



**Republic v County Government of Nairobi & 2 others; Kingpost Limited (Exparte Applicant) (Environment and Land Judicial Review Case 10 of 2020) [2025] KEELC 579 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 579 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 10 OF 2020  
OA ANGOTE, J  
FEBRUARY 13, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COUNTY GOVERNMENT OF NAIROBI ..... 1<sup>ST</sup> RESPONDENT  
COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE .... 2<sup>ND</sup>  
RESPONDENT**

**MEMBER, LANDS, PLANNING, URBAN RENEWAL, HOUSING AND  
PROJECT MANAGEMENT ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**THE KINGPOST LIMITED ..... EXPARTE APPLICANT**

**RULING**

1. Vide a Motion dated 6<sup>th</sup> July, 2023, brought pursuant to the provisions of Section 5 of the *Judicature Act*, Cap 8, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules, the Ex-Parte Applicant seeks the following reliefs:
  - i. The Honourable Court be pleased to grant leave to the Ex-parte Applicant, in default of payment to apply to cite and hold the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to be in contempt of court and mete an appropriate punishment.
  - ii. The Honourable Court do ask and/or demand of the 2<sup>nd</sup> Respondent to show reasons as to why he/she should not be committed to civil jail for failure to obey a court order to make payment as per an order of Mandamus granted against him/her, compelling him/her to satisfy



the decree issued in NRB ELC No 506 of 2008(Also Thika ELC No 35 of 2017) standing at Kshs 7, 250, 138.67/= as at 31/1/2023.

- iii. That the Honourable Court grant such further orders and/or consequential orders, writs and declarations for purposes of enforcing the Ex-parte Applicant's decree dated the 27<sup>th</sup> November, 2019.
  - iv. Such further or other relief as the Honourable Court may deem just and expedient to grant.
2. The application is based on the grounds on the face of the Motion and supported by the Affidavit of Bhupinder Singh Chana, the Managing Director of the Ex-parte Applicant of an even date who deponed that the Applicant filed ELC No 506 of 2008(formerly Thika ELC No 35 of 2017) and that after hearing the parties, the court rendered its Judgment on 19<sup>th</sup> June, 2018.
  3. The Managing Director of the Ex-parte Applicant deponed that on the 11<sup>th</sup> November, 2021, the court issued an order of mandamus in favour of the Applicant directing the Respondents to comply with, and satisfy the decree dated the 27<sup>th</sup> November, 2019 in the sum of Ksh 4,500,000/= and accrued interest now standing at Kshs 2, 489, 318 and that despite having been duly served with the Judgment and subsequent order of Mandamus, the Respondents elected to disobey the same and declined to satisfy the decretal amount totaling Kshs 7,250, 138.67 as at 31<sup>st</sup> January, 2023.
  4. It was deposed that the Judgment and penal notice were personally effected on the Respondents and Counsel; that since the entry of the Judgment on 27<sup>th</sup> November, 2019, and despite several reminders, the same has not been settled and that it is the unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless the order is set aside.
  5. In response to the Motion, the Respondents filed Grounds of Opposition dated 21<sup>st</sup> July, 2023 premised on the grounds that:
    - i. The application is fatally incompetent and incurably defective.
    - ii. The application seeking to cite and hold the Respondents to be in contempt of court is misadvised since the Respondents have not failed, neglected and/or refused to pay the decretal amount and costs awarded in NRB ELC No 506/2008.
    - iii. The County Government responsibilities with respect to management and control of public finance under the *Public Finance Management Act*, 2012 gives the mandate to pay out funds to the County Executive Committee Member in Charge of Finance and not the Respondents.
    - iv. Sections 196 and 197 of the *Public Finance Management Act*, 2012, prohibits public officers from paying the Applicant as it would be an offence to spend any public funds without any prior authorization.
    - v. The County Government of Nairobi has competing interests catered for in the budget. This Honourable court to allow for the Applicant's claim to be factored in the forthcoming budget as approved by the County Assembly since the County Executive cannot expend money not approved in the budget as it will amount to an illegality.
    - vi. Once the said monies are allocated for, approved and passed by the County Assembly pursuant to Section 125 of the *Public Finance Management Act*, 2012, the Respondents will effect payments of the said monies.



- vii. The Application is hence frivolous, vexatious and an abuse of the court process and ought to be dismissed with costs to the Respondents.

