



Odindo & 13 others v County Government of Kisumu (Judicial Review E024 of 2024) [2025] KEELRC 692 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 692 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW E024 OF 2024**

JK GAKERI, J

MARCH 6, 2025

BETWEEN

JEREMIAH ACHOLA ODINDO & 13 OTHERS & 13 OTHERS & 13 OTHERS APPLICANT

AND

COUNTY GOVERNMENT OF KISUMU RESPONDENT

RULING

1. Before the Court for determination is the Applicant’s Notice of Motion dated 12th December, 2024 seeking various Order that:
 1. Mr. George Omondi Okongo, the County Executive Committee Member, Finance Department of Finance and Economic Planning and Mr. Martin Okode, the Chief Finance Officer, Department of Finance and Economic Planning of the County Government of Kisumu, do appear before this Honourable Court and show cause why they should not be cited for contempt of court for failing to pay the Applicant’s Kshs.16,000,000.00 (sixteen million) being the principal amount due to the applicants.
 2. Mr. George Omondi OKongo, the County Executive Committee Member for Finance, Department of Finance and Economic Planning and Mr. Martin Okode the Chief Officer Department of Finance and Economic Planning of the County Government of Kisumu do appear before the Honourable Court and show cause why they should not be cited for contempt of court for failing to pay the applicant’s interest at 14% accruing on the Principal amount due to the applicant’s from 18th September when the County Assembly of Kisumu confirmed that it had provided for the same in the Budgetary Allocation for FY 2022/2023 for payments of retirees of the former Defunct Local Authority.



3. This Honourable Court be pleased to find and hold that Mr. George Omondi Okongo and Mr. Martin Okode the County Executive Member Committee Member and Chief Officer County Government of Kisumu are in contempt and disobeyed the Order issued by this court on 5th December, 2024.
 4. Mr. George Omondi Okongo and Mr. Martin Okode be punished for contempt of court and be committed to civil jail for a period of not exceeding six (6) months.
 5. Costs of this application be borne by the respondents.
2. The Notice of Motion is expressed under provision of the Judicature Act, English Civil Procedure Rules, Government Proceedings Act, Public Finance Management Act, Civil Procedure Act, Civil Procedure Rules and Article 159 of Kenya and is based on the grounds set out on its face and the Supporting Affidavit of Sylvia Nyambeki sworn on 12th December, 2024 who depones that on 5th December, 2024, the court granted the applicants an Order of mandamus compelling the respondents to pay the sum of Kshs.16,000,000.00 due to the applicant's and the order was served on 9th December, 2024, accompanied by a letter imploring the respondents to pay the sum or face contempt.
 3. The affiant depones that the court order dated 5th December, 2021 is still binding on the respondents.
 4. According to the affiant, court orders are supposed to be complied with and the Order/decreed herein relate to a letter by the County Assembly of Kisumu dated 18th September, 2023 to the County Secretary of the County Government confirming that the Kshs.16,000,000.00 be provided for in the Budgetary Allocation of the 2022/2023 financial year.
 5. That the respondents conduct has subjected the applicants to hardship and frustrated their legitimate expectation.

Respondent's case

6. By a Replying Affidavit sworn by Martin Opiyo Okode on 17th January, 2025, the affiant deposes the County constituted a Task Force to verify all claims of retirees including the Petitioners and delivered a report on the amount due to the retirees and the Budgetary Allocation made in 2022/2023 financial year and appropriated in the Bill and the County Assembly passed it.
7. The affiant deposes that the applicants were not part of the verified group as they belonged to the Municipal County of Kisumu and all their debts had been taken care of by a debt swap.
8. That the amount appropriated for purposes of paying retirees it was treated as such as per the Public Finance Management Act (PFMA) Mr. Martin Opiyo Okode deposes that in total the sum of Kshs.17,577,216.00 was paid to verified claims of former employees of the Local Authority.
9. That the Kshs.16,000,000.00 allegedly set aside for the applicants was not set aside for them and those whose money was allocated were paid and the respondent has no money for retirees and if the judgment stands, allocation of funds needs to be followed in order to comply with the PFMA.
10. That there has been no negligent or deliberate disobedience of the court order.
11. That an order to compel the respondents to pay the said amount would amount to a travesty of justice as the amount has not been budgeted for nor appropriated or provided by the National Treasury.



