



**GA Insurance Limited v County Secretary Homa Bay County Government & another
(Judicial Review 8 of 2018) [2025] KEHC 12027 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 12027 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
JUDICIAL REVIEW 8 OF 2018**

**OA SEWE, J
JUNE 27, 2025**

BETWEEN

GA INSURANCE LIMITED PLAINTIFF

AND

**THE COUNTY SECRETARY HOMA BAY COUNTY GOVERNMENT 1ST
DEFENDANT**

**CHIEF OFFICER FOR FINANCE HOMA BAY COUNTY
GOVERNMENT 2ND DEFENDANT**

RULING

1. Before the Court for determination is the Notice of Motion dated 13th June 2024. It is expressed to have been filed pursuant to the direction of Hon. Mr. Justice Kiarie Waweru Kiarie on 25th January 2022. The applicant relied Section 5(1) of the *Judicature Act*, Chapter 8, Laws of Kenya, Sections 1A and 1B of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya, Rule 81.4, Section 2 Part 81 of the English Civil Procedure (Amendment No. 2) Rules 2012, Laws of England, and other enabling provisions of the law and procedures in seeking the following orders:
 - a. That the Court be pleased to order that the County Secretary and Head of the County Public Service Board of the County Government of Homa Bay, Prof. Benard Muok, and the Chief Officer for Finance, County Government of Homa Bay, Mr. Alphonse Wera, are in breach and contempt of the court order made on 4th February 2022 by Hon. Justice Kiarie Waweru Kiarie.
 - b. That the Court be pleased to punish the County Secretary and Head of the County Public Service Board of the County Government of Homa Bay, Prof. Benard Muok, and the Chief Officer for Finance, County Government of Homa Bay, Mr. Alphonse Wera, for their willful and deliberate contempt of the court order made on 4th February 2022 by Hon. Justice Kiarie Waweru Kiarie.



- c. That the Court be pleased to summon the County Secretary and Head of the County Public Service Board of the County Government of Homa Bay, Prof. Benard Muok, and the Chief Officer for Finance, County Government of Homa Bay, Mr. Alphonse Wera, to appear before the Court and show cause why they should not be committed to prison and/or fined for their willful and deliberate contempt of the court order made on 4th February 2022 by Hon. Justice Kiarie Waweru Kiarie.
 - d. That the County Secretary and Head of the County Public Service Board of the County Government of Homa Bay, Prof. Benard Muok, and the Chief Officer for Finance, County Government of Homa Bay, Mr. Alphonse Wera, be fined for their willful and deliberate contempt of the court order made on 4th February 2022 by Hon. Justice Kiarie Waweru Kiarie.
 - e. That the Court be pleased to issue any other orders to meet the ends of justice.
 - f. That the costs of the application be provided for.
2. The application was premised on the grounds that, in utter contempt of the Court's authority, the respondents have willfully and deliberately disobeyed the orders issued herein on 25th January 2022 by Hon. Kiarie Waweru Kiarie by failing to pay the ex parte applicant (hereinafter, "the applicant") within 60 days of the order the sum of Kshs. 4,253,289.60 together with interest thereon at court rates from 21st November 2012 until payment in full. The applicant further averred that it has, on several occasions reminded the respondents to comply with the court order of 25th January 2022 to no avail in spite of full knowledge of the order. Thus, the applicant contended that it is only fair and in the interest of justice that the Notice of Motion be allowed and orders granted as prayed.
 3. The application was premised on the affidavit of Mr. Khaseke M. Georgiadis, an Advocate of the High Court of Kenya, practicing as such in the firm of Mohammed Muigai LLP. He averred that by a Ruling in this matter, delivered on 25th January 2022 by Hon. Mr. Justice Kiarie Waweru Kiarie, the Court issued orders for the payment within 60 days of the order sum of Kshs. 4,253,289.60 in accordance with the Certificate of Costs issued in Migori High Court Civil Case No. 13 of 2015 on 25th May 2015 together with interest thereon at court rates with effect from 21st November 2012 until payment in full and costs.
 4. Counsel further averred that, through a letter dated 4th February 2022 sent via email to the respondents' Advocates, M/s Nyauke and Company Advocates, the applicant informed them of the Ruling and Orders of the Court. In addition, the respondents' Advocates were served with the Order and a copy of the Ruling on the 4th February 2022. Copies of the aforementioned documents were annexed to the Supporting Affidavit as Annexures "GK-1", "GK-2" and "GK-3". Additional correspondences were adverted to at paragraph 7 of the Supporting Affidavit as well as an Affidavit of Service sworn by Mr. Muga Dennis Odhiambo sworn on 8th May 2023.
 5. Accordingly, the applicant posited that the respondents are not only aware of the court order issued on 25th January 2022 but were also served with the same; and as such they have deliberately and callously refused to either acknowledge or pay the appellant as directed by the Court. They averred that it has become necessary that the authority and esteem of the Court be upheld by punishing the respondents as prayed in the application dated 13th June 2024. They added that the said Ruling and Order have neither been appealed nor set aside.
 6. The respondents opposed the application. They relied on their Grounds of Opposition dated 13th November 2024 and contended that:



- a. The application dated 13th June 2024 offends the provisions of Section 21 of the [Government Proceedings Act](#) and Order 29 of the Civil Procedure Rules.
 - b. The application dated 13th June 2024 contravenes the provisions of Section 2 as read together with Section 148 of the [Public Finance Management Act](#) for misjoinder of parties.
 - c. That the financial capacity of the County Government of Homa Bay depends on the allocation by the Treasury and the approval of the Controller of Budget and therefore the settlement of the judgment sum of Kshs. 4,253,289.60 must be subjected to the aforesaid process.
 - d. That the orders sought in the application dated 13th June 2024 against parties not joined to the principal suit violates the right to fair hearing.
 - e. That the amount claimed in the suit are not justified and cannot be supported and as such the application dated 13th June 2024 ought to be dismissed with costs.
7. In addition to the Grounds of Opposition, the respondents relied on the Replying Affidavit sworn on their behalf on 12th February 2025 by the Legal Officer, County Government of Homa Bay, Mr. George Illah. They averred that the Order dated 4th February 2022 was issued against the County Government of Homa Bay and therefore it is the County Government of Homa Bay that is liable to pay. They further averred that the County Government of Homa Bay has competing interests including the settling of decrees to the public yet it has limited resources depending on allocation by the National Treasury and approval by the National Assembly. They confirmed that the process of settling the subject decretal sum has already begun and should be given time.
8. The application was canvassed by way of written submissions, pursuant to the directions given herein on 4th February 2025. In their written submissions dated 20th February 2025, the applicant proposed for determination the single question whether the respondents are in contempt of the court order issued on 25th January 2022. The applicant then went on to submit on the elements that must be proved in such an application, namely:
- a. Whether the terms of the order were clear and unambiguous and were binding on the defendant;
 - b. Whether the defendant had knowledge or proper notice of the terms of the order;
 - c. Whether the defendant has acted in breach of the terms of the order;
 - d. whether the defendant's conduct was deliberate.
9. The applicant urged the Court to find that the terms of the order dated 25th January 2022 was clear and unambiguous in that the respondents, and not the County Government of Homa Bay, were to pay the sum of Kshs. 4,253,280.60 together with interest thereon at court rates with effect from 21st November 2017 within 60 days from the date of the order.
- The applicant further urged the Court to find that the respondents were not only aware of the order, in that it was made in the presence of their counsel, but were also served with the same. Reference was made to Paragraph 4 of the respondents' Replying Affidavit where knowledge of the order was conceded to by Mr. Illah.
10. The applicant further relied on the Affidavit of Service sworn by the Court Process Server to demonstrate that, in spite of the fact that the respondents had due notice of the order issued on 25th January 2022, they were also duly served with it. They therefore contended that the respondents have blatantly refused to either acknowledge the order or pay the applicant as ordered.