## Submissions

6. The Applicant filed submissions on 8<sup>th</sup> December, 2023. Counsel submitted that the law on contempt is premised on the provisions of the *Judicature Act* after the nullification of the *Contempt of Court Act* and that as stated in *Hadkinson vs Hadkinson*(1952)2 ALL ER 56, it is the unqualified obligation of every person against who an order has been made by a court of competent jurisdiction to obey it unless discharged and as a result, the person disobeying it is in contempt and should be punished. Reliance was also placed on the case of *Republic vs County Chief Officer, Finance and Economic Planning, Nairobi City County Ex-parte Stanley Muturi* [2018]eKLR.
7. It was urged that in the circumstances, the contemnor, being the accounting officer is guilty of contempt having failed to settle the debt and that the Respondents contention that the Motion is mis-advised missed the point and there is nothing irregular in citing the Respondents for contempt.
8. According to Counsel, Section 21(3) of the *Government Proceedings Act* imposes a statutory duty on the accounting officer of the Government to pay the money specified in a certificate of order against the Government to the person so entitled or to his Advocate and that pursuant to Section 103(2)(a) and (3) and Section 148(2) and (3) of the *Public Finance Management Act*, a County Executive Committee Member for Finance is the accounting officer of a County Government. Reliance in this regard was placed on the case of *Republic vs County Chief Officer, Finance & Economic Planning, Nairobi City County Ex-Parte Stanley Muturi*(supra).
9. It was submitted that with respect to Section 148(3) of the *Public Finance Management Act*, the County Executive Committee Member for Finance is mandated to ensure that each County Government entity has an accounting officer as provided for under Article 226(2) of the *Constitution* and where he/she fails to appoint an officer, or does not disclose such a designated officer, the responsibilities of an accounting officer fall on his shoulders. To support this contention, Counsel cited the case of *Solo Worldwide Inter-Enterprises vs County Secretary, Nairobi County and Another* [2016] eKLR.
10. It was submitted that the contemnors are guilty of contempt; that in *Samuel M.N Mweru & Others vs National Land Commission and 2 Ors*[2020]eKLR the court restated the test for establishing contempt to wit proof by the Applicant of the terms of the orders, knowledge of the terms by the Respondent and failure by the Respondent to comply with the terms of the order.
11. The court further noted that upon proof of the foregoing 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.
12. The Respondents filed submissions on 7<sup>th</sup> November, 2023. Counsel submitted that it is a well-established principle that in seeking contempt, the Applicant must demonstrate the terms of the order, Respondents knowledge thereof and his deliberate failure to abide by them; that as expressed in *Gatharia K Mutitika vs Baharini Farm Limited* [1958] KLR 227, contempt of court must be proved satisfactorily, and it must be higher than proof on a balance of probabilities. Reliance was also placed on the case of *Re: Vinay Chandra Mishra* (1995)2 S CC584).
13. It was contended that the contempt orders sought do not lie against the alleged contemnors because under Party IV of the *Public Finance Management Act*, the County Government responsibilities with



respect to management and control of funds lies with the County Executive Committee Member in Charge of Finance and not the alleged contemnors.

14. According to Counsel, the alleged contemnor is a public officer and is prohibited in law under Section 196 of the Public Finance Management Act, 2012 from paying the ex-parte Applicant as ordered as it would be an offence to spend any public funds without any prior authorization and budgetary allocation and that consequently, he cannot be said to have intentionally violated and or disobeyed an order of the court and cannot be found to be in contempt.

### **Analysis and Determination**

15. Vide the present Motion, the Applicant seeks, inter-alia, to be granted leave to apply to cite and hold the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in contempt of court and mete out an appropriate punishment.

16. It is well established that the current position with respect to contempt as guided by the Judicature Act is that the requirement for obtaining leave to initiate contempt proceedings does not apply in cases where committal is sought for a breach of a court judgment, order, or undertaking. [See the Court of Appeal decision in Christine Wangari Gachege vs Elizabeth Wanjiru Evans & 11 Others [2014]eKLR] Consequently, prayer 1 as sought is superfluous.

17. In light of the foregoing, and upon consideration of the pleadings, and submissions, the issues that arise for determination are:

- i. Whether the Motion is competent?
- ii. Whether the Applicant has proved contempt as against the 2<sup>nd</sup> Respondent?