Applicant's Further Affidavit

12. Mr. Jeremiah Achola Opindo depones that the Replying Affidavit was not served and the order of mandamus granted on 5th December, 2024 was subsisting as it had not been set aside and no payment had been made as confirmed by Mr. Martin Okode.
13. That the respondent's response contains payments of funds to former employees of the local authorities of Muhoroni, Nyando and Kisumu County Councils.
14. The affiant relies on the letter dated 18th September, 2023.
15. That retirees of the former Municipal Council of Kisumu are not included and details of the alleged debt swap were not availed and the respondent cannot re-litigate the applicant's case as it is based on documents from the Task Force.
16. That the respondents are playing games on the payments having vowed not to pay.

Applicant's submission

17. On service of the court order issued on 5th December, 2024, the applicant's advocate submits that it was effected on 9th December, 2024 and the respondents were notified by a letter of even date to comply within 3 days and were thus aware of the terms of the Order which were clear unambiguous and binding.
18. On compliance with the Orders, the advocate submitted that the respondents have deliberately acted in breach of the court order citing excuses and their reply is silent on compliance.
19. Counsel urges that the court order has not been set aside and the respondents could not re-litigate the applicant's documents.
20. As regards the elements of contempt of court, reliance was made on the sentiments of the court in Narok HCC Civil Appeal E002/2021 Kotoine Koilel & Another V Kanini Krsai Koilel & Another on the essentials of contempt, namely; (i) knowledge of the terms by the respondent (ii) the terms of the Order (iii) failure by the respondent to comply with the terms of the order.
21. Also cited are the sentiments of Romer L. J. in *Hadkinson v Hadkinson* [1952] ALLER 567 on the essence of a court order and the obligation to obey it, to urge the court to safeguard and protect the sanctity of court Orders by punishing the respondents.
22. Finally, reliance was also made on the sentiments of the court in [*Teachers Service Commission V Kenya National of Teachers & 2 Others, Petition No. 23 of 2013.*](#)

Respondent's submissions

23. In their submissions filed on 20th February, 2025 the respondent's oppose the instant application on the premises that; the same is premature as costs are yet to be taxed, certificate of order was not extracted prior to the application, decretal sum of Kshs.16,000,000.00 can only be settled if factored in the next budget cycle and the ingredients of contempt of court were not established.
24. On prematurity of the application, the respondents advocate relies on Section 21(1) of the [*Government Proceedings Act*](#) which require taxation of costs and extraction of the certificate.
25. Counsel urged that since the court awarded costs on 5th December, 2024, taxation had to be done and the certificate of order to be extracted and served.



26. Counsel submitted that the court ought not assist a party that acts in disregard of procedural law and cited the decision in *Nicholas Kiptoo Arap Korir V Independent Electoral and Boundaries Commission & 6 Others* [2013] eKLR to buttress the submission.
27. On the absence of service of Certificate of Order upon the respondent, counsel submitted that the instant application was made prior to service of the certificate and the applicant's counsel admitted the same in court when asked by the court.
28. Reliance was also made on the sentiments of Githua J in *Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security Ex Parte Fredrick Manoah Egunza* [2012] eKLR on the essence of service of Certificate of Order upon the respondents as were the sentiments of Mrima J. in *Republic V County Government of Trans Nzoia & 2 Others; Grandway S. Ventures Ltd (Interested Party)* (JR 003 OF 2022 [2022] KEHC 17123 KLR on compliance with the requirements of Section 21 of the *Government Proceedings Act*.
29. Counsel urged that since the applicant neither extracted nor served the Certificate of Order before commencement of the instant application, the same must fail on that score.
30. Concerning the ingredients of contempt, counsel reiterated the four ingredients and cited the decisions in *Samuel M. N. Mwereu & Others V The National Land Commission & 2 Others* No. 443 of 2017 and *Amos Mathenge Kabuthu V Simon Peter Mwangi* [2015] eKLR, to submit that the respondents neither breached the terms of the Order nor refused to pay the decretal amount as the applicant had not rebutted the contents of Replying Affidavit that the respondent had no money to settle the decretal sum and was ready to settle in the next budget and the applicants had not proved otherwise. Counsel submitted that the burden of proof in contempt proceedings is beyond reasonable doubt and cites the decision in *St. Mary Academic Ltd & Another V Grace Njeri Mukura & Another; Yvonne Jeruto & Another (Contemnors)* [2021] eKLR to urge that the applicants had to discharge the burden to the required standard.
31. Counsel submitted that the decretal sum can only be settled in the next budgetary cycle and the same would be an appropriate relief.
32. That the budget cyclers is a multi-layered process as per the provisions of the PFM Act.
33. According to counsel, an Order compelling the respondent's to pay the sum of Kshs.16,000,000.00 would disrupt provision of services such as health, Early Childhood Education, Feeding Programme and staff salaries and the challenge of pending bills would continue.
34. The respondent's counsel submitted that the instant application is pre-mature the applicants had neither discharged the burden of proof nor tendered evidence of having obtained the Certificate of Order and served it prior to initiating the instant application.
35. That the only appropriate relief is to have the amount factored in and settled in the next budget cycle and the application must fail.

