



**Associated Autooile Distributor (K) Limited v Mombasa County Government,
 (Formerly) Municipal Council of Mombasa; Evans Oanda, Mombasa County Executive
 Committee Member & another (Contemnor) (Judicial Review Miscellaneous Application
 53 of 2006) [2025] KEHC 425 (KLR) (Judicial Review) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 425 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
 JUDICIAL REVIEW
 JUDICIAL REVIEW MISCELLANEOUS APPLICATION 53 OF 2006
 RE ABURILI, J
 JANUARY 27, 2025**

BETWEEN
ASSOCIATED AUTOMOILE DISTRIBUTOR (K) LIMITED APPLICANT
AND
**MOMBASA COUNTY GOVERNMENT, (FORMERLY) MUNICIPAL COUNCIL
 OF MOMBASA RESPONDENT**
AND
**EVANS OANDA, MOMBASA COUNTY EXECUTIVE COMMITTEE
 MEMBER CONTEMNOR**
**GLORIA MWASI (CHIEF OFFICER, (FINANCE) MOMBASA COUNTY
 GOVERNMENT CONTEMNOR**

RULING

1. This matter has a checkered history of being in this court for the longest time possible. It involves settlement of a decree of the court in mandamus proceedings. Over the years, interest accrues to the detriment of the citizens of Kenya who are the tax payers. The court has over time, from the proceedings on record, granted the Respondents an opportunity to settle the decree and by instalments. Even where there have been attempts to settle part of the decree, there has been default.
2. There is an application on record dated 4/11/2024 because the earlier orders for settlement by instalments were breached and so have all the other orders for settlement, going by the court record.



3. However, there were efforts made to settle the decree by instalments as agreed by the parties. The Respondents are public officials who are expected to honour court orders. They are already in contempt of court and any proceedings subsequent to the contempt proceedings are meant to ensure settlement of the decrees, not anything else.
4. The Respondents were served with the application dated 4/11/2024 and when they appeared on 16/1/2025 before this court, they sought leave and time to file a Replying affidavit. That was not the first time that they were coming into contact with the court on the said application. They were given 7 days to comply.
5. They have filed a Replying affidavit. However, the same was filed one day late, on 24/1/2025 instead of by 23/1/2025 as ordered by the court on 16/1/2025. There was delay of one day.
6. The applicant's Counsel urges the court to strike out the Replying affidavit while the Respondents' Counsel urges the court to enlarge the time for filing and deem the Replying affidavit as duly filed and served. I observe that the applicant promptly filed a supplementary affidavit.
7. There is delay of one day. However, that delay is not inordinate and justice can still be served to both parties who are ready to argue the pending application if they are given the opportunity to be heard on the application.
8. I find no prejudice will be occasioned to the Applicant if leave is granted to the Respondents to allow the Replying affidavit as filed and served to be validated.
9. This will fast-track the pending proceedings to their logical conclusion.
10. On the earlier delay, following directions by Ngaah J, I observe that in between, there was the Christmas season and the period within which time stopped running. The Respondents have nonetheless filed their Reply to the application. Striking out of the Reply would be a draconian measure that should be the last resort.
11. Let all parties be heard so that this court can make an informed decision on exactly why there has been no compliance with court orders on the settlement of this age-old decree. Only then can this court also satisfy itself that it has done and been seen to have done justice to both parties.
12. Accordingly, I decline to strike out the Respondents' Replying affidavit. I allow it to remain on record as filed and served and is deemed to be validly filed and served within the period granted by the court.
13. Parties to proceed and argue the application dated 4/11/2024, orally, forthwith if they are ready to do so.
14. I so order.

**DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS AT NAIROBI
THIS 27TH DAY OF JANUARY, 2025**

R.E. ABURILI

JUDGE

