



**Wayrren Enterpirses Limited v County Secretary Nairobi City County & another (Application 98 of 2020) [2025] KEHC 3895 (KLR) (Judicial Review) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3895 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
APPLICATION 98 OF 2020  
JM CHIGITI, J  
MARCH 27, 2025**

**BETWEEN**

**WAYRREN ENTERPIRSES LIMITED ..... APPLICANT**

**AND**

**THE COUNTY SECRETARY NAIROBI CITY COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF OFFICER/COUNTY TREASURER NAIROBI CITY  
COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application before this Court is the Notice of Motion 14<sup>th</sup> June, 2024. The application is brought Under Section 5 of *Judicature Act*, Cap 8 Laws of Kenya, section 1A, 1B and 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all enabling provisions of the law. It seeks the following orders:
  1. Spent
  2. That the Honourable Court be pleased to cite The County Secretary, Nairobi City County and the Chief Officer/County Treasurer Nairobi City County for being in contempt of the Orders issued by the High Court on 30<sup>th</sup> January, 2023; and
  3. That the Honourable Court be pleased to imprison The County Secretary, Nairobi City County and the Chief Officer/County Treasurer Nairobi City County for contempt of the Orders issued by the High Court on 30<sup>th</sup> January, 2023 for a period of six (6) months or such other period as the Court will determine – until satisfaction of the decree dated 7<sup>th</sup> May 2019 issued by the Chief Magistrates Court of Kenya at Milimani in Milimani CMCC No. 5591 of



2018 Wayrren Enterprises Limited Vs Nairobi City County (comprised in the Certificate of Order against government of 16<sup>th</sup> November, 2023).

4. That costs of the Application be provided for.
2. The application is supported by a Supporting Affidavit by Berline Adhiambo sworn on 14<sup>th</sup> June, 2024.
3. It is the Applicants case that this court vide its judgment dated 26<sup>th</sup> January, 2023 ordered inter alia: -

“That this honourable court be pleased to issue an Order of Mandamaus directed to the Respondents compelling them to satisfy the Decree and Certificate of Costs in Milimani CMCC No. 5591 of 2018 together with interest thereto at the rate of 25% p.a from 13<sup>th</sup> September, 2013 until payment in full.”
4. A Decree was issued on 30<sup>th</sup> January, 2023 in this Judicial Review application and served together with Certificate of Order against Government upon the Respondents physically.
5. It is contended that despite service, the County Secretary, Nairobi City County and the Chief Officer/ County Treasurer Nairobi City County have disregarded, disrespected, ignored and/or neglected to comply with the Orders issued by the High Court on 30<sup>th</sup> January 2023 by acting in total defiance and contravention of the same.
6. It is the Applicant’s case that the Respondents are in violation of Article 73(2) and 232 of *the Constitution* of Kenya as read together with sections 3 and 8 of the *Leadership and Integrity Act* and section 10 of the *Public Officer Ethics Act*.
7. According to the Applicant, it is in the interest of justice and preservation of the rule of law that this Honourable Court intervenes and punishes the said Respondents for contempt of court orders to ensure observance and respect of the due process of law and maintain public administration of justice as administered by courts.
8. The Applicant canvassed their application by written submissions dated 1<sup>st</sup> October, 2024.
9. It is submitted that it is a settled principle that court orders are binding and must be complied with unless varied or set aside by a competent court. Obedience to the law is paramount, and no one, including public officials, is above the law.
10. They place reliance in the case of Republic v Attorney General & Another Ex-parte James Alfred Koroso [2013] eKLR, the Court held:

“Once a court of law issues an order, it is not optional for the party at whom it is directed to choose whether to obey or disobey the same. Court orders are to be obeyed.”
11. See also Republic v Principal Secretary, Ministry of Health Ex-Parte Omwenga George Ougo [2021] eKLR, and Republic v The County Secretary Nairobi City County & Another Ex- Parte Wachira Nderitu Ngugi & Co Advocates [2016] eKLR.
12. The Applicant invokes Article 73(2) of *the Constitution* of Kenya which outlines the responsibilities of public officers, including upholding integrity, promoting accountability, and respecting the rule of law.
13. It is their submission that the Respondents, as public officers, have flagrantly violated these constitutional values by failing to honor the mandamus order issued by this Honourable Court and contrary to the provisions of the *Public Officer Ethics Act* and the *Leadership and Integrity Act*, which obligate public officers to uphold the rule of law and ensure compliance with lawful orders.



