



Republic v Attorney General & another; Mutua & another (Ex parte Applicants) (Suing as the Legal Representatives and Administrators of the Estate of Cosmus Mutuku Mutua - Deceased) (Judicial Review E018 of 2023) [2025] KEHC 11172 (KLR) (Judicial Review) (29 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11172 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E018 OF 2023
JM CHIGITI, J
JULY 29, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

THE HON ATTORNEY GENERAL 1ST RESPONDENT

DIRECTOR, NATIONAL YOUTH SERVICE 2ND RESPONDENT

AND

ANN NDINDA MUTUA EX PARTE APPLICANT

GEDION MUTISYA MUTUA EX PARTE APPLICANT

**SUING AS THE LEGAL REPRESENTATIVES AND ADMINISTRATORS OF
THE ESTATE OF COSMUS MUTUKU MUTUA - DECEASED**

RULING

1. The application 5th July, 2024 that is before this Court for determination is the that is seeking the following orders;
 1. ...spent.
 2. That this Honourable Court be pleased to order That 1st & 2nd Respondents Servant, agent and/or representative be committed to jail for a period not exceeding Six (6) Months for contempt of court and disobeying the orders of this honourable Court issued on 20th July,2023.



3. That order (b) above be specifically effected against the following servants or agents of the 1st & 2nd Respondent who have participated in the above disobedience of the court order in their capacity as the Attorney General of the Republic of Kenya and the Director National Youth Service respectively.
 - A) Justin B. N. Muturi
 - B) James Kipsiele Tembur
4. That this Honourable Court do grant any other or further orders of the court geared towards protecting the dignity and the authority of the court.
5. That Costs of this application to be borne by the Respondents.

The Applicants' case;

2. It is her case that on 20th July 2023 this court issued an order of Mandamus directing the Respondents herein to proceed and pay a sum of Kshs 3,154,548/- plus costs and interest being the amount owing as per the decree in Nairobi *CMCC No. 1220 of 2016* subject of the judicial review application herein.
3. Instead of proceeding to obey the said court order and settle the decretal sum as directed by the court The Respondents have resulted into delaying tactics by engaging in unfruitful correspondence with the aim to deny the Applicant justice.
4. It is the Applicants case that The Respondents have failed ignored and/or refused to protect the dignity and authority of the court by deliberately and knowingly disobeying the court orders issued on 20th July 2023.
5. It is argued that the culture of disobeying court orders and decisions has reached very high levels in Kenya and especially by Constitutional office holders.
6. The authority and dignity of the court must be protected at all times at all cost and this honourable court must now exercise its constitutional authority of punishing people for contempt of court.

Respondent's case;

7. In reacting to the application, the Respondents filed grounds of opposition predicated on the following;
 - a. The Attorney General is wrongly enjoined in the proceedings as he is not the Accounting Officer of National Youth Service.
 - b. Mr. Justin B.N. Muturi is not the Attorney-General of the Republic of Kenya thus ought to be struck out of the proceedings.
 - c. That there is not wilful disobedience of this Honourable Court's Orders.
 - d. That the Application be struck out with costs.
8. It is submitted as follows;
 1. The alleged Contemnors, Mr. James Kipsiele Tembur is the Director General of the National Youth Service.
 2. The office of the Director General of the National Youth Service is established under Section 16 of the *National Youth Service Act*, Cap. 208.



3. The Director General, under Section 17 of the *National Youth Service Act*, Cap. 208 shall be the Chief Executive and accounting officer of the service and shall ensure that the resources of the service are used in a way that is lawful, authorized, effective, efficient, economical and transparent.
4. The Attorney General is the Principal Legal Adviser to the government. As the principal legal adviser to the government the Attorney General represents the national government in court or in any other legal proceedings to which the national government is a party.
5. It is in this role as the principal legal adviser to the government that the Attorney General appeared in Civil Suit no 7220 of 2016.
9. It is admitted that Judgment in the suit was entered in favour of the Exparte Applicant and that it is the failure of the 2nd Respondent to fulfil the decree that gave rise to this contempt application.
10. It is its case that the Attorney General is the legal advisor to the 2nd Respondent. The mandate of satisfying the decree falls upon the 2nd Respondent. Thus, the Attorney General can only advise the 2nd Respondent to fulfil the decree.
11. It is submitted that when a state organ is alleged to have committed contempt of court the proper officer to be cited as the contemnor is the “accounting officer” of that state organ.
12. Section 67(2) of the *Public Finance Management Act*, 2012 states that;

