



**Karisa v Chief Officer - Finance, County Government of Kilifi & 2 others (Judicial Review Application E001 of 2024) [2025] KEELRC 1075 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1075 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI  
JUDICIAL REVIEW APPLICATION E001 OF 2024**

**M MBARŪ, J  
APRIL 3, 2025**

**BETWEEN**

**ELIAS MWINGA KARISA ..... APPLICANT**

**AND**

**CHIEF OFFICER - FINANCE, COUNTY GOVERNMENT OF  
KILIFI ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF KILIFI .... 2<sup>ND</sup>  
RESPONDENT**

**KILIFI COUNTY GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The applicant filed an application dated 4 October 2024 under the provisions of Section 1A and 3A of the [Civil Procedure Act](#) and Order 51 rule 1 of the [Civil Procedure Rules](#) seeking orders;
  1. Spent.
  2. This court do find and declare that the respondents are jointly and severally in contempt of court orders issued on 20 March 2024.
  3. Warrants of arrest be issued against the respondents to appear before the court and show cause why they should not be committed to civil jail for disobeying the court orders of 20 March 2024 for a term as the court may deem fit.
  4. Upon granting the order (2) above, the respondent be subsequently committed to civil jail for a term not exceeding six (6) months for disobeying the court orders of 20 March 2024; or be fined a fine not exceeding Ksh.20 million or both as the court shall deem fit.



5. An order of mandatory injunction be issued directing the respondents, either by themselves, servants and/or agents and any person or persons acting under them, to deposit Ksh.2,171,149.03 plus an interest of Ksh.379,951.08 and costs taxed at Ksh.68,835 all Ksh.2,619,935.11.
6. The costs of this application be taxed at ksh.50, 000.
2. The application is supported by the application through his Affidavit and avers that on 11 March 2024, the court granted an Order of mandamus against the respondent, compelling them to proceed and pay out the decretal sum of Ksh.1, 171,149.03in Malindi Chief Magistrate Court ELRC No.19 of 2022 within 45 days failure to which the same shall attract interests at court rates until paid in full. The orders were issued in the presence of the respondent's advocate; therefore, there was no need to effect service. However, on 20 March 2024, the applicant served the respondents directly, and this was acknowledged, and an Affidavit of Service has been filed to this effect.
3. Through their advocates, the respondents requested that the decretal sum be settled but asked to forfeit the costs. The applicant agreed to the proposal on the condition that payment be made within 45 days.
4. Contrary to the agreement, the respondents failed to honour it. The respondents have proceeded to dishonour the court orders, and the application seeking Warrants of Arrest and for the officers cited to be issued with a notice to show cause why they should not pay or be committed to civil jail should be issued.
5. In reply, the respondents filed the Replying Affidavit of Martin Mwaro, county secretary and head of the County Public Service. He averred that the respondents are aware of the judgment delivered on 14 June 2024 and orders to pay the applicant unpaid salaries from October 2022 to February 2022, amounting to Ksh. 642,320, together with costs and interests. The court also declared that the respondent had violated sections 17, 18 and 20 of the Employment Act but declined to reinstate the applicant.
6. Mwaro aver that the respondents are aware that on 11 March 2024, the court issued orders, and the ruling was delivered on 14 June 2024, in which the respondents were ordered to pay a decretal sum of Ksh.2,171,149.03, of which Ksh.136,400 has already been paid. The party and party bill of costs dated 13 March 2024, assessed at Ksh. 38,835.
7. The averments by the applicant that there was service of court orders on 14 June 2024 are incorrect, as service was effected on the deponent and not the respondents. The mandate of the office of the County Secretary is provided under Section 44(3) of the County Government Act (CGA), which includes being head of public service and secretary to the county executive committee. Under section 45(3) of the CGA, the office is responsible for administering county departments provided under Section 46m of the CGA. The office of the deponent has not violated any Court Orders as alleged. There is no service upon the respondents as alleged.
8. Under the Judicature Act, Civil Procedure Act and the Contempt of Court Act of England, personal service of the judgment and orders granted must be effected. There is no evidence that the orders of 14 June by Hon. Ongondo, 11 March 2024 by Justice Mbaru, and 14 June 2024 by Hon. Thamara have been served upon the respondent to justify the contempt proceedings. The summons served upon the County Secretary's office do not form the basis for contempt of court proceedings.
9. Mwaro aver that the respondents have taken necessary steps to comply with the court judgment by requesting details of accounts mapped and verified through the GoK IFMIS payment system. There is correspondence with the applicant to finalise his payment.



