 2024 is with merit and is hereby allowed and the court issues the following orders;
- a. the Clerk of the County Assembly of Mombasa and the County Executive Committee Member – Finance of the County Government of Mombasa are found in contempt of court orders issued on 14 march 2024 are given one final opportunity to, within twenty-one (21) days of this order, comply with the court orders which were rendered on 14 march 2024 or show cause why they should not be committed to civil jail for the continued defiance of the said orders.
 - b. In default, the Clerk of the County Assembly of Mombasa and the County Executive Committee Member–Finance of the County Government of Mombasa shall attend court for sentencing on 3 March 2025;
 - c. Costs incurred herein shall be paid by the respondents.

DELIVERED IN OPEN COURT AT MOMBASA THIS 6 DAY OF FEBRUARY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

