



**Republic v Garissa County Government & 2 others; Bulle & another
(Ex parte) (Employment and Labour Relations Judicial Review
E041 of 2024) [2025] KEELRC 2093 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2093 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS JUDICIAL REVIEW E041 OF 2024
HS WASILWA, J
JULY 17, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**GARISSA COUNTY GOVERNMENT 1ST RESPONDENT
COUNTY EXECUTIVE COMMITTEE MEMBER IN CHARGE OF FINANCE,
GARISSA COUNTY 2ND RESPONDENT
CHIEF OFFICER IN CHARGE OF FINANCE, GARISSA
COUNTY 3RD RESPONDENT**

AND

**ABDI SHALE BULLE EX PARTE
IBRAHIM MALOW NUR SHURIE EX PARTE**

RULING

1. The Applicant filed a Notice of Motion dated 17th April 2025 seeking orders that: -
 1. a Notice to Show Cause does issue as against the County Secretary of Garissa County Government, County Executive Committee Member in Charge of Finance, Garissa County and the Chief Officer in Charge of Finance, Garissa County to show cause why they should be cited for contempt for failing to pay an outstanding amount of Ksh. 270,830 in this matter.
 2. the County Secretary of Garissa County Government, County Executive Committee Member in Charge of Finance, Garissa County and the Chief Officer in Charge of Finance, Garissa County be committed to civil jail for a period of six months or such period as the court may



deem fit or any other sanction as this court may deem fit and appropriate punishment to be meted out upon the contemnors for failing to pay an outstanding amount of Ksh. 270,830 in this matter.

3. the costs of this Application and interest thereon be provided for.
4. any other and further relief that this Honourable Court may deem fit and just to grant in the circumstances.

Ex-parte Applicants' Case

2. The ex-parte Applicants aver that vide a judgment delivered on 15th October 2024, this court issued a judicial review order of mandamus compelling the Respondents to pay the 1st ex-parte Applicant Ksh. 1,514,480 and the 2nd ex-parte Applicant Ksh. 1,623,730.50 and the ex-parte Applicants were awarded costs of the proceedings.
3. The ex-parte Applicants aver that the order was issued in the presence of the parties herein and it was clear and unambiguous.
4. The ex-parte Applicants aver that the Respondents made full payment of the amount owed to the 2nd ex-parte Applicant in December 2024 and on 5th February 2024, the 1st ex-parte Applicant was paid Ksh. 1,500,000 instead of Ksh. 1,514,480.
5. The ex-parte Applicants aver that they filed a Party and Party Bill of Costs dated 5th February 2025 and the Taxing Master delivered on 8th April 2025 whereby the Taxing Master found that the Respondents ought to pay the ex-parte Applicants Ksh. 256,359 as costs. Therefore, the Respondents owe the ex-parte Applicants a sum of Ksh. 270,830 comprising of Ksh. 256,350 being certified costs and Ksh.14,480 being unpaid dues to the 1st ex-parte Applicant.
6. The ex-parte Applicants aver that the ruling of taxation was rendered in the presence of the Respondents' counsel and the Certificate of Taxation was extracted and served upon them vide a letter dated 9th April 2025. However, the Respondents have failed, refused and/or neglected to comply with the court orders.
7. It is the ex-parte Applicants' case that Part IV of the *County Government Act* responsibilities in respect to management and control of public finance under the *Public Finance Management Act* and the statutory duty to pay out funds from the County Treasury vests in the Respondents.
8. The ex-parte Applicants aver that it is essential for the court to uphold the maintenance of the rule of law and good order of its authority and dignity. Therefore, the court should not condone deliberate disobedience of its orders should not shy away from its responsibility to deal firmly with contemnors.
9. The ex-parte Applicants avers that settlement of decretal sum by the national and county government does not necessarily depend on the availability of funds as was held by Justice Githua J in *Republic vs Permanent Secretary, Ministry of state for Provincial Administration and Internal Security Ex Parte Fredrick Manoah Egunza* [2012]eKLR.

Respondents' Case

10. In opposition to the application, the Respondents filed a replying affidavit dated 12th May 2025, sworn by the 2nd Respondent, Abass Ismail Khaar.
11. The Respondents aver that the 1st Respondent is currently experiencing significant financial challenges which they are actively working to address through stringent fiscal management and resource allocation



strategies. However, they have managed to full pay the 2nd ex-parte Applicant in December 2024 and the 1st ex-parte Applicant a sum of Ksh. 1,500,000 on 5th February 2025.

