



**Republic v County Secretary, Finance, ICT & Economic Planning County
Government of Kiambu & another; Mungai (Suing as Legal Representative of the
Estate of Anthony Mungai Kirika - Deceased) (Exparte Applicant) (Judicial Review
Application 29 of 2018) [2023] KEELRC 743 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 743 (KLR)

KIAMBU HIGH COURT JUDICIAL REVIEW APPLICATION NO 20 OF 2018

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION 29 OF 2018**

**L NDOLO, J
MARCH 28, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**COUNTY SECRETARY, FINANCE, ICT & ECONOMIC PLANNING COUNTY
GOVERNMENT OF KIAMBU 1ST RESPONDENT**

**CHIEF OFFICER, FINANCE, ICT & ECONOMIC PLANNING COUNTY
GOVERNMENT OF KIAMBU 2ND RESPONDENT**

AND

**LUCY KANYI MUNGAI (SUING AS LEGAL REPRESENTATIVE
OF THE ESTATE OF ANTHONY MUNGAI KIRIKA -
DECEASED) EXPARTE APPLICANT**

RULING

1. This matter was initially filed in the High Court at Kiambu as Judicial Review Application no 20 of 2018. Pursuant to an order issued by Meoli J on October 9, 2018, the matter was transferred to this court for hearing and determination.
2. By a judgment delivered on February 7, 2010, O.N Makau J issued an order of *mandamus* in favour of the *ex parte* applicant as against the 2nd respondent.



3. The order of mandamus directed the 2nd respondent to pay to the *ex parte* applicant the sum of ksh 17,201, 967 being the decretal sum as per decree dated October 8, 2018, arising from a judgment delivered by Hon Kituku on April 11, 2018 in Kiambu CMCC no 175 of 2016.
4. The 2nd respondent was further directed to pay accrued interest from the date of the decree as well as costs of the application.
5. The judgment of O.N Makau J was not satisfied as directed and on December 15, 2021, the *ex parte* applicant filed a notice of motion dated December 14, 2021, seeking orders to commit the 2nd respondent to civil jail for contempt of court on account of disobedience of the orders issued on February 7, 2020.
6. The notice of motion is supported by an affidavit sworn by Counsel for the *ex parte* applicant, Solomon Kivuva and is premised on the following grounds:
 - a. That following the hearing and determination of Kiambu CMCC no 175 of 2016 between the *ex parte* applicant and the County Government of Kiambu, judgment was entered in favour of the *ex parte* applicant, in the sum of ksh 17,201,967 being the principal sum, costs and interest accrued, vide a decree and certificate of costs dated October 8, 2018;
 - b. That despite service of the said judgment and decree, the Respondents neglected their statutory duty and without any justification whatsoever refused to pay the *ex parte* applicant the said sum compelling her to institute judicial review application no 29 of 2018 seeking inter alia that an order of mandamus be issued, directing the 1st and 2nd respondents to pay to the *ex parte* applicant the sum of ksh 17,201,967;
 - c. That the aforesaid judicial review application was heard by O.N Makau J on February 7, 2020, who ordered:
 - i. That an order of *mandamus* be and is hereby issued directing the 2nd Respondent namely, the Chief Officer- Finance, ICT and Economic Planning, Kiambu County Government to pay to the *ex parte* Applicant the sum of ksh 17,201, 967 being the decretal sum as per the decree dated October 8, 2018, pursuant to the judgment delivered by Hon Kituku on April 11, 2018 in Kiambu CMCC no 175 of 2016 and in respect of the Applicant's certificate of costs arising from the aforesaid suit;
 - ii. That the accrued interest from the date of the decree to payment in full be borne by the 2nd respondent;
 - iii. That the costs of the judicial review application and the chambers summons dated October 9, 2018 be borne by the 2nd respondent;
 - iv. That the application as against the 1st respondent be and is hereby dismissed with no order as to costs.
 - d. That despite numerous reminders and/or requests from the *ex parte* applicant, the 2nd respondent has wilfully and intentionally continued to violate, disobey and/or disregard the orders issued by O.N Makau J on February 7, 2020 and the *ex parte* applicant continues to suffer enormous financial loss, inconvenience and hardship;
 - e. That the court has determined that its authority must be respected by all parties, regardless of status or standing in society and any contempt of the orders creates an obligation for the court



to assert its authority, for the good of the authority of the court and for public confidence in such authority;

- f. That the dignity and authority of the court must be protected at all times;
 - g. That the culture of disobeying court orders and decisions has reached very high levels in Kenya and courts must exercise their constitutional authority of punishing for contempt of court; and
 - h. That unless the application is heard and the orders sought herein granted, the 2nd Respondent will continue to deliberately disobey the aforesaid orders thereby causing an infringement of the fundamental rights of the *ex parte* applicant as enshrined in the Constitution and statute and thus occasioning a miscarriage of justice with the *ex parte* Applicant suffering irreparable loss and damage.
7. The 2nd respondent, William Kimani, opposes the application by his replying affidavit sworn on February 8, 2022.
 8. He depones that at the time the decree was issued by the court on June 23, 2021, the decretal sum of ksh 17,201,967 had not been budgeted for as provided under the Public Finance and Management Act and the attendant Regulations.
 9. Kimani further depones that the Finance Department, upon being seized of the decree, was preparing a supplementary budget where the decretal sum would be considered accordingly.
 10. When the matter was placed before me, I took the route of summoning the 2nd respondent to appear before the court to explain why the decretal sum had not been paid. In this regard, the parties' advocates appeared before me several times and William Kimani made a personal appearance on October 3, 2022.
 11. In the course of time, some money has been paid to the *ex parte* applicant, through her Advocates, towards satisfaction of the decretal sum.
 12. According to Miss Mbugua, Counsel on record for the 2nd respondent, ksh 11 Million had already been paid to the *ex parte* applicant, through her Advocates. Counsel therefore submitted that the 2nd respondent had demonstrated good will towards settling the decretal sum and asked the court to disallow the application.
 13. It is evident that from the time the contempt application was filed some money has been paid to the *ex parte* applicant, through her Advocates. This in effect means that the alleged contempt has been partially purged.
 14. Although the parties' advocates gave some figures as to what had been paid towards satisfaction of the decretal sum, none of them filed a statement of account to enable the court to determine to what extent the alleged contempt had been purged.
 15. I will therefore withhold a final determination as to whether or not to cite the 2nd respondent for contempt of court, pending filing of a joint statement of account by the parties' advocates.
 16. The said statement shall be filed within the next forty (45) days from the date of this ruling.
 17. I will make no orders as to costs at this stage.

DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF MARCH 2023

LINNET NDOLO

JUDGE



Appearance:

Mr. Mahugu for the Ex Parte Applicant

Miss Mbugua for the 2nd Respondent