11. On the 3rd element, the applicant submitted that, in so far as the respondents were given a specific timeline within which to comply, they are in breach of the order. They submitted that it is now three years since the issuance of the order. They pointed out that the respondents have not demonstrated what steps they have taken over the last three years to comply and added that over two budget cycles have since passed without any action on the part of the respondents. The applicant urged the Court to conclude that their posturing smacks of arrogance and therefore ought to be dealt with accordingly.
12. On their part, the respondents proposed the following questions for determination:
 - a. Whether they are in contempt of a court order;
 - b. Whether the relief sought can be granted;
 - c. Who bears the costs of the application.
13. They placed reliance on Section 30 of the [Contempt of Court Act](#), 2016, and submitted that a Notice to Show Cause ought to have been issued to the Accounting Officer and the Attorney General before the institution of the contempt application. The respondents also relied on Section 21 of the [Government Proceedings Act](#) and the case of Kungu v County Government of Nairobi (Judicial Review Miscellaneous Application E034 of 2023) KEHC 3265 (KLR) (Judicial Review) (3 April 2024) (Ruling) and urged the Court to find that the application is premature in that no Certificate of Order against the County Government has been applied for or obtained by the applicant as required.
14. The respondents reiterated their stance that expenditure by the County Government of Homa Bay is budgeted for in the annual budget process, and that it is not in a position to make any payment outside the procedure provided for in Section 125 of the [Public Finance Management Act](#). In this regard, they respondents made reference to HCCC No. 3832 of 1990: Kisya Investments Ltd v Attorney General & another. They therefore contended that, for the above reasons, the applicant is not entitled to the orders prayed for in the Notice of Motion dated 13th June 2024. They accordingly prayed for its dismissal with costs.
15. Although the respondents placed reliance on Section 30 of the [Contempt of Court Act](#), 2016, that provision was declared unconstitutional on 9th November 2018 by Hon. Mwita, J. in Kenya Human Rights Commission v Attorney General & another [2018] eKLR. The learned Judge held:

“Having considered the petition, the response, submissions, [the constitution](#) and the law, I am persuaded that sections, 30 and 35 of the [Contempt of court Act](#) are unconstitutional. I, however, find that the entire Act fails the constitutional test of validity for lack of public participation and for encroaching on the independence of the judiciary. Consequently, and for the above reasons, this petition succeeds and I make the following orders.

 1. A declaration is hereby issued that Sections 30, and 35 of the impugned [Contempt of Court Act](#) No 46 of 2010 are inconsistent with [the constitution](#) and are therefore null void.
 2. A declaration is hereby issued that the entire [contempt of court Act](#) No 46 of 2016 is invalid for lack of public participation as required by Articles 10 and 118(b) of [the constitution](#) and encroaches on the independence of the Judiciary.
 3. No order as to costs.
16. Needless to mention that the nullification of the [Contempt of Court Act](#) had the effect of reviving the Section 5 of the [Judicature Act](#). I am fortified in this stance by Republic v Returning Officer of



Kamkunji Constituency & The Electoral Commission of Kenya, HCMCA No. 13 of 2008, in which it was held:

“The applicable law as regards contempt of court existing before the enactment of the Contempt of Court Act was restated by the Court of Appeal in Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others, [2014] eKLR. In that case the Court found that the English law on committal for contempt of court under Rule 81.4 of the English Civil Procedure Rules, which deals with breach of judgment, order or undertakings, was applied by virtue of section 5(1) of the Judicature Act which provided that:

“The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.”

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...”

17. Similarly in Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR, the above position was endorsed thus:

“I agree with the above reasoning that since the act that repealed section 5 of the Judicature Act ^[17] has been declared unconstitutional, the effect is that section 5 of the Judicature Act ^[18] still stands.”

18. The applicant also relied on Section 5(1) of the Judicature Act as well as Rule 81.4, Section 2, Part 81 of the English Civil Procedure (Amendment No. 2) Rules. Section 5 of the Judicature Act, states:

1. The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.
2. An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.

19. That court orders must be strictly obeyed was explicated by Romer LJ in Hadkinson v Hadkinson [1952] ALLER 567:

“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 even void.

For, a person who knows of an order, whether null or valid, regular or irregular cannot be permitted to disobey it. It would be most dangerous to hold that the suitors or their solicitors could themselves judge whether an order was null or valid. Whether it was regular or irregular, that they should come to the court and not take upon themselves to determine



such question. That the course of a party knowing of an order which was null and irregular, and who might be affected by it, was plain, he should apply to court that it might be discharged. As long as it exists, it should not be disobeyed." (Also see Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another [2005] KLR 828)

20. Accordingly, granted the issues raised by the respondents in their Grounds of Opposition, Replying Affidavit and submissions, the issue for consideration is whether the applicant has met the threshold to warrant the issuance of the orders sought herein. It is now settled that in an application of this nature, an applicant must prove the following pre- requisites, namely:

- a. that the terms of the order are clear and unambiguous;
- b. That the alleged contemnor had knowledge or proper notice of the order;
- c. That the respondent has deliberately failed to obey the order; (see *Katsuri Limited v Kapurchand Depar Shah* [2016] eKLR)

21. In addition to annexing copies of the order in question to its Supporting Affidavit, the applicant relied on the court record. Moreover, the issuance of the order in question was conceded to by the respondents. The order is plain, unambiguous and capable of compliance. Again, the respondents did not dispute this aspect of the applicant's case. That is why at paragraph 10 of their Replying Affidavit, they deposed that:

"...The Applicant having confirm (sic) that the respondents have acknowledged receipt of the said Order, the process of settling the decretal sum has already begun and should be given time."

