



**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 3075 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3075 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

JUDICIAL REVIEW APPLICATION 29 OF 2018

L NDOLO, J

NOVEMBER 30, 2023

[FORMERLY KIAMBU HIGH COURT JUDICIAL REVIEW APPLICATION NO 20 OF 2018]

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. By a ruling dated 28th March 2023, I withheld final determination as to whether or not to cite the 2nd Respondent for contempt of court.
2. The ruling proceeded from a Notice of Motion dated 14th December 2021, seeking to commit the 2nd Respondent to civil jail for contempt of court, on account of disobedience of the orders issued by Makau J on 7th February 2020.



3. The orders of 7th February 2020 directed the 2nd Respondent to pay to the Ex Parte Applicant the sum of Kshs. 17,201, 967 being the decretal sum as per decree dated 8th October 2018, arising from a judgment delivered by Hon Kituku on 11th April 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 Notice of Motion was supported by an affidavit sworn by Counsel for the Ex Parte Applicant, Solomon Kivuva and was 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 Kshs. 17,201,967 being the principal sum, costs and interest accrued, vide a decree and certificate of costs dated 8th October 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 Kshs. 17,201,967;
 - c. That the aforesaid Judicial Review Application was heard by Makau J on 7th February 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 Kshs. 17,201, 967 being the decretal sum as per the decree dated 8th October 2018, pursuant to the judgment delivered by Hon Kituku on 11th April 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 9th October 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 Makau J on 7th February 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.
6. The 2nd Respondent, William Kimani, opposed the application by his replying affidavit sworn on 8th February 2022.
7. He deponed that at the time the decree was issued by the Court on 23rd June 2021, the decretal sum of Kshs. 17,201,967 had not been budgeted for as provided under the Public Finance and Management Act and the attendant Regulations.
8. Kimani further deponed that the Finance Department, upon being seized of the decree, was preparing a supplementary budget where the decretal sum would be considered.
9. 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 3rd October 2022.
10. In the course of time, some money has been paid to the Ex Parte Applicant, through her Advocates, towards satisfaction of the decretal sum. However, the ultimate figure keeps rising owing to accrual of interest.
11. After my interim ruling, there were many court appearances at which Counsel appearing for the 2nd Respondent promised that the outstanding amount would be liquidated.
12. On 19th July 2023, Mr. Mararo told the Court that the outstanding amount would be settled within forty-five (45) days. He undertook to submit a written proposal by close of business on that day.
13. By 18th September 2023, when the matter came up for mention, no payment had been made and no proposal had been submitted.
14. At a subsequent mention on 25th October 2023, the Court was informed that there had been no compliance on the part of the 2nd Respondent. I therefore reserved this ruling.
15. From the pleadings and court record, there is no dispute that the 2nd Respondent has failed to comply with a valid court order.
16. *Black's Law Dictionary (Ninth Edition)* defines contempt of court as:
- “Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
17. As held by Lord President Clyde in *Johnson v Grant*, (1923), SC 789 at 790 the power to punish for contempt of court is not for the personal integrity of the courts or even the private rights of parties; it is to protect the fundamental supremacy of the law.



18. In *Clarke & others v Chadburn & others* [1985] 1All E.R (PC), 211 it was observed as follows:

“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, wilful disobedience to an order of court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal...even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”

19. Closer home, in *Econet Wireless Ltd v Minister for Information & Communication of Kenya* [2005] eKLR it was held:

“Where an application for committal for contempt of a court order is made the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proved to punish the contemnor or demand that it is purged or both.”

20. In this case, the 2nd Respondent, William Kimani has persistently disobeyed the orders of the Court issued on 7th February 2020.

21. I therefore have no difficulty in citing the said William Kimani for contempt of court, which I hereby do.

22. The Ex Parte Applicant will have the costs of the case.

23. Mitigation and sentencing on 22nd January 2024.

24. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF NOVEMBER 2023

LINNET NDOLO

JUDGE

Appearance:

Mr. Mahugu for the Ex Parte Applicant

Mr. Mararo for the 2nd Respondent