12. The Respondents aver that Section 5 of the *County Allocations of Revenue Act* outlines the framework for the allocation of additional funds to County Governments including both conditional and unconditional allocations designed to better support local administrations in fulfilling their financial obligations.
13. Additionally, the Act mandates the Cabinet Secretary to publish a monthly report on actual transfers which would ideally enhance transparency and predictability in funding for the counties. Unfortunately, the 1st Respondent is currently unable to utilise the provisions of Section 5 due to a pending court matter: Constitutional Petition No. E001 of 2025 in the High Court of Kenya at Embu.
14. The Respondents aver that the court issued ex-parte conservatory orders vide a court order dated 9th January 2024 that stayed the operation of Section 5 of *County Allocations of Revenue Act* which complicated the ability of counties including the 1st Respondent to access the funds necessary to meet their contractual obligations.
15. It is the Respondents' case that the Act was only approved in December of 2024 and its implementation has been intermittently halted by the County Assemblies Forum which was resulted in delays that severely impact the timely disbursement of funds to counties thus hindering the 1st Respondent's capacity to access essential funds.
16. The Respondents aver that they are operating in good faith and with sincere desire to fulfil all pending financial commitments as soon possible. They are working tirelessly to ensure they have sufficient funds to meet outstanding bills and have initiated various measures including revising budget allocations and exploring alternative funding sources to expedite the payment process.
17. The Respondents aver that they are optimistic that the efforts will yield positive results to allow settlement of debts owed to contractors and other service providers.

Ex-parte Applicants' Submissions

18. The ex-parte Applicants submitted that a Notice to Show Cause is not a finding of contempt. The Respondents are merely being called upon to Show Cause or give an explanation as to why they should not be cited for contempt for failing to pay an outstanding amount of Ksh. 270,830 in this matter.
19. The ex-parte Applicants submitted that Conservatory Orders that were granted in Kiambu High Court Petition No. E001 of 2025 *County Assemblies Forum v State Law Office* on 9th January 2025 were only to the extent that it reduced the budget ceilings for recurrent expenditures of All County Assemblies in the Republic of Kenya, Section 5 of *CARA* was not stayed in its entirety.
20. The ex-parte Applicants submitted that the Respondents' allegations that they are experiencing budgetary constraints cannot hold water as held in *Republic vs. Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza* [2012] eKLR wherein it was held that settlement of decretal sum by the Government whether National or County does not necessarily depend on the availability of funds.
21. It is the ex-parte Applicants' submissions that have made out a case warranting the grant of a notice to show cause against the Respondents to show sause why they should not be cited for contempt for failing to pay an outstanding amount of Ksh. 270,830.



22. On costs, the ex-parte Applicants submitted that it is trite law that costs follow events and there is no good reason for the court to depart from this well-established principle. Further, Section 27 of the *Civil Procedure Act* provides the general rule which ought to be followed unless for good reason to be recorded. They therefore contend that it is just and fair that they be awarded costs so that they can recoup the expenses they have incurred in prosecuting the application.

Respondents' Submissions

23. The Respondents submitted there is no wilful disobedience of the court orders; to establish contempt, the Applicant must provide clear and convincing evidence of deliberate failure to comply.
24. The Respondents relied in *Sheila Cassatt Isenberg & another v Antony Machatha Kinyanjui* [2021] KEHC 5692 (KLR) whereby the court held: -

“Contempt of Court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed. This was aptly stated in *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227, that: A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a 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 criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice.”

25. Based on this decision, the Respondents submitted that the ex-parte Applicants have not demonstrated wilful or deliberate disobedience to this court's order. The alleged failure to pay Ksh. 270,830 is attributable to ongoing financial constraints and administrative processes rather than outright defiance.
26. It is the Respondents' submission that they have demonstrated they are actively engaging relevant authorities and making genuine efforts to settle the outstanding amount. Therefore, their compliance or delay does not reach the threshold of contempt; in the absence of clear, convincing evidence of intentional disobedience, the court should not issue a notice to show cause against them.
27. The Respondents submitted that having shown genuine efforts to comply with the court's order and not wilfully disobeyed it, penalizing them with costs would be unjust given their ongoing financial constraints and administrative processes. They therefore submitted that each party should bear its own costs or the court exercises its discretion and deny the Applicants costs to promote fairness and justice.
28. I have considered the averments and submissions of the parties herein. There was no contention that the respondents are owing the applicant kshs 270,830/- as averred. The respondents have even submitted that they are willing to pay the said amount save for the lack of funds in their account.
29. I therefore find that the application is merited and an order is issued compelling payment of this amount by the respondent. In default, execution to issue.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF JULY 2025.



HELLEN WASILWA
JUDGE

