



Republic v County Secretary, Nairobi City County & another; Litswa & another (Exparte Applicants) (Suing as the Legal Representatives of the Estate of Hermaton Litswa) (Judicial Review Miscellaneous Application 292 of 2019) [2025] KEHC 9339 (KLR) (Judicial Review) (30 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9339 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 292 OF 2019
RE ABURILI, J
JUNE 30, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY SECRETARY, NAIROBI CITY COUNTY 1ST RESPONDENT

**COUNTY CHIEF OFFICER, REVENUE & ADMINISTRATION NAIROBI
COUNTY 2ND RESPONDENT**

AND

DORCAS KASEY LITSWA EXPARTE APPLICANT

ERIC LUGEYI LITSWA EXPARTE APPLICANT

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF HERMATON
LITSWA**

RULING

1. By a Notice of Motion dated 7th March, 2025, the ex parte applicants herein seek the following orders:
 - a. That this Honourable Court be pleased to order the County Secretary and the County Chief Officer, Revenue Administration, Nairobi City County to appear and show cause why they should not be cited for contempt of court for failing to pay the Applicant the sum of Kshs.1,721,917.80 together with interest thereon at the rate of 12% p.a until payment in full as ordered by this court on the 6th October 2021.



- b. That the Respondents be committed to civil jail for disobeying the Order of the Honourable Court issued on 6th October 2021 in HC JR Misc. Application No. 292 of 2019 and the Order dated 2nd December 2020 in NBI CMCC No. 7927 of 2008 and Decree and Certificate of Costs issued on 22nd June 2017.
 - c. That Patrick Analo Akivaga, the County Secretary and Wilson Njoroge Gakuya, the Chief Officer, Revenue Administration, Nairobi City County be committed to civil jail for contempt of court.
 - d. That the costs of this Application be borne by the Respondents.
2. The application is supported by the affidavit sworn by Erick Ligeyi Litswa on 7th March 2025.
 3. The applicant's case is that an order or mandamus was issued by the Court on 6th October 2021, directing the respondents to honour the decree and certificate of costs issued on 22nd June 2017 in Milimani CMCC No.7927 of 2008 and pay to the ex parte applicant the sum of Kshs.1,721,917.80 together with costs and interest thereon at the rate of 12% until payment in full.
 4. It is deposed that the respondents were served with the order of mandamus on 7th December 2021 but are yet to settle the amount owing despite several reminders. That there are also outstanding costs in HCCA 304 of 2018 that the Respondents have failed and/or refused to pay despite repeated demands issued.
 5. The application was canvassed by way of oral submissions made before the court on 27th May 2025 only by Ms. Macharia counsel for the Applicant as there was no representation for the Respondent. I note from the Affidavit of Service sworn on 26th May 2025 by Migui Mungai that a hearing notice dated 23rd May 2025 was served upon the firm of M/s Mogire Mogusu Advocates representing the Respondents.
 6. In her oral submissions, Ms. Macharia stated that an order with a penal notice was extracted and served upon the Respondents on 23rd February 2023. That the Respondents were served again on 17th February 2025 with all documents including a decree, certificate of order against the government, demand letter and mandamus order with a penal notice.
 7. Counsel submitted that the respondent's counsel had sought time to sort out the matter but this has never been done yet it is almost 10 years since the decree was issued. It was submitted that the delay to pay is inordinate.
 8. The respondents did not file any response opposing the application for contempt of court despite service of the application having been effected as evidenced by the affidavit of service sworn on 30th April 2025 by Migui Mungai.

Analysis and Determination

9. From the affidavit evidence and submissions by the Applicant on record and the applicable law and decided cases, the issues for determination are whether the Respondents are guilty of contempt of court order issued on 6th October 2021 and if so, what orders should this court make in the circumstances.
10. It is not in contention that there is a valid order of this court that is clear and unambiguous. It is important for the court to point out that the Respondents were not denied an opportunity to file their responses. In its directions issued on 13th March, 2025, the Court explicitly allowed the respondents to submit their responses to the present application. These directions were duly served on the respondents by the ex parte Applicant on 30th April, 2025.



11. However, despite this opportunity, the Respondents had still not filed their responses as of 7th May, 2025 when the matter was before this court for directions on the ex parte Applicant's instant application for contempt. The respondents also failed to appear before the court on 27th May 2025 despite a hearing notice having been served upon the firm of M/s Mogire Mogusu & Advocates who were representing them. The said service is evidenced by the affidavit of service sworn on 26th May 2025.
12. The law on contempt is clear. Court orders are not mere suggestions. They are binding, and once issued, every party against whom they are directed is duty-bound to obey them unless and until they are lawfully set aside.
13. Public officers may be cited personally for contempt where they willfully disobey court orders issued against the institutions they lead or represent. In this case, it is the accounting officer that the law holds responsible for settling decrees issued by courts of competent jurisdiction. Additionally, disobedience of a court order fundamentally undermines the rule of law, on which the administration of justice is founded.
14. Contempt is defined in Black's Law Dictionary (Ninth Edition) 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.”
15. Contempt, strictly defined, refers to actions that hinder the fair and efficient operation of the justice system. Contempt of court involves more than simply enforcing compliance with court orders. Superior courts have the power to hold litigants in contempt where they fail to follow court directives a critical measure for preserving both the authority and credibility of the judicial system.
16. As a result, when a court is asked to find a litigant in contempt, it is not only resolving the specific grievance of the successful party but also safeguarding the broader public interest. See the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR.
17. In the Scottish case of Stewart Robertson vs Her Majesty's Advocate, 2007 HCAC63, Lord Justice Clerk stated that:

“Contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings”.
18. In the case of Kenya Tea Growers Association Vs Francis Atwoli and 5 Others [2012] eKLR Lenaola J (as he then was in the High Court) cited with approval the case of Clarke and Others Vs Chadburn & Others [1985] 1All E.R (PC), 211 in which the Court observed that:

“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal....even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it”.



19. However, the court in the case of *Econet Wireless LTD vs. Minister For Information & Communication of Kenya & Another* [2005] eKLR held that:

“Where an application for committal for contempt of court orders is made the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance, an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious- a contemnor would have no right of audience in any court of law unless he is punished or purges the contempt.”

20. From the foregoing, it is trite that contempt of court proceedings and applications are subtle and criminal in nature and would impose criminal sanctions if a conviction followed.

21. In Kenya, the *Contempt of Court Act* was declared unconstitutional by the Court in *Kenya Human Rights Commission v Attorney General & Another* (2018) eKLR. This means that Section 5 of the *Judicature Act* was reinstated following the nullification of the *Contempt of Court Act*. This was the position taken by the Court in *Republic v Kajiado County & 2 others Exparte Kilimanjaro Safari Club Limited* [2019] eKLR which I concur with and wherein the Court stated that:

“This section was repealed by section 38 of the Contempt of Act of 2016, and as the said Act has since been declared invalid, the consequential effect in law is that it had no legal effect on, and therefore did not repeal section 5 of the *Judicature Act*, which therefore continues to apply. In addition, the substance of the common law is still applicable under section 3 of the *Judicature Act*. This Court is in this regard guided by the applicable English Law which is Part 81 of the English Civil Procedure Rules of 1998 as variously amended, and the requirement for personal service of court orders in contempt of Court proceedings is found in Rule 81.8 of the English Civil Procedure Rules.”

22. In *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR Mativo J. (as he then was in the High Court) restated the test for establishing contempt of court and stated that:

“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.”

23. The question therefore is, has the ex parte Applicant established a case for the citation of the alleged contemnors for contempt of court orders?
24. As has been stated herein above it is not in contention that there exists a valid order of this court dated 6th October 2021 whose terms are clear and unambiguous and binding on the Respondents.
25. However, section 21 of the *Government proceedings Act* as read with the Public Finance and Management Act places the duty of settling decrees on the accounting officers. There is no evidence that the County Secretary is the Accounting Officer of the Nairobi City County Government. I hereby expunge the office of County Secretary and its holder from these proceedings.
26. In regard to the Chief Officer, Revenue Administration, the Court is satisfied that personal service of the order for mandamus was effected. The secretary in the office of the Respondent received the order but declined to endorse acknowledgment. There is no denial by the 2nd respondent that the said service was effected. The court also notes that service was also effected upon the County Solicitor as had been directed by the secretary at the 2nd Respondent's office, and that the County Solicitor acknowledged receipt.
27. The silence of the County Chief Officer, Revenue and Administration, in the face of a sworn affidavit of service and a long-standing unpaid decree, gives rise to a presumption of actual knowledge. This, combined with the conduct of the secretary in the office and the subsequent service on the County Solicitor, persuades the Court that the officer was aware of the order and failed to act upon it.
28. This court finds that there is brazen disobedience of the decree for Mandamus issued by this court and there being no appeal to challenge that decree and as the 2nd respondent has not explained why the decree has not been settled despite service upon them being effected, I find and hold that the respondent is in contempt of court orders issued on 6th October, 2021.
29. Upon being found to be in contempt of court order, the court proceeds to convict the 2nd respondent office holder for contempt of court orders of Mandamus issued on 6th October, 2021.
30. However, with regard to whether the Court should commit the 2nd respondent to civil jail, I am reluctant to issue such an order at this point. That request is premature, as the contemnor has not yet been given an opportunity to present mitigating factors prior to sentencing, as required by law. This Court must adhere to due process. It cannot blindly follow other decisions or be swayed by parties to take procedural shortcuts in contempt proceedings.



31. Accordingly, I decline to issue notice to show cause and order that the contemnor does appear in this court for mitigation on October 7, 2025, before appropriate orders as to sentencing can issue.
32. The matter continues to attract costs at the expense of the public. I order that each party bear their own costs of the application herein for contempt of court.
33. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF JUNE, 2025

R.E. ABURILI

JUDGE

