



REPUBLIC OF KENYA



KENYA LAW
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Republic v Judiciary & 2 others; Kahacho (Exparte Applicant) (Judicial Review Application E019 of 2023) [2025] KEHC 4041 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KEHC 4041 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW APPLICATION E019 OF 2023**

SM MOHOCHI, J

MARCH 28, 2025

BETWEEN

REPUBLIC APPLICANT

AND

THE JUDICIARY 1ST RESPONDENT

CHIEF REGISTRAR OF THE JUDICIARY 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

AND

JAMES NGURU KAHACHO EXPARTE APPLICANT

RULING

1. The Applicant by way of Notice of Motion dated 18th October, 2024 brought under Section 1A, 1B, 3A and 63 (e) of the *Civil Procedure Act*, Order 40 Rule 3, Order 51 Rule 1 of the Civil Procedure Rules and Section 5 of the *Judicature Act* seeks the following prayers: -
 - i. Spent
 - ii. That the Honourable Court be pleased to cite the 2nd Respondent, Ms. Winfridah Mokaya, for contempt of Court and fined Kshs. 500,000 (Kenya Shillings Five Hundred Thousand) to be paid to the Ex-Parte Applicant, for failure to honour the Order of Mandamus given by the Honourable Court on the 9th of May, 2024 compelling her to pay the Ex-Parte Applicant the decretal sum of Kshs. 3,048,560 and taxed costs of Kshs 228,410, interests of Kshs 96,374 together with accrued interests thereon at the rate of 12 % p.a from the 28th October, 2022 until the date of full payment arising from the Nakuru Chief Magistrates Court Civil Suit No. E004 of 2021 being James Nguru Kahacho vs The Judiciary, The Chief Registrar of the Judiciary and The Honourable Attorney General;



- iii. That in the alternative, the 2nd Respondent be cited for contempt of Court and committed to civil Jail for a period not exceeding six (6) months;
- iv. That costs of this Application be provided for and be borne by the 2nd Respondent.

Applicant's Case

2. The Application is premised on the grounds on its face and the Applicant's Supporting Affidavit evenly dated wherein he deposes that an order of Mandamus was issued by the Court on 9th May, 2024 compelling payment of decretal sum and associated costs arising from Nakuru CMCC No. E004 of 2021 but despite service the 2nd Respondent has declined and or refused to honour the order without lawful justification.
3. The Ex-Parte Applicant argued that the award being related to personal injury needs the sum to continue with his treatment. That the 2nd Respondent is inclined on frustrating his efforts in demonstrating absolute disregard and contempt of Court Orders. That it is in the interest of justice that the prayers sought are issued as the Ex-Parte Applicant has no other way of enforcing the orders.

Analysis and Determination

4. I have considered the prayers in the application and the grounds in support therein, the supporting affidavit and the sole issue for determination is whether the Applicant has met the threshold for the grant of the orders sought and what orders are appropriate in the circumstances.
5. It is settled that, for contempt proceedings to succeed, there are necessary conditions that have to be met by the Applicant that is: -
 - i. The terms of the order issued are not ambiguous and are clear;
 - ii. That there was proper notice of the order and the contemnor had adequate knowledge of the subject order; and
 - iii. The contemnor has deliberately failed to obey the order
6. It is accurate that on 9th May, 2024 this Court issued an order of mandamus against the 2nd Respondent compelling her to pay the decretal sum owed to the Ex-Parte Applicant as well as associated costs and interest. It stated that: -
 1. That this Honourable Court be and is hereby pleased to issue and order of Mandamus to Compel the Chief Registrar of the Judiciary, Ms. Winfridah Mokaya to pay the Ex-Parte Applicant the decretal sum of Kshs. 3,048,560 and taxed costs of Kshs 228,410, interests of Kshs 96,374 together with accrued interests thereon at the rate of 12 % p.a from the 28th October, 2022 until the date of full payment arising from the Nakuru Chief Magistrates Court Civil Suit No. E004 of 2021 being James Nguru Kahacho vs The Judiciary, The Chief Registrar of the Judiciary and The Honourable Attorney General;
 2. That the Ex-Parte Applicant is awarded costs of this suit.
7. There was no ambiguity in that order.
8. The Oder was served on the 2nd and 3rd Respondents on the 3rd day of June, 2024 to which they acknowledged receipt by stamping on the Ex-Parte Applicant's copy. There is evidence that the Respondent had knowledge of the order herein and was personally served. The 2nd Respondent despite service and acknowledging service has also failed to comply with the order.



9. The 2nd Respondent has not advanced any cogent explanation as to why there is noncompliance with this Court's orders. The Court has also not cited any orders indicating that the decree and/or orders of 9th May, 2024 have been set-aside or stayed or otherwise challenged.
10. Once orders are issued by the Court, there is a moral and legal imperative from the person the orders issued against has. Where that obligation is not acted upon the Court has the duty to punish for contempt in order to maintain order, sustain the Rule of Law and ensure there is no anarchy in the administration of justice. The Supreme Court in Republic v Mohamed & Another [2018] KESC 51 (KLR) observed that: -
- (23) Authorities on the necessity to punish for contempt are legion. We have considered those provided by the respondent, and also cite the following, in affirmation of the principle.
- (24) In Econet Wireless Kenya Ltd V. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828 Ibrahim J (as he then was) relied on the Court of Appeal decision in Gulabchand Popatlal Shah & Another Civil Application No. 39 of 1990 (unreported), where the Court of Appeal stated 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... In Hadkinson v. Hadkinson (1952) 2 All E.R. 567, it was held that: It is the plain and 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 and until that 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 an order believes it to be irregular or void.”
- (25) In Att-Gen vs Times Newspapers Ltd. [1974] AC. 273 , Lord Diplock stated
- “... There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity.”
11. I am therefore satisfied that the Ex-Parte Applicant has proved to the required standard that indeed the 2nd Respondent is in Contempt of Court Orders.
12. The Ex-Parte Applicant has sought that the 2nd Respondent be fined Kshs. 500,000 or in the alternative be committed to civil jail for a period not exceeding six (6) months.
13. The imposition of a hefty fine or committal to civil is one way of punishing contemnors. Committal to civil jail should be a last resort measure. This Court will not be so quick to curtail the liberties of individuals in nature of subjecting them to a civil jail without first giving them an opportunity to redeem themselves and purge the contempt.
14. In the premise I make the following orders: -
- i. That Notice to Show Cause be and is hereby issued to the 2nd Respondent, Ms. Winfridah Mokaya, to appear in person before this Court and show cause why this Court should not cite her for contempt of Court and make appropriate punishment for refusing and failing to comply with the order of this Court of 9th May, 2024.



ii. Costs of this Application be borne by the 2nd Respondent.

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

MOHOCHI S.M.

JUDGE

