



**Republic v County Secretary, County Government of Mombasa & another;  
EpcO Builders Limited (Exparte Applicant) (Judicial Review Application  
E049 of 2021) [2024] KEHC 3924 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3924 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
JUDICIAL REVIEW APPLICATION E049 OF 2021**

**OA SEWE, J**

**MARCH 19, 2024**

**IN THE MATTER OF CONTEMPT OF COURT BY THE COUNTY  
SECRETARY AND COUNTY EXECUTIVE COMMITTEE MEMBER  
FOR FINANCE, COUNTY GOVERNMENT OF MOMBASA**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**COUNTY SECRETARY,  
COUNTY GOVERNMENT OF MOMBASA.....1ST RESPONDENT/CONTEMNOR**

**COUNTY EXECUTIVE COMMITTEE**

**MEMBER FOR FINANCE, COUNTY**

**GOVERNMENT OF MOMBASA.....2ND RESPONDENT/CONTEMNOR**

**AND**

**EPCO BUILDERS LIMITED.....EX PARTE APPLICANT**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY SECRETARY, COUNTY GOVERNMENT OF MOMBASA .... 1<sup>ST</sup>  
RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE, COUNTY  
GOVERNMENT OF MOMBASA ..... 2<sup>ND</sup> RESPONDENT**

**AND**



**RULING**

- [1] Before the Court for determination is the Notice of Motion dated 21<sup>st</sup> August 2023. It was filed by the ex parte applicant, EPCO Builders Limited, pursuant to Section 5 of the *Judicature Act*, Chapter 8 of the Laws of Kenya, Sections 1A, 1B & 3A of the Civil Procedure Rules, Rule 39(2) of the High Court (Organization and Administration) (General) Rules and Order 51 of the Civil Procedure Rules and all enabling provisions of the law. The applicant thereby prayed that:
- (a) The Court be pleased to find and hold that the County Secretary, and the County Executive Committee Member for Finance, County Government of Mombasa, are in contempt of the Court's orders given on 27<sup>th</sup> July 2022;
  - (b) The Court be pleased to hold that as a consequence of their acts of contempt, the County Secretary and the County Executive Committee Member for Finance, County Government of Mombasa, be detained in prison for a period of six months or such period that the Court may please.
  - (c) The Court be pleased to grant such other orders and directions as may be appropriate in the circumstances.
  - (d) The 1<sup>st</sup> and 2<sup>nd</sup> respondents/alleged contemnors be condemned to pay costs of the application.
- [2] The application was premised on the grounds that the applicant filed a Complaint dated 22<sup>nd</sup> October 2007 in the Chief Magistrates Court at Mombasa in Mombasa Chief Magistrate's Civil Case No. 3027 of 2007 against the respondent for the sum of Kshs. 895,500.90 together with interest at such a rate and for such period as the court may deem fit and just to grant. Judgment was thereafter entered in the applicant's favour on the 6<sup>th</sup> July 2018 for the aforesaid sum together with interest and costs. Thereafter, the applicant obtained a Certificate of Order against the County Government of Mombasa on 22<sup>nd</sup> August 2019 for the payment of Kshs. 1,103,433.42 together with interest at court rates until full payment, which it duly served on the County Government.
- [3] The applicant further averred that, as a result of the judgment debtor's continued disregard of the decree and orders of the court, it applied for a judicial review order of Mandamus in this matter, to compel the respondents to perform their statutory function by satisfying the lower court's decree. That prayer was granted vide the judgment dated 27<sup>th</sup> July 2022; yet the respondents continue to ignore the command to pay. The applicant now seeks that the respondents be cited for contempt of court on account of their defiance.
- [4] The grounds were explicated in the Supporting Affidavit sworn on the applicant's behalf by its director, Ramji Devji Varsani. The applicant attached thereto copies of the judgment and decree of the lower court, a copy of the judgment delivered herein on the 27<sup>th</sup> July 2022 as well as a copy of the letter to the respondent dated 16<sup>th</sup> December 2022 by which the applicant's counsel forwarded the subject order.
- [5] In response to the application, the respondents filed a Replying Affidavit sworn by the 1<sup>st</sup> respondent, Jeizan Faruk on 8<sup>th</sup> November 2023. He conceded that judgment was delivered herein against the respondents, and that the respondents are yet to comply therewith. The 1<sup>st</sup> respondent however blamed the applicant for its failure to register itself in the Integrated Financial Management System (IFMIS) as a government supplier; contending that this is what hampered the processing of the payment. The



1<sup>st</sup> respondent further averred that, as the County Secretary, he is not the Accounting Officer of the County Government of Mombasa; and has therefore been improperly impleaded herein.