Analysis and determination

36. It is common ground that by its Ruling delivered on 5th December, 2024, the court issued the Order of mandamus compelling the Kisumu County Government to pay the applicants the sum of Kshs.16,000,000 (sixteen million) shillings and the Court Order is still in force as it has not been set aside.



37. Evidence on record reveals that the Ruling and order both dated 5/12/24 were served on the respondents on 12th December, 2024 as evidenced by the Affidavit of Service sworn by Mr. Cosmas Oyoo Laja on even date. This is contrary to the contents of the Supporting Affidavit of Silvia Nyambeka that the order was served on 9th December, 2024.
38. It is equally not in contest that the instant Notice of Motion was filed on 13th December, 2024 and served on even date as the Affidavit of service reveals. This was less than 3 days after service of the Ruling and Order dated 5th December, 2024 bearing in mind that Thursday 12th 2024 was not a working day.
39. The alleged 3 days notice to honour the Order was not adhered to by the applicants.
40. That was not the only instance in which the applicants have exhibited over-zealous haste in taking action.
41. Even assuming that the respondent had the money in one of its bank accounts, would it have been possible for the respondents to receive the Ruling and Order and ensure that all attendant disbursement procedures were adhered to within one day granted that the date of service is not counted?
42. Similarly, the applicants filed a Party and Party Bill of costs dated 6th December, 2024 for the sum of Kshs.2,003,233.333 on even date. However, the court did not trace any evidence of service and the same does not appear to have been prosecuted.
43. Significantly, the certificate of Order on record dated 3rd February, 2025 was issued long after the instant application was filed and could not have been served prior to the lodgement of the application.
44. As correctly submitted by the respondent's advocate, the provisions of Section 21 of the [Government Proceedings Act](#) were not complied with.
45. Section 21 provides: -
 - (1) Where in any civil proceedings by or against the Government, or in proceedings in connection 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, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order: Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.
 - (2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney General.
46. The application for the Certificate of Order against the Government must be made to the registrar or the Court pursuant to the provisions of Order 29 Rule 3 of the Civil Procedure Rules, 2010 including an application for a separate certificate for costs (if any).
47. Clearly, Section 21(1) of the [Government Proceedings Act](#) envisions one certificate inclusive of the award and interest effective from a particular day until date of payment including whether interest is payable on costs and from when as evidenced by Form 22 of Appendix A.
48. In this case, the applicant's filed one form which is silent on the costs payable as well as interest, if any.



49. In the court's view, Form 22 and Form 23, if applicable, of Appendix A of the Civil Procedure Rules, 2010 is the document(s) which notifies the Government the amount payable pursuant to a court judgment, costs and interest, if any on the judgment award and costs, and the effective dates.
50. The Form(s) address the specifics of the decree and costs (if awarded by the court) as well as interest on both or either of them as appropriate.
51. Before this form or forms is or are obtained, all the successful party has is a judgment or ruling. The certificate of Order Against the Government is necessary for payment to be effected.
52. In the instant case, the form was neither served on the respondents nor the County Attorney or other duly authorised officer.
53. Significantly, Section 21(4) of the [Government Proceedings Act](#) is unambiguous that there is no other way of proceeding against the Government or County Government for purposes of enforcement of payment and no liability attaches on government officers.
54. The court is in agreement with the sentiments of Githua J in Republic V Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Ex Parte Fredrick Manoah Egunza (Supra) that:

“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”.

55. The court is in agreement with the foregoing sentiments.
56. In the instant case, it is unambiguous that no certificate of Order against the County Government of Kisumu was served on the County's responsible officer as none was available on 13th December, 2024 when the instant Notice of Motion was filed which leaves no doubt that the provisions of Section 21(1) and (2) of the [Government Proceedings Act](#) were not complied with, and as correctly submitted by the respondent's counsel, the application for the certificate can only be made after expiration of 21 days after the judgment and this procedural requirement was not complied with.
57. It is trite law that procedural rules are the handmaidens of substantive law and serve an essential purpose as held by Kiage JA in Nicholas Kiptoo Arap Korir Salat V I.E.B.C & 6 Others (Supra) that-

“This court, indeed all courts, must never succor and cover to party who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just certain and even-handed.