“...the person responsible for the administration of a Constitutional Commission or institution of Independent Office shall be the accounting officer responsible for managing the finances of That commission institution or Independent Office. This position finds support in the case of *Tom v Director of Public Prosecution & 2 others; Kenya National Highways Authority & another (Interested Parties)* [2022] KEHC 151 (KLR) where the court stated at para 11 That: “Unless a statute expressly stated otherwise, the accounting officer was the person responsible for managing the finances of a public entity.”
13. Based on the definition above and provisions of Section 17 of the *National Youth Service Act*, Cap.208, the Accounting Officer is the Director General of the National Youth Service.
14. It is the Respondents’ submission that the Attorney General is wrongly enjoined in these proceedings as she is not the Accounting Officer of the National Youth Service.
15. It is submitted that it is public knowledge that Justin B.N. Muturi is no longer the Attorney General of the Republic of Kenya. He is not a Government official as such no orders should issue in the circumstances.
16. Order 1, rule 10 of the *Civil Procedure Rules* states as follows:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
17. This sub-rule gives to the court the power to strike out any party that is improperly joined.



18. It is the Respondents' submission that Justin B.N. Muturi ought to be struck out of the proceedings.
19. On the issue of costs it is submitted that it is a well-established principle that costs follow the event.
20. In the case of *Party of Independent Candidate of Kenya vs Mutula Kilonzo & 2 others*, the court held as follows:

“...it is clear from the authorities That the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is a matter in which the trial judge is given discretion...But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. In the second place the general rule That costs should be awarded to the successful party is a rule That should not be departed from without the exercise of good grounds for doing so.”

Analysis and determination;

21. The Respondents do not deny that the Applicant is entitled to the amount claimed.
22. The alleged Contemnor, Mr. James Kipsiele Tembur is the Director General of the National Youth Service.
23. The office of the Director General of the National Youth Service is established under Section 16 of the *National Youth Service Act*, Cap. 208.
24. According to Section 17 of the *National Youth Service Act*, Cap. 208 The Director General, shall be the Chief Executive and accounting officer of the service who shall at all times ensure that the resources of the service are used in a way that is lawful, authorized, effective, efficient, economical and transparent.
25. The Attorney General is the Principal Legal Adviser to the Government. He represents the national government in court or in any other legal proceedings to which the national government is a party.
26. When a state organ is alleged to have committed contempt of court the proper officer to be cited as the contemnor is the “accounting officer” of that state organ.
27. It is worth noting that the Attorney General as the Legal Advisor to the 2nd Respondent has confirmed that Judgment in the suit was entered in favour of the Exparte Applicant.
28. He confirms that it is the failure of the 2nd Respondent to fulfil the decree that gave rise to this contempt application. The mandate of satisfying the decree falls upon the 2nd Respondent. Thus, the Attorney General can only advise the 2nd Respondent to fulfil the decree the mandate of satisfying the decree falls upon the 2nd Respondent.
29. Section 67(2) of the *Public Finance Management Act*, 2012 states that;

‘...the person responsible for the administration of a Constitutional Commission or Institution of Independent Office shall be the Accounting Officer responsible for managing the finances of that Commission Institution or Independent Office.’
30. In the case of *Tom v Director of Public Prosecution & 2 others; Kenya National Highways Authority & another (Interested Parties)* [2022] KEHC 151 (KLR) the court stated at para 11 that:

“Unless a statute expressly stated otherwise, the accounting officer was the person responsible for managing the finances of a public entity.”



31. The court has taken judicial notice of the fact that Justin B N Muturi is no longer the Attorney General of the Republic of Kenya. His name is hereby struck out of these proceedings in the circumstances.
32. The court notes that though the 2nd Respondent does not deny owing the money that the Applicant is pursuing an order for committal to civil jail cannot issue without a notice to show cause first being issued against the person who is supposed to be committed to civil jail. This accords with Article 47 of a *Constitution* of Kenya.
33. The Accounting Officer of the 2nd Respondent is the Director of the National Youth Service. The 2nd Respondent does not deny knowledge of the court order.
34. This court is of the view that the Applicant has made out a case for Director General of the 2nd Respondent to attend court to show cause why he should not be committed to civil jail.
35. Cost follow the event.

Disposition;

36. The Applicant has made out a case for the grant of the orders sought in the terms as set out below.
Orders;
 1. A notice to show cause is hereby issued directed at the 2nd Respondent to attend court. He shall appear in person on 18th November 2025 in open court at 11 am for the purposes of showing cause why he should not be cited for contempt of court.
 2. Costs to the Applicant

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JULY, 2025.

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J. CHIGITI (SC)
JUDGE