22. It is plain therefore that the respondents have been aware of the order since 2022. No attempt has been made to comply therewith. While it is true that the County Government of Homa Bay relies on voted funds which must be approved annually, there was no attempt to demonstrate that the judgment sum in issue was included in the budget cycles that followed the order of 25th January 2022. There has been no communication exhibited to show the constraints the County Government was operating under. Such inaction flies in the face of Section 21(3) of the *Government Proceedings Act*, which state:

3. If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.

23. In this instance, no appeal was filed and therefore the Order for payment of costs as well as the order for mandatory injunction stand to date. That said, it is plain that the only way of enforcement of the order of 25th January 2022 is by compelling compliance by the accounting officer of the County Government of Homa Bay, for Section 21(4) of the *Government Proceedings Act* is explicit that:

4. ...no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government,



or any Government department, or any officer of the Government as such, of any money or costs.”

24. To activate compliance, Section 21(1) and (2) of the *Government Proceedings Act* require that:
1. Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.
 2. A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.

25. In addition, Order 29 Rule 3 of the Civil Procedure Rules provides that:

“Any application for a certificate under section 21 of the *Government Proceedings Act* (which relates to satisfaction of orders against the Government) shall be made to a registrar or, in the case of a subordinate court, to the court; and any application under that section for a direction that a separate certificate be issued with respect to costs ordered to be paid to the applicant shall be made to the court and may be made ex parte without a summons, and such certificate shall be in one of Form Nos. 22 and 23 of Appendix A with such variations as circumstances may require.”

26. It is plain then that a Certificate of Costs under Order 21 Rule 9 of the Civil Procedure Rules is not sufficient for purposes of Section 21 of the *Government Proceedings Act*. The rationale for this stringent procedure was well captured in *Kisya Investments Ltd v Attorney General & Another* [2005] 1 KLR 74 as follows:

“History and rationale of Government’s immunity from execution arises from the following:- Firstly, there has been a policy in respect of Parliamentary control over revenue and this is threefold and is exercised in respect of (i). The raising of revenue- (by taxation or borrowing); (ii). its expenditure; and (iii). The audit of public accounts. The satisfaction of decrees or judgements is deemed to be an expenditure by Parliament and as a result of this must be justified in law and provided for in the Government’s expenditure. It is for this reason that section 32 of the *Government Proceedings Act* provides that any expenditure incurred by or on behalf of the Government by reason of this Act shall be defrayed out of the moneys provided by Parliament. Parliamentary control over expenditure is based upon the principle that all expenditure must rest upon legislative authority and no payment out of public funds is legal unless it is authorised by statute, and any unauthorised payment may be recovered. SEE HALSBURY’S LAWS OF ENGLAND 4TH EDN VOL. 11 PARA 970, 971

AND 1370. As a result of the foregoing, which was borrowed from the Crown Proceedings Act, 1947 (section 37) of England, this is a warning that any payment by Government must



be covered by some appropriation. It is said that Parliament is very jealous of its control over the expenditure and this is as it should be. No Ministry or Department has any ready funds at all times to satisfy decrees or judgements. While existence of claims and decrees may be known to the Ministries and Departments, they have to notify the Ministry of Finance and Treasury of the same so that payment is arranged for or provisions made in the Government expenditure. SEE AUCKLAND HARBOUR BOARD vR (1924) AC 318,326. The second situation, which arises from the above, is that once a decree or judgement is obtained against the Government, it would require some reasonable time to have it forwarded to the ministry of Finance, Treasury, Comptroller and Auditor General etc. for scrutiny and approvals for it to be paid from the Consolidated Fund. The Ministries and Departments do not have their “own” funds to settle such decrees or payments and considering the nature of the Government structure, procedures, red tape and large number of claims, this could take a long time. If execution and/or attachment against the Government were allowed, there is no doubt that the Government will not be able to pay immediately upon passing of decrees and judgements and will be inundated with executions and attachments of its assets day in, day out. Its buildings will be attached and its plants and equipment will be attached, its furniture and office equipment will be attached, its vehicles, aircraft, ship and boats will be attached. There will be no end to the list of likely assets to be attached and auctioned by the auctioneer’s hammer. No Government can possibly survive such an onslaught. The Government and therefore the state operations will ground to a halt and paralyzed and soon the Government will not only be bankrupt but it’s Constitutional and Statutory duties will not be capable of performance and this will lead to chaos, anarchy and the breakdown of the Rule of Law. This is the rationale or the objective of the Law that prohibits execution against and attachment of the Government assets and property.” (also see Republic v Permanent Secretary Office of the President Ministry of Internal Security & Another, Ex Parte Nassir Mwandih, supra)

