



**Otieno, Ragot & Company Advocates v Clerk, Homabay County Assembly & 2 others
(Miscellaneous Application E004 of 2023) [2024] KEELRC 1498 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1498 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS APPLICATION E004 OF 2023**

**CN BAARI, J
JUNE 13, 2024**

BETWEEN

OTIENO, RAGOT & COMPANY ADVOCATES APPLICANT

AND

THE CLERK, HOMABAY COUNTY ASSEMBLY 1ST RESPONDENT

**COUNTY ASSEMBLY SERVICE BOARD, HOMABAY COUNTY 2ND
RESPONDENT**

HOMABAY COUNTY ASSEMBLY 3RD RESPONDENT

RULING

1. Before Court is the Applicant's motion application dated 14th November, 2023, brought pursuant to Sections 3 and 5(1) of the *Judicature Act*, Chapter 8, Laws of Kenya, Sections 1A, 3 and 3A of the *Civil Procedure Act* Cap. 21, Laws of Kenya, *Contempt of Court Act*, 1981 Laws of England, Part 81 of the *English Civil Procedure (Amendment No.2)* Rule, 2012 laws of England). The Applicant prays: -
 - i. That the Respondents herein, the Clerk HomaBay County Assembly; County Assembly-Service Board Homa-Bay County and Homa-Bay County Assembly be held in contempt of court and be punished accordingly for having been and continuing to act in contempt of the orders of this court issued on 18.04.2023, and until they comply with the said order.
 - ii. That the Respondents herein, be ordered to meet the costs of this application.
2. The application is supported by grounds on the face of the motion and the affidavit of Jude Ragot sworn on 14th November, 2023.
3. The Applicant avers that an order of Judicial Review by way of Mandamus was issued by this court in this instant Judicial Review proceedings on 18.04.2023 in favor of the Ex parte Applicant, compelling the Respondents to pay to the Applicant the sum of Kshs.1,437,520.60/- with interest at court



rates of 14% per annum from 18.04.23 until payment in full, being the decree and certified costs in Kisumu ELRC Miscellaneous No.41 of 2019 between Otieno, Ragot & Company Advocates vs. Homa-Bay County Assembly, and further the costs of the Judicial Review proceedings assessed at Kshs.158,755.41/- as per the Certificate of Costs issued herein on 15th August, 2023.

4. The Applicant further states that the order dated 18.04.2023, and a certificate of costs issued on 15.08.2023 were extracted with a penal notice endorsed thereon and served upon the Respondents, and that it was explained to them in detail in the Ex parte Applicant's correspondence to them vide letter dated 18.8.2023, setting out the computation of the Decree, costs and interest thereon, amounting to Kshs.2,846,290.80/-.
5. That despite having thus been given an opportunity to comply with the said *order of Mandamus*, the Respondents have acted in utter disregard and wilful disobedience of the said orders, and have simply opted to ignore the same.
6. That the Applicant's Advocate personally reached out to the Clerk, Homa-Bay County Assembly on 04.09.2023 to remind her of the outstanding sum, and inform her of the Applicant's intention to commence contempt of court proceedings against the Respondents for their continued disregard of the court orders.
7. That it is now apparent that despite demand for payment of the outstanding balance of Kshs.2,864,290.80/-, the Respondents have never made good any payment, much to the anguish of the Ex parte Applicant.
8. The Applicant avers that no reasonable explanation has been given by the Respondents for their continued reluctance to make the payment, and the Applicant is now desperate that the continued reluctance on the part of the Respondents is a clear indication that they have no intention at all to make the payment, unless punished by this court for their continued contempt, and compelled to make the payment.
9. The Applicant further avers that the Respondents' foregoing conduct constitutes a gross and blatant abuse of the office, and the powers bestowed upon them by disobeying the direction of the court to pay in a manner that can only be described as reckless by reason of giving no explanation or justification for the failure to comply with the court order.
10. The Respondents did not oppose the motion despite prove that they were served.
11. The Applicant further filed submissions in the matter and which have been duly considered.

Determination

12. I have considered the Applicant's motion, the grounds and affidavit in support thereof together with the Applicant's submissions. The issue for determination is whether the Applicant has proved a case of contempt against the Respondents.
13. The *Black's Law Dictionary* (Ninth Edition) defines contempt of Court as:

“Conduct that defies the authority or dignity of a court, and because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
14. In *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR, the Court held that to succeed in an application for contempt, an Applicant must prove that the terms of the order were clear, unambiguous and were binding on the defendant, the defendant had knowledge of



or proper notice of the terms of the order, the defendant has acted in breach of the terms of the order and the defendant's conduct was deliberate.

15. The *Contempt of Court Act*, 2016 was declared unconstitutional by the High Court in the case of *Kenya Human Rights Commission v Attorney General & Another*, [2018] eKLR, which decision, then means that the applicable law on contempt proceedings remains Section 5 of the *Judicature Act*. The Section states thus: -

“(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.”

16. The record confirms that this Court issued an order of mandamus against the Respondent ordering them to pay the Applicant a sum of Kshs. 1,437,520.60/- together with the costs of that application and interest at 14% from the date of the order. The costs were later assessed at Kshs. 158,755.41, which together with the 14% interest is said to amount to a total of Kshs. 2,846,290.80/-
17. Further, an affidavit of service has been placed before this court showing that the Respondents were served with the order of the court. The court has also been told that the Applicant proceeded to call the 1st Respondent to buttress upon her to pay up the sum herein to no avail.
18. In *Republic v. Attorney General & another Ex Parte Mike Maina Kamau* (2020) eKLR, Mativo J. Had this to say on contempt: -

“Court orders must be obeyed at all times in order to maintain the Rule of Law and good order. This of course means that the authority and dignity of courts must be upheld at all times and this differentiates civilized societies from those applying the law of the jungle. It is the duty of the court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with contemnors. The court does not, and ought not to be seen to make orders in vain; otherwise, the court would be exposed to ridicule and no agency of the constitutional order would then be left in place to serve as a guarantee for legality and for the rights of all people.

A court order is binding on the party against whom it is addressed and until set aside, remains valid and is to be complied with. It is a crime to unlawfully and intentionally disobey a court order.”

19. The Applicant's evidence on the contempt motion remain uncontroverted, the Respondents not having deemed it necessary to oppose the motion. The order issued and which is the subject of the instant application is in my view clear on what the Respondents were required to do which they did not.
20. In the end, I find the notice of motion merited and grant orders as follows: -
- a. That the Respondents herein, the Clerk HomaBay County Assembly; County Assembly-Service Board Homa-Bay County and Homa-Bay County Assembly are hereby found guilty of contempt of court for having been and continuing to act in contempt of the orders of this court issued on 18.04.2023.
 - b. That the 1st Respondent, the Clerk Homabay County, being the accounting officer of the Respondents herein, is allowed 30 days to purge the contempt by complying with the orders of this court issued on 18.04.2023.



- c. That Notice to show cause be and is hereby issued to the 1st Respondent to personally appear before this court on 2nd July, 2024, to show cause why she should not be committed to civil jail for contempt of court, should order (b) above not be complied with.
- d. The costs of the application shall be borne by the Respondents.

21. Orders accordingly.

**DATED, SIGNED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS
13TH DAY OF JUNE, 2024.**

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Ragot present for the Applicant.

N/A for the Respondents

Ms. Anjeline Wanjofu – C/A

