



**Odindo v County Government of Kisumu (Judicial Review
E024 of 2024) [2025] KEELRC 1519 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1519 (KLR)

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

**JK GAKERI, J
MAY 20, 2025**

BETWEEN

JEREMIAH ACHOLA ODINDO APPLICANT

AND

COUNTY GOVERNMENT OF KISUMU RESPONDENT

RULING

1 Before the Court for determination is the Applicant’s Notice of Motion dated 11th March, 2025 filed under certificate of urgency seeking various Orders 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 this Honourable Court and show cause why they should not be cited for contempt of court for failing to pay the applicants 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 Committee Member and Chief Officer respectively



in the Department of Finance and Economic Planning of the County Government of Kisumu, are in contempt and have 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 provisions 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 11th March, 2025 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 further depones that the court order dated 5th December, 2021 is still subsisting and binding on the respondents and disobeying it is punishable by committal or attachment and the order was clear and ambiguous.
- 4 According to the affiant, court orders are supposed to be complied with and the Order/decree 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 The affiant deposes that the appellants extracted the Certificate of Order Against the Government dated 3rd February, 2025 and 21 days have lapsed.
- 6 That the respondents conduct has subjected the applicants to hardship and frustrated their legitimate expectation.

Respondent's Case

- 7 The respondent's Replying Affidavit was sworn by Martin Opiyo Okode who deposes that the Hansard stated:
 - 1 That the County Secretary immediately constitutes an Adhoc Taskforce consisting of the County Director Human Resource County Internal Audit and any other relevant officer to retrieve, comprehensively review and correctly compute all claims due to the Petitioners" and
 - 2 That where the claims presented by the Petitioners cannot be verified for lack of supportive documentation and evidence, the County Secretary should immediately initiate the payment of retirement dues to the Petitioners based on the standardized calculation of Pension and Retirement Benefits based on basic salary component that the Petitioners were engaged in during their term of service".
- 8 The affiant deposes that he was aware that the County formed a Taskforce to implement the recommendation adopted in the Hansard and the Scope of the Adhoc Committee was to verify all claims of the retirees including the Petitioners from the defunct municipalities and the exercise was undertaken and a report delivered and the arrears were verified.
- 9 The affiant further avers that the Petitioners were not part of the verified claims as per the list of the verified retirees attached and the Report of the Adhoc Committee gave rise to the budgetary allocation in the year 2022/2023 and the amount was appropriated in the Bill and the Assembly passed it.



- 10 That the Petitioners were never part of the verified list since they belonged to the defunct Municipal Council of Kisumu and all their debts were taken care of by a debt swap and the amount appropriated in the financial year 2022/2023 was earmarked for the verified claims of the retirees as listed by the report of the Adhoc Committee and the money was paid to the retirees in strict compliance with the [Public Finance Management Act](#).
- 11 According to the affiant, the vouchers in February 2024, number 18, former local authority retirees were allocated and paid Kshs.10,271,191.00, in March 2024 and at number 9, the allocation was Kshs.4,792,853.00 and paid and in June 2024, at number 15 the retirees were allocated and paid Kshs.2,513,172.00 a total of Kshs.17,577,216.00.
- 12 That the claims paid were verified and documents on record show that actual disbursements took place as per the list and the County Assembly of Kisumu followed up on the implementation of the Report of the Committee on Labour and Special Welfare on 12th June, 2024. That the amount budgeted was meant for the former employees from the County Council of Nyando, Ahero Town Council, Muhoroni Town Council, Municipal Council of Kisumu as well as County Council of Kisumu.
- 13 The affiant deposes that it is unfathomable for the applicant's herein to claim that the Kshs.16,665,776 was meant for them as it was not and the persons on whose behalf it was set aside for were paid and if the judgment stands, the process of allocation of funds ought to be complied with as by law required, principally the Public Finance and Management Act.
- 14 The affiant deposes that the Certificate of Order Against the Government received on 5th February, 2025 had been placed in the current budget whose process is in the 3rd phase and yet to be debated by the County Assembly for appropriation as per the Public Finance and Management Act and must be appropriated by the County Assembly and approval by the Controller of Budget and the National Treasury and the estimated time is 3 months from the beginning of the new financial year.
- 15 Finally, the affiant deposes that the applicants had not attached any computation/verified amounts and the claims lacks supportive evidence.
- 16 The affiant deposes that the respondents are not in contempt and were taking steps to make funds available.