27. That the above provisions are equally applicable to County Governments is explicit in Subsection (5). It states:
 5. This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.
28. No such Certificate of Costs against the Government in the prescribe forms, namely Form No. 22 and 23, were exhibited herein by the applicant.
29. It is also noteworthy that the applicant brought this suit against the County Secretary and the Chief Finance Officer of the County Government of Homa Bay. The question to pose therefore is whether either of them is an accounting officer for purposes of Section 21 of the [Government Proceedings Act](#).
30. Section 103 of the [Public Finance Management Act](#) states:
 1. There is established for each county government, an entity to be known as County Treasury.
 2. The County Treasury shall comprise—
 - a. the County Executive Committee member for finance;
 - b. the Chief Officer; and



- c. the department or departments of the County Treasury responsible for financial and fiscal matters.
3. The County Executive Committee member for finance shall be the head of the County Treasury.
31. Subsection (3) is explicit that the County Executive Member for Finance, as opposed to the Chief Officer, Finance, is the head of the County Treasury. In *Council of Governors & Others v The Senate* [2015] eKLR, at paragraphs 134 to 137, a three judge bench of the High Court had the following to say in this regard:
 - “134. The Petitioners have also sought the interpretation of the term “Accounting Officer”. In that regard, Article 226 of *the Constitution* provides;
 1. Act of Parliament shall provide for –
 - (a)
 - (b) The designation of an accounting officer in every public entity at the national and county level of government
 2. The accounting officer of a national public entity is accountable to the national assembly for its financial management, and the accounting officer of a county public entity is accountable to the county assembly for its financial management.

Pursuant to this provision, Parliament enacted the *Public Finance Management Act*. The appointment and designation of a County Government Accounting Officer is provided for under Section 148 of that Act, as follows;

 1. A County Executive Committee member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation.
 2. Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity.
 135. It therefore follows that “an accounting officer” for a County Government entity is the person so appointed and designated as such by the County Executive Committee Member for Finance under Section 148 of the *Public Finance Management Act*. Indeed, Section 148
32. of the *Public Finance Management Act* mandates the County Executive Committee Member for Finance to ensure that each County government entity has an accounting officer as provided for under Article 226(2) of *the Constitution*.”



33. Similarly, in Republic v County Secretary, Nairobi City County & Chief Officer, Finance/Nairobi City County Treasurer ex-parte Mohamed Tariq Khan (supra) it was held: -

“ 8. It must however be remembered always that a judicial review application is neither a criminal case nor a civil suit hence the application ought to be brought against the person who is bound to comply with the orders sought therein. In this case the Respondent ought to have been the Accounting Officer who is the County Executive Member for Finance.”

34. The same position was taken in Soloh Worldwide Inter-Enterprises v County Secretary Nairobi County & another [2016] eKLR as hereunder:

“ 17. It therefore follows that the person who has the overall financial obligation for the purposes of the affairs of a County Government must be the County Executive in Charge of Finance and unless he shows otherwise, he is the one under obligation to pay funds, in the capacity as the accounting officer. It must always be remembered that a judicial review application is neither a criminal case nor a civil suit hence the application ought to be brought against the person who is bound to comply with the orders sought therein. In an application for mandamus where orders are sought to compel the satisfaction of a decree against a County Government, the proper person to be a respondent ought to be the said County Executive in Charge of Finance unless he discloses that he had in fact appointed an accounting officer for that purpose...”

35. In the premises, it is plain that the application is not only premature, but has also been brought against the wrong parties. In the result, it is hereby ordered that the Notice of Motion dated 13th June 2024 be and is hereby struck out with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF JUNE 2025

SIGNED BY: HON. LADY JUSTICE OLGA A. SEWE

THE JUDICIARY OF KENYA.

HOMABAY HIGH COURT

HIGH COURT DIV