10. The decretal sum awarded to the applicant for unpaid salary from October 2022 to February 2022, Ksh. 642,320, and costs have been erroneously calculated.
11. The payment of the decretal sum plus costs is progressing. The respondents and the County Government of Kilifi are committed to honouring the court orders once the payable amounts are clarified.
12. The applicant filed his Supplemental Affidavit and avers that the respondent knows the judgment delivered on 14 June 2024. The judgment was personally served on the respondents, and there are returns to this effect. The respondents were represented in court, and the orders of 20 March 2024 were issued in the personal presence of their advocate.
13. The applicant avers that the respondents, through Martin Mwaro's reply, have not stated why they have refused to obey the court orders of 20 March 2024. No reasons are given for such fragrant disdain for court orders, and the orders sought are justified and should be allowed with costs.
14. Both parties attended and filed written submissions, which are analyzed in the body of the findings.
15. Mwaro, as a senior officer of the respondents, Kilifi County Government, has admitted knowledge of the judgment and orders herein. The main contestation is that his office was served with the court's orders giving rise to the instant applicant and not to the respondent officers.
16. His contestation is also that the decretal sum and costs have been erroneously tabulated and not the correct amount.
17. Mwaro also admitted that the applicant was paid Ksh.136, 400 as part of the decretal sum, and the parties agreed on the due costs at Ksh. 68, 835.
18. Whereas in contempt proceedings, the orders subject to such proceedings should be served upon the affected persons or officers, the court has held that personal knowledge of court orders is sufficient and requires obedience. In the case *Kenya Tea Growers Association vs Francis Atwoli & Others*, Nairobi High Court Constitutional Petition No 64 of 2010, it was held that;
 

... if personal awareness of the court orders by the alleged contemnors is demonstrated, they will be found culpable of contempt even though they had not been personally served with the orders and penal notice.
19. In *Teachers Service Commission v Kenya National Union of Teachers and Two Others*, (2013) e KLR that;
 

[A court order] It is a directive that is issued after much thought and with circumspection. It must, therefore, be complied with, and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy; this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.
20. The respondents have attended court through their advocates. The orders of 20 March 2024 were delivered in the advocate's presence. The Office of the County Secretary, represented by Martin Mwaro, was served with court orders, and there was an admission of knowledge of the same.
21. The personnel are aware that the court orders are sufficiently demonstrated. The respondents cannot separate themselves from their advocates and claim that there was no personal service. Martin Mwaro's attendance in court through his Replying Affidavit, instead of the respondents and cited persons and



officers of Kilifi County Government, cannot extricate these officers from personal knowledge of the orders of 20 March 2024. To take such a view would end in chaos and anarchy, which does not foster the rule of law.

22. The court finds there is knowledge of the court orders by the respondents and cited officers.
23. On the respondents' allegations that the decretal sum is erroneously tabulated, if any error, mistake, or sufficient reason is established by a party that such error or mistake is apparent on the record, the recourse is to seek a review. To stand back and point out an error and take the view that that is the reason for disobedience of court orders is a contradiction and abuse of process.
24. Mwaro, for the respondents, avers that the decretal sum is Ksh. 136,400, and costs have been agreed upon. However, the evidence of the payment is not submitted.
25. The respondents have relied on the case of *Barclays Bank (K) Limited v William Mwangi Nguruki* Civil Appeal No.20 of 2014 to argue that where parties have made progress towards making payments of the decretal sum, the court should consider such effort while addressing an alleged contempt of court. However, the efforts made are internal to the respondents. The averment that there is payment of Ksh.136, 400 addressed above is without evidence.
26. The court orders issued on 20 March 2024 have not been complied with. Such disobedience is apparent, and the cited persons and officers of the Kilifi County Government have not made any effort to explain their conduct.
27. I find, and I hold that the respondents have jointly and severally willfully disobeyed court orders herein, particularly orders of 20 March 2024;
28. They are guilty of contempt of court, and I will require them all to attend court to show why they should not be committed to jail for that disobedience.
29. Accordingly, the application dated 4 October 2024 is allowed the following Orders issued;
  - a. The respondent officers shall attend court on 5 May 2025 to show cause why they should not be sanctioned for contempt of court orders issued on 20 March 2024;
    - i. The person and officer of the County Secretary;
    - ii. Chief Officer, Finance;  
Both officers of the County Government of Kilifi.
  - b. The officers cited (a) above shall purge the contempt;
  - c. The applicant is awarded the costs of the application.

**DELIVERED IN OPEN COURT AT MALINDI ON THIS 3RD DAY OF APRIL 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Davis Wekesa

..... and .....

