



REPUBLIC OF KENYA



**Ndichu v Attorney General & another (Application E159 of 2023)
[2025] KEHC 3843 (KLR) (Judicial Review) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3843 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
APPLICATION E159 OF 2023
JM CHIGITI, J
MARCH 28, 2025**

BETWEEN

ROBERT NDICHU APPLICANT

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

**PRINCIPAL SECRETARY, MINISTRY OF INTERIOR & NATIONAL
ADMINISTRATION 2ND RESPONDENT**

RULING

1. The application before this Court is the Notice of Motion 11th July, 2024. The application is brought Under Order 1A, 1B & 3A (3) of the Civil Procedure Act, and Section 4(a) and 6(c) of the contempt of court Act 2016. It seeks the following orders:
 1. That this Honourable court be pleased to cite the respondents for contempt of the court order issued by this court on the 26th April 2024 in Misc. Judicial Review Appl. No. E159 of 2023, and do order that he be committed to Civil jail for a period not exceeding thirty (30) days, for failure to comply with the same.
 2. That costs be provided for.
2. The application is supported by a Supporting Affidavit by Robert Ndichu sworn on even date.
3. It is the Applicant's case that in the year 2009, he sued the respondent and successfully obtained a judgement and a decree against the respondent on 28th September 2012 for Kshs. 1,595,605.00/=.
4. A certificate against government was issued on the 8th July 2016.



5. It is contended that he has intimidated the Respondent of the same vide his advocates but the same did not yield any positive results.
6. This prompted him to move this Honourable Court praying for the judicial review orders of mandamus, compelling the Respondent to satisfy the said decree.
7. Mandamus was granted on the 26th April 2023 in J. R Misc. Application No. E159 of 2023.
8. It is contended that despite service of the said orders upon the Respondents, they continue in non-compliance thereof with absolute impunity and disregard to the issuing court and this republic's justice system.
9. It is posited that such acts of non-compliance and the continued disobedience of the order have, and continue to visit gross injustice, damage and loss upon the him.
10. The Applicant canvassed his application with written submissions dated 30th January, 2025.
11. The Applicant invokes Section 5 of the Judicature Act confers jurisdiction on the superior courts to punish for contempt in the following terms;

“ Every superior court shall have power to –

- a. Punish for contempt of court on the face of the court.
- b. Punish for contempt of court; and
- c. Uphold the dignity and authority of subordinate courts”.

12. Reliance is placed in *In Econet Wireless Kenya Limited v Minister for Information and Communication of Kenya Authority* [2005] eKLR where Hon Justice Ibrahim (as he then was) observed as follows: -

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”

13. It is contended that the Respondents are aware of the judgment and consequential orders as they have been notified of the same on several occasions through personal service to which receipt has been acknowledged.

14. Reliance is placed in *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR Mativo J. restated the test for establishing contempt as follows;

“

“ 40. It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove;

- (i) the terms of the order,



(ii) Knowledge of these terms by the Respondent,

(iii) Failure by the Respondent to comply with the terms of the order.

Upon proof of these 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. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated: -

"There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate..."

15. It is submitted that the Respondents have willfully and deliberately disobeyed this Honourable Court's orders in terms of the judgement given on 28th September, 2012 and the orders of 26th April, 2024, which remains unsettled to date unjustifiably to the Applicant's detriment.

16. In *Mahinderjit Singh Bitta v Union of India & Others* 1 A NO. 10 of 2010 (13th October, 2011):

"In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is *lis* before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. (Emphasis)."

17. It is further submitted that the Respondents have never made an attempt to come to Court and explain the difficulties (if any) faced by the need to comply with the order after the Court rendered the said decision.

18. Reliance is placed in *Judicial Review 9 of 2021; Henry Musemate Murwa v Francis Owino, Principal Secretary, Ministry of Public Service, Youth and Gender Affairs & another* [2021] eKLR;

"The Applicant has two judgments, one in Cause No. 564 of 2011 and in High Court JR 128 of 2017. The two judgments have not been set aside. No appeal has been filed in respect thereto. The two judgments are valid. The Respondents are aware of both but have since the judgments were delivered, failed to pay. Dr. Francis O. Owino having not denied that he was the accounting officer at the time of service of the judgment in High Court JR 128 of 2018, I find him guilty of disobedience of this Court's Orders of 26th July 2018. The said Dr. Francis O. Owino is directed to appear in Court on 28th September 2021 for purposes of sentencing."

19. It is contended that *the Constitution*, 2010 is supreme and Article 2 (1) reiterates that by stating that it binds all persons and all state organs. No man or State organ or authority is above the Constitutional command.



20. The Applicant posits that his application dated 11th July, 2024 is merited and he urge this Honourable Court to allow it as prayed in the motion with costs.
21. The application is undefended.

Analysis and determination;

22. The issue for determination is whether or not the applicant has made out a case for the grant of the orders sought.
23. It is not in dispute that on 28th September 2012 a judgement and decree was issued against the respondent for Kshs. 1,595,605.00/=.
24. Thereafter, a certificate against government was issued on the 8th July 2016.
25. The Applicant notified the Respondent of the od the foregoing. The decree remains unsettled.
26. This precipitated the Applicant to file an application for an order of mandamus, compelling the Respondent to satisfy the said decree.
27. Consequently, an order of Mandamus was granted on the 26th April 2023 in JR Misc Application No. E159 of 2023.
28. Despite service of the said orders upon the Respondents, they continue with the non-compliance thereof with absolute impunity and disregard to the issuing court and this republic's justice system.
29. Section 5 of the Judicature Act confers jurisdiction on the superior courts to punish for contempt in the following terms;

“Every superior court shall have power to –

 - a. Punish for contempt of court on the face of the court.
 - b. Punish for contempt of court; and
 - c. Uphold the dignity and authority of subordinate courts”.
30. In *Econet Wireless Kenya Limited Vs Minister for Information and communication of Kenya Authority* [2005] eKLR Hon Justice Ibrahim (as he then was) observed as follows: -

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”
31. It is this court’s finding that the respondents are in contempt of the court orders.
32. However, before the Respondents can be sentenced, this court must first give the Respondents an opportunity to show cause why they should not be sentenced by way of Mitigation.



Disposition;

33. The court is satisfied that the applicant has proven that he entitled to the order sort, and I proceed to grant the following orders.

Order;

34. The Respondents are hereby cited for contempt of the court order issued by this court on the 26th April 2024 in Misc. Judicial Review Appl. No. E159 of 2023.

35. The Respondents are hereby summoned to personally appear before this Court for mitigation and sentencing on 23rd June 2025 at 11 AM in open court.

36. That costs to the Applicant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH 2025

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J. CHIGITI (SC)

JUDGE