14. It is also their submission that the Respondents have been granted ample time to settle the decretal sum owed to the them but have chosen to act in blatant disregard.
15. In *Republic v Cabinet Secretary Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works Ex-Parte Samantha Nyambura Njiru* [2023] eKLR, the ex-parte applicant sought a mandamus order to compel the Cabinet Secretary to pay damages awarded in a previous judgment. The mandamus was granted, but the Respondents did not act.
16. It is their case that Respondents' actions represent a serious threat to the rule of law and public confidence in the judiciary therefore it is in the interests of justice and the preservation of the Court's authority that this Honourable Court finds the Respondents guilty of contempt and orders their imprisonment for a period of six (6) months, or such period as this Court deems appropriate, until compliance is achieved

### **Respondents' case;**

17. The Respondents oppose the Application with Grounds of opposition dated 12<sup>th</sup> August, 2024. It is contended that:
  1. The application is vexatious bad in law and an abuse of the court process as it offends the provision of iv section 21 or the *Government Proceedings Act* cap 40 Laws of Kenya.
  2. The application dated 14<sup>th</sup> June 2024 is effective and incompetent as it offends the provision of section 30 of the *Contempt of Court Act*.
  3. The application falls way below the threshold provided for under the relevant rules for citing contentious enforcing and execution of decrees.
18. The Respondents filed written submissions dated 14<sup>th</sup> October, 2024.
19. It is submitted that application dated 14<sup>th</sup> June 2024 seeks two substantive orders which two prayers cannot be sought in one application namely. The prayers are:
  - i. an order that a Notice to Show Cause be issued to show cause why contempt of court proceedings should not be commenced against the respondents for disobeying the court order, and,
  - ii. an order that contempt of court proceedings be commenced against the respondents and they be deemed to be guilty of the contempt and liable to imprisonment for a term not exceeding six months or to a fine not exceeding Kshs. 200,000/=
20. It is contended that they were not served with the notice to show cause why contempt proceedings should not be instituted against them as the law provides in Section 30 of the *Contempt of Court Act*.
21. They posit that it is impermissible to commit an alleged contemnor to jail in the absence of proper service of the notice as the law demands and conclusive proof of the same.
22. They further submit that exercise of judicial authority is now entrenched in *the Constitution* under Article 159 which commands Courts to be guided by the principles stipulated therein.
- 233 It is their case that the omission to serve the Attorney General offends section 30 (3) and contempt of Court proceedings can only be commenced after a thirty days' notice has been served.



24. It is the Respondents' case that in proving the elements of civil contempt, learned authors of the book *Contempt in Modern New Zealand* authoritatively 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.

25. The Respondents argue that The High Court of South Africa held 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.

#### **Analysis and determination:**

26. The issue for determination is whether the applicant has made out a case for the grant of the orders sought.

27. On 26th January, 2023 the court delivered a judgment issuing an Order of Mandamus directed to the Respondents compelling them to satisfy the Decree and Certificate of Costs in Milimani CMCC No. 5591 of 2018 together with interest thereto at the rate of 25% p.a from 13th September, 2013 until payment in full.

28. The decree holder thereafter extracted and served upon the Respondents the Certificate of Order against government dated 16th November, 2023 and Mandamus Order issued on 30th January, 2023.

29. The Court's Order was clear, unambiguous, and the same was issued for compliance by the Respondents.

30. From the responses filed in opposing the application, the court is satisfied that the Respondents, the office of the Attorney General and/or County attorney are fully aware of the orders. The decree remains unsettled despite service.

31. The Respondents' actions amounts to a clear violation of Article 73(2) and 232 of *the Constitution* of Kenya as read together with sections 3 and 8 of the *Leadership and Integrity Act* and section 10 of the *Public Officer Ethics Act*.

32. The Respondent does not deny knowledge of the decree, orders or the amount owed as set out in the certificate of order.



33. The decree holders had a legitimate expectation that they shall enjoy the fruit of the judgment. This remains unachieved.
34. The unreasonable unexplained delay in settling Decrees which are not the subject a stay execution of offend doctrine of legitimate expectation and the rule of law under Article 10 of The Constitution and this court cannot countenance that.
35. The Applicant /The decree holder must not be left in limbo indefinitely.
36. I am guided by De Smith, Woolf & Jowell, “Judicial Review of Administrative Action” 6th Edn. Sweet & Maxwell page 609:

“A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government’s dealings with the public.”