18. Vide their Grounds of Opposition, the Respondents contend that the present Motion is fatally defective. It is their contention that the County Government responsibilities with respect to management and control of public finance in the county is the County Executive Committee Member in Charge of Finance and not the named contemnors.

19. Section 21(3) of the Government Proceedings Act under the head satisfaction of orders against the Government provides that:

“(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon...”

20. The term “the accounting officer” has been the subject of interpretation in various decisions. In Council of Governors & Others vs The Senate Petition No. 413 of 2014 [2015] eKLR, it was held as follows:

“(134) The Petitioners have also sought the interpretation of the term “Accounting Officer”. In that regard, Article 226 of the Constitution provides;(1)Act of Parliament shall provide for -(a)....(b)The designation of an accounting officer in every public entity at the national and county level of government. (2)The accounting officer of a national public entity is accountable to the national assembly for its financial management, and the accounting officer of a county public entity is accountable to the county assembly for its financial



management. Pursuant to this provision, Parliament enacted the Public Finance Management Act. The appointment and designation of a County Government Accounting Officer is provided for under Section 148 of that Act, as follows;1.A County Executive Committee member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation.2.Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity.(135)It therefore follows that “an accounting officer” for a County Government entity is the person so appointed and designated as such by the County Executive Committee Member for Finance under Section 148 of the Public Finance Management Act. Indeed, Section 148 (3) of the Public Finance Management Act mandates the County Executive Committee Member for Finance to ensure that each County government entity has an accounting officer as provided for under Article 226(2) of the Constitution.”

21. Likewise, in *Republic vs Kisii County Government Ex-Parte Peter Kaunda Nyamosi & 2 Others* [2018] eKLR, the position taken was as follows:

“ 25. It is therefore clear that the accounting officer for the County Government is the County Executive Member for Finance. Since the order of mandamus was against the County Government, I do not think that this is fatal as the order of mandamus remains alive and the court may issue a notice to show cause against the accounting officer, upon whom the statutory duty is imposed, to ensure that its decision is enforced (see *Consolata Kihara & 21 Others v Director of Kenya Trypanosomiasis Research Institute* [2003] KLR 582 and *Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County (Ex Parte David Mugo Mwangi)* NBI HC Misc. App. 222 of 2016 [2018] eKLR).”

22. In *Solo Worldwide Inter-Enterprises vs County Secretary Nairobi County and Another* [2016] eKLR the court reiterated that the person with the overall financial obligation for the purposes of the affairs of a County Government is the County Executive in Charge of Finance unless he demonstrates otherwise by showing that he has designated an officer for that purpose.
23. In the circumstances, looking at prayer 2 of the Motion, it is clear that the Applicant specifically cited the 2<sup>nd</sup> Respondent herein who is the County Executive Committee Member in Charge of Finance. The 2<sup>nd</sup> Respondent has not demonstrated that there is another officer designated to deal with the financial affairs of the County. Ultimately, the 2<sup>nd</sup> Respondent has been correctly cited and this objection is moot.
24. The Black’s Law Dictionary (Ninth Edition) defines contempt of Court as follows:

“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.”



25. Discussing contempt, the Supreme Court in *Republic vs Ahmad Abolfathi Mohammed & Another* [2019] eKLR posited thus:

“There is no doubt that an act in contempt of the Court constitutes an affront to judicial authority; and the Court has the liberty and empowerment to mete out penalty for such conduct, in a proper case. The object is, firstly, to vindicate the Court’s authority; secondly, to uphold honourable conduct among Advocates, in their standing as officers of the Court; and thirdly, to safeguard its processes for assuring compliance, so as to sustain the rule of law and the administration of justice”

26. Due to the repeal of the *Contempt of Court Act*, 2016, [see *The Kenya Human Rights Commission vs Attorney General & Another* [2018] eKLR] the substantive law governing contempt proceedings is the *Judicature Act*. Section 5 of the Act provides as follows:

- “(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 such power shall extend to upholding the authority and dignity of subordinate courts.
- (2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”

27. Additionally, Section 29 of the *Environment and Land Court Act* under the title offences provides as follows:

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”

28. As a principle, Courts do not act in vain and their orders must at all times be obeyed. This was articulated by the Court of Appeal in *Shimmers Plaza Limited vs National Bank of Kenya Limited* [2015]eKLR as follows:

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26<sup>th</sup> President of the United States of America once said:-

“No man is above the law and no man is below it; nor do we ask any man’s permission to obey it. Obedience to the law is demanded as a right; not as a favour”.