Courts cannot and in the bending or circumventing of rules and shifting of goal posts for while it may seem to aid one side, it unfairly harms the innocent party who strives to abide



by the rules. I apprehend that it is in the even-handed and dispassionate application of rules that courts give assurance that there is clear method in the manner in which things are done...”

58. The court is in agreement with these sentiments.
59. In light of the foregoing, it is difficult to contradict the respondent’s contention that the instant application was instituted prematurely.
60. As to whether the ingredients of contempt of court have been demonstrated, parties have adopted contrasting positions with the applicant maintaining that the respondent’s failure to pay have subjected the applicants to hardship and squalor which was inhuman and degrading and contrary to the provisions of *the constitution*. The respondents on the other hand contend that the elements of contempt were not proved.
61. While the applicant’s Supporting Affidavit allude to the sanctity of court orders and their binding and enforceable nature, it did not catalogue the ingredients of contempt of court and how far they were met.
62. The essence of punishing persons who are guilty of disobeying court orders has been highlighted in legions of decisions such as; Econet Wireless Kenya Ltd V Ministry of Information and Communication of Kenya & Another [2005] eKLR, Republic V Ahmed Aburfathi Mohamed & Another [2018] eKLR, Gulabchand V Popatlal & Another, Civil Appeal No.39 OF 1990, Josephine Mueni Mutunga V Energy Regulatory Commission & Another [2016] eKLR, Praxes Namoni Sisi V Geothermal Development Co. Ltd & Another [2016] eKLR, Mwaniki Silas Ngare V John Akama & Another [2016] eKLR, as well as Teachers Service Commission V Kenya National Union of Teachers & 2 Others [2013] eKLR among others.
63. In Samuel Mweru & Others V National Land Commission and 2 Others (Supra) the court stated as follows:

It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove

- (i) the terms of the order,
- (ii) Knowledge of these terms by the Respondent,
- (iii). Failure by the Respondent to comply with the terms of the order.

Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book Contempt in Modern New Zealand who succinctly stated: -

“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: -

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;



- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate”.

64. In the instant case, since the court's ruling was served on the respondent's on 10th December, 2024, a fact they did not contest, it is arguable that they were aware of the terms of the Court order as the ruling was clear on the award and costs.
65. It is clear from the ruling that the court did not award interest on the award or costs and none is recoverable.
66. As adverted to elsewhere on this ruling, since the applicant did not comply with the provisions of Section 21(1) and (2) of the Government Proceedings Act and Order 29 rule 3 of the Civil Procedure Rules, 2010, there was no proper service of the terms of the court Orders as Form 22 had not been provided.
67. Similarly, the applicant did not accord the respondents reasonable time to pay before the instant application was filed on 13th December, 2024 and as such cannot be faulted for having purportedly acted in breach of terms of the order.
68. In the court's view, the question as whether the respondent's conduct was deliberate or not does not arise as the applicant did not comply with the provisions of the Government Proceedings Act and the Civil Procedure Rules which facilitate the process.
69. On the burden and standard of proof, it is trite law that he who alleges must prove.
70. Section 107 of the Evidence Act provides;
1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 2. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.
71. Section 108 provides that;
- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given by either side.
72. Having alleged that the respondents were guilty of contempt, it was incumbent upon the applicants to demonstrate that indeed the respondents were guilty of contempt.
73. As regards the standard of proof in contempt proceedings, it is not beyond reasonable doubt as it is in criminal cases, contrary to the respondent's counsel's submissions. It is neither on a balance of probabilities nor beyond reasonable doubt. It is in between, though closer to beyond reasonable doubt as held by the Court of Appeal in *Mutitika V Baharini Farm Ltd* [1985] KLR as follows:
- In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi – criminal in nature.
74. The rationale for this standard is that if cited for contempt is the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard



in civil cases. This power to commit a person to jail must be exercised with utmost care and exercised only as last resort. It is of utmost importance therefore for the respondents to establish that the alleged contemnors conduct was deliberate in the sense that he or she wilfully acted in a manner that faulted the court order”.

75. In sum, it is the finding of the court that the applicants herein has not placed sufficiently reliable and verifiable evidence to prove that the respondents had acted in breach of the terms of the court order dated 5th December, 2023 or that that conduct was deliberate.

76. From the foregoing analysis, it is discernible that the applicant’s Notice of Motion dated 12th December, 2024 is for dismissal and it is accordingly dismissed with no Orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 6TH DAY OF MARCH, 2025

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