37. This accords with Section 11 (2) of The Fair Administrative Action Act which stipulates that in proceedings for judicial review relating to failure to take an administrative action, the court may grant any order that is just and equitable, including an order- (a) directing the taking of the decision; (b) declaring the rights of the parties in relation to the taking of the decision; (c) directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties.
38. The court has the duty to ensure that the rules of natural justice are upheld at all times. The orders that the Applicant is seeking cannot be granted once. This is thinking is rights inspired and imperative in cases where one’s liberty is at risk of being taken away.
39. Article 47 (1) of the Constitution states as follows;

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair”

Article 47(2)

“If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”

40. Article 47 has now been effectuated by the Fair Administrative Action Act, 2015 under which section 4(3) provides as follows:

- (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-
  - (a) prior and adequate notice of the nature and reasons for the proposed administrative action;
  - (b) an opportunity to be heard and to make representations in that regard;
  - (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
  - (d) a statement of reasons pursuant to section 6;



- (e) notice of the right to legal representation, where applicable;
- (f) notice of the right to cross-examine or where applicable; or
- (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action. The status of fair administrative action in Kenya's constitutional and jurisprudential framework was discussed by Onguto, J in Kenya Human Rights Commission vs Non-Governmental Organizations Co-ordination Board [2016] eKLR a case in which the powers of the same Respondent were in question, in which the learned Judge expressed himself inter alia as follows:

“As to what constitutes fair administrative action, the court in *President of the Republic of South Africa and Others vs. South African Rugby Football Union and Others (CCT16/98) 2000 (1) SA 1*, stated thus:

“Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also its content. The principal function of section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades...” [Emphasis supplied]

41. Thus, a person whose interests and rights are likely to be affected by an administrative action has a reasonable expectation that they will be given a hearing before any adverse action is taken as well as reasons for the adverse administrative action as provided under Article 47 (2) of *the Constitution*. Generally, one expects that all the precepts of natural justices are to be observed before a decision affecting his substantive rights or interest is reached. It is however also clear that in exercising its powers to superintend bodies and tribunals with a view to ensuring that Article 47 is promoted the court is not limited to the traditional judicial review grounds. The *Fair Administrative Action Act*, 2015 must be viewed in that light.

The Petitioner also alleges violation of its right to fair hearing. Article 50(1) of *the Constitution* makes provision for fair hearing. The Article is to the effect that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

The right to fair hearing is evidently closely intertwined with fair administrative action. The often cited case of *Ridge vs. Baldwin* [1964] AC 40 restated the right to fair hearing as a rule of universal application in the case of administrative acts or decisions affecting rights. In his speech to the House of Lords in 1911, Lord Loreburn aptly put it as a ‘duty lying upon everyone who decides anything’ that may adversely affect legal rights.

Halsbury Laws of England, 5th Edition 2010 Vol. 61 at para 639 on the right to be heard states that:



“The rule that no person is to be condemned unless that person has been given prior notice of the allegations against him and a fair opportunity to be heard (the audi alteram partem rule) is a fundamental principle of justice. This rule has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court.”

I would state that it now appears that the court, effectively has a duty to look into not only the merits and legality of the decision made due to the requirement of “reasonable” action under Article 47, but also the process and procedure adopted due to the requirement of following all precepts of natural justice under both Articles 47 and 50 (1) of *the Constitution*. The court proceeding under Article 47 of *the Constitution* is expected not only to pore over the process but also ensure that in substance there is justice to the petitioner. The traditional common law principles of judicial review are, in other words, not the only decisive factor.

It may sound like stretching the precincts of traditional judicial review, but clearly by *the Constitution* providing for a “reasonable” administrative action and also enjoining decision makers to provide reasons, the constitutional scheme was to entrench the blazing trend where courts were already going into merits of decisions by innovatively applying such principles like proportionality and legitimate expectation. I must however confess that the line appears pretty thin and, perhaps, more discourse is required on the subject of traditional judicial review and the now entrenched substantive constitutional judicial review.”

42. Article 50(1) provides that every person has a right to have any dispute that can be resolved by the application of the law decided in a fair and public hearing before a court or an independent and impartial tribunal or body.
43. The twin rules of natural Justice that no man shall be a Judge in his own cause (Nemo Judex in causa sua) and that no man shall be condemned unheard (audi alteram partem) are cardinal principles of law which are fundamental in our Justice system. They are basically an embodiment of the duty to act fairly. However, there is no legal definition or standard regarding what constitutes procedural fairness and each case must be decided on its own merits.
44. The fact that the decree remains unsettled must not be used as a reason deny the Respondents their Constitutional right to be heard.
45. This is the rational that drives the procedure for the notice to show cause.

Order:

1. The County Secretary, Nairobi City County and the Chief Officer/County Treasurer Nairobi City County are hereby summoned to personally appear before this Court to show cause why they should not be cited and found guilty of Contempt of Court for disobeying and defying the Order and Decree of the Order of Mandamus given by this Honourable Court on 25<sup>th</sup> July 2018 on 23<sup>rd</sup> June 2025 at 11 AM in open court.
2. That costs to the Applicant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF MARCH, 2025.**

.....  
**J. CHIGITI (SC)**



**JUDGE**