The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by the *Constitution*. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy.”



29. It is trite that contempt proceedings are quasi-criminal in nature due to the severe consequences they attract. Consequently, the standard of proof in such proceedings is higher than the balance of probabilities in civil cases although not as high as beyond reasonable doubt. As stated by the Supreme Court in *Republic vs Ahmad Abolfathi Mohammed & another* [2018] eKLR:

The standard of proof in cases of contempt of Court is well established. In the case of *Mutitika v. Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:

“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, and 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 a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.

30. In order to succeed in civil contempt proceedings, the Applicant has to prove that the terms of the order were clear, unambiguous and binding on the Respondent; Knowledge of these terms by the Respondent; failure by the Respondent to comply with the terms of the order; and deliberate conduct by the Respondent.
31. It is not in dispute that vide a Judgment dated the 19<sup>th</sup> June, 2018, the court found in favour of the Applicant and granted it, inter-alia, general damages for trespass and nuisance to the tune of Kshs 4,500,000 together with costs and interests. On 11<sup>th</sup> November, 2021, the court issued Mandamus orders in favour of the Applicant which read as follows:

“A writ of mandamus against the County Government of Nairobi and the County Executive Committee Member for Finance-Nairobi County compelling them forthwith to satisfy the decree of this Court in ELC 506 of 2008(Also Thika ELC No 35 of 2017) is hereby issued.”

32. Looking at the first test, there is no doubt that the court’s orders of 11<sup>th</sup> November, 2023 were clear, and precise, calling upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to ensure settlement of the decretal sum due to the Applicant.
33. Moving to the aspect of knowledge, the Applicant has demonstrated service thereof vide a letter dated the 24<sup>th</sup> January, 2023 which was duly received as evinced by the stamps from the Office of the County Attorney and the Office of the CECM Finance and Economic Planning, Nairobi County. The court notes that this service or indeed knowledge of the court orders aforesaid is not disputed by the Respondents.
34. It is also admitted that the decree is yet to be settled. The Respondents plead among others of non-allocation of funds from the Government. The Court in *Republic vs Permanent Secretary*,



Ministry of State for Provincial Administration and Internal Security *Exparte* Fredrick Manoah Egunza [2012]eKLR discussing a similar contention noted:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the *Government Proceedings Act*. 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. 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. This provision does not condition payment to budgetary allocation and parliamentary approval of Government expenditure in the financial year subsequent to which Government liability accrues.” [Emphasis mine].”

35. The court concurs. Non-allocation of funds by Parliament is not an acceptable defence or justifiable excuse for non-payment of decretal sums.
36. In the present case, the 2<sup>nd</sup> Respondent has not indicated what steps if any, it has taken to effect payment since issuance of the Mandamus in 2021. Indeed, since 2021, the Respondents have gone through more three financial circles within which they should have budgeted for the decretal sum.
37. The court therefore finds that the 2<sup>nd</sup> Respondent, as the Accounting Officer on whose shoulders the duty to pay the decretal sum rests, has willfully and intentionally disobeyed the Court Order dated 11<sup>th</sup> November, 2021 and is therefore in contempt of court.
38. Accordingly, the Motion dated 21<sup>st</sup> August 2023 is hereby allowed and orders granted in respect thereof as hereunder:
  - i. The 2<sup>nd</sup> Respondent herein, The County Executive Committee Member for Finance, County Government of Nairobi, be and is hereby found to be in contempt of the Court’s orders given on 11<sup>th</sup> November, 2021.
  - ii. The 2<sup>nd</sup> Respondent herein, The County Executive Committee Member for Finance, County Government of Nairobi, to appear before this court to show cause why he should not be detained in prison for a period of six months or such period that the court may please for contempt of court, or to meet out any other appropriate sentence.



iii. That costs of the Motion to be borne by the 1<sup>st</sup> Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**O. A. ANGOTE**

**JUDGE**

In the presence of;

Ms Nyakundi holding brief for Mr. Koceyo for Respondents

Mr. Njagi for Applicant

Court Assistant: Tracy