Applicant's Submission

- 17 On service of the court order issued on 5th December, 2024, the applicant's advocate submitted 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 was silent on compliance.
- 19 Counsel urged that the court order had 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 were 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 was 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 relied on Section 21(1) of the *Government Proceedings Act* which require taxation of costs and extraction of the certificate of Order.
- 25 Counsel urged that since the court awarded costs on 5th December, 2024, taxation had to be done for 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 cycle is a multi-layered process as per the provisions of the [*Public Finance Management 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 and 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 Notice of Motion filed on 13th December, 2024 and served on even date was dismissed with no orders as to costs on the ground that the applicants had not demonstrated that the respondents had breached the terms of the court Order dated 5th December, 2024 or that their conduct was deliberate.
- 39 The ruling on 6th May, 2025 precipitated the instant Notice of Motion which seeks similar Orders.
- 40 While in the previous Notice of Motion the applicants had not attached a copy of the Certificate of Order Against the Government, a copy was attached, coupled with evidence of service to the respondents on 5th February 2025 via email and the instant Notice of Motion was filed on 11th March, 2025 barely a month later.
- 41 Bearing in mind that this is the 3rd Application by the applicants and the second in less than 4 months and on similar Orders, the applicant appear to be in a hurry to enforce the court's Judgment.
- 42 This is vividly demonstrated by the applicant's failure to have the costs taxed as submitted by the respondents.
- 43 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.
- 44 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:



- 45 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.
- 46 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”.
- 47 The court is in agreement with the foregoing sentiments.
- 48 In the instant case, it is clear that the Certificate of Order Against the County Government of Kisumu was served on the County Attorney on 5th February, 2025 in compliance with the provisions of Section 21(2) of the *Government Proceedings Act*.
- 49 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 contended that the elements of contempt were not proved.
- 50 While the applicant’s Supporting Affidavit alluded 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.
- 51 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.
- 52 In *Samuel Mweru & Others v National Land Commission and 2 Others* (*Supra*) Mativo J (as he then was) set the threshold for contempt 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".

53 Additionally, in *Sheila Cassat Issenberg v Anthony Machatha Kinyanjui* [2021] eKLR, the court relied on the sentiments of the Supreme Court of India in *Mahinderjit Singh Bitta v Union of India & Others* 1A No. 10 of 2010 (13th October, 2011) as follows:

In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the Order of the court, event to constitute a civil contempt. Every party is lis before the court in its spirit and substance. Every person is required to respect and obey the Orders of the court with due dignity for the institution"

54 As regards the standard of proof in contempt proceedings, it is trite law that 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 Babarini 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.

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".

55 The court is further guided by the sentiments of Mulwa J as follows:

Notably, given the serious consequences that flow from contempt proceedings such as fines or imprisonment, it is essential that the court Order be properly served upon the alleged contemnor and that it is established that she has personal knowledge of tis terms..."



56 However, as held by the Court of Appeal in *Shimmers Plaza Ltd V National Bank of Kenya Ltd* [2015] eKLR, knowledge of Judgment or Order by the advocate of the alleged contemnor suffices in contempt proceedings. The court expressed itself as follows:

There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him or her to report back to the client all that transpired in court that has a bearing on the client's case”

Terms of the Order

57 On 5th December, 2024 the court delivered its ruling on the Notice of motion dated 19th July, 2024 granting the Order of Mandamus compelling the CEC Finance and Economic Planning and the CFO Finance Kisumu County to pay the applicants the sum of Kshs.16,000,000.00 and costs of the application and the Order was served and received by the Executive Member County Treasury on 10th December, 2024.

58 Evidently, the two Orders were clear and unambiguous as no issue of ambiguity was raised by counsel for the respondents.

59 Similarly, the Certificate of Order Against the County Government was served on the County Attorney on 5th February, 2025 and henceforth, the respondents were deemed aware of the Certificate of Order Against the County Government of Kisumu.

Disobedience of the order

60 Granted that the Certificate of Order Against the County Government was served on 5th February, 2025 and the respondent's Replying Affidavit stated that the applicants were not part of the Petitioners whose claims were verified and paid on the one hand and that the Certificate of Order Against the County Government had been placed in the current budget whose process was in the 3rd phase, but must be debated by the County Assembly, for appropriation, appropriated and approved by the Controller of Budget and the estimated time is 3 months, it is clear that the respondents have not demonstrated willingness to abide by the Orders of the court and good faith to negate the element of deliberate conduct.

61 Analogous to the National Assembly, County Assemblies are empowered to make supplementary budgets to cater for various needs.

62 Be that as it may, bearing in mind that the instant application was made barely (1) month after the Certificate of Order Against the Government was served upon the respondents, it is only fair that the respondents be accorded time to satisfy the court Order dated 5th December, 2024.

In the court's view three (3) months is reasonable.

63 Consequently, the Orders that commend themselves are:

- a. The respondents stand cited for contempt of court for failing to pay the applicants the sum of Kshs.16,000,000.00 (sixteen million) as ordered by the court provided that:
- b. The respondents have three (3) months to honour the court Order as per the Certificate of Order Against the Government dated 3rd February, 2025, failing which sentence will follow.

64 Parties shall bear own costs of this application.



DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 20TH DAY OF MAY, 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.