- [6] In addition to the Replying Affidavit, the respondents filed a Ground of Opposition dated 18<sup>th</sup> October 2023, contending that there was no personal service of the Court Order for contempt of court proceedings to lie. They accordingly contended that the application is incompetent and ought to be dismissed with costs.
- [7] In reaction to respondents' averments, the applicant filed a Supplementary Affidavit sworn on 29<sup>th</sup> January 2024. Hence, in response to the assertion that it is not a registered supplier, the applicant averred that it has previously dealt with the respondent and was paid without the issue of the IFMIS being raised. The applicant annexed a copy of the RTGS to exemplify the manner of its previous dealings with the respondent and the mode of payment. In response to paragraphs 6, 7, 8 and 9 of the Replying Affidavit, the applicant made reference to the judgment of the Court herein and emphasized the fact that the respondents are under obligation to comply with the orders of the Court. It added that all the documents are now on the e-filing portal and therefore the respondents cannot feign ignorance or complain of lack of service.
- [8] The application was canvassed by way of written submissions, pursuant to the directions given herein on 23<sup>rd</sup> October 2023. Hence, the applicant relied on its written submissions dated 29<sup>th</sup> January 2024. It thereby proposed the following issues for determination:
- (a) Whether the respondent is in contempt of the court orders issued on 27<sup>th</sup> July 2022;
  - (b) What is the appropriate relief for the applicant?
- [9] The applicant submitted that the respondents have a legal obligation which they should have obeyed already; but instead they chose the path of defiance, hence the contempt application. Counsel made reference to Section 5 of the *Judicature Act* and the cases of Kenya Human Rights Commission v Attorney General & Another [2018] eKLR, Samuel M.N. Mweru & Others v National Land Commission & 2 Others [2020] eKLR, Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County, Ex Parte Stanley Muturi [2017] eKLR, and Teachers Service Commission v Kenya National Union of Teachers & 2 Others Petition No. 23 of 2013, to underscore the obligation to obey court orders.
- [10] In response to the respondents' contention that they do not hold their offices in their personal capacity, the applicant was categorical that the respondents were never sued in their personal capacity in the first place; but on account of their respective offices. Reliance was placed in this regard on Republic v County Secretary, Trans Nzoia County Government & Another, Ex Parte Veteran Pharmaceuticals Limited [2019] eKLR, in which it was held:

As regards who the accounting officers of the Trans Nzoia County are, section 44 of the County Government Act establishes the office of the County Secretary who is the secretary to the County Executive Committee, and is answerable for the operations of the County Executive, and whose functions include being head of the county public service. Section 103 of the *Public Finance Management Act* also establishes the County Treasury comprising of the County Executive Member of Finance, the Chief Officer and the departments of the County Treasury responsible for finance and fiscal matters. Under Section 103(3) of the *Public Finance Management Act*, the County Executive Committee member for Finance is the head of Treasury and is thus responsible for finance matters in the County. Therefore, both the 1<sup>st</sup> and 2<sup>nd</sup> respondents are jointly responsible for the satisfaction of Court orders



and decrees on payment of money owed by the Trans Nzoia County by virtue of their roles and functions.”

- [11] Accordingly, the applicant urged the Court to find that the respondents have willfully and intentionally disregarded Court Orders; and therefore are in contempt of court, for which they should be committed to prison for such period as the Court may deem fit and just.
- [12] The respondents relied on their written submissions dated 6<sup>th</sup> February 2024. They proposed a single issue for determination, namely whether the application for contempt offends Section 45(4) of the County Government Act, in so far as it has been instituted against the County Secretary. According to the respondents, the proper party to such an application is the Chief Officer, who is the Accounting Officer. The respondent relied on the case of *Soloh Worldwide Inter-Enterprises v County Secretary Nairobi County & another* [2016] eKLR, wherein the court, in determining the question of who is the proper party to be sued as an accounting officer, cited the case of *Council of Governors & Others v The Senate Petition No. 413 of 2014* [2015] eKLR. Reliance was also placed by the respondents on Section 44 of the *County Governments Act* No 17 of 2012 as well as Section 103 of the *Public Finance Management Act*, which establishes the County Treasury, comprising of the County Executive Member of Finance, the Chief Officer, and the department of the County Treasury responsible for finance and fiscal matters. The provision also states that the County Executive Committee member for finance shall be the head of the County Treasury.
- [13] As was pointed out by learned counsel the *Contempt of Court Act*, 2016, was declared invalid on 9 November 2018 for lack of public participation in *Kenya Human Rights Commission v Attorney General & Another* [2018] eKLR. Accordingly, the applicable law in this regard is that which obtained prior to the passing of the *Contempt of Court Act*; as guided by Section 5 of the *Judicature Act*, Chapter 8 of the Laws of Kenya. That provision 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 the 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 criminal jurisdiction of the High Court.”
- [14] In *Republic v Kajiado County & 2 others Ex parte Kilimanjaro Safari Club Limited* [2019] eKLR, Hon. Nyamweya, J. (as she then was) aptly summarized the current contempt of court legal landscape thus:
26. 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 vs. 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.”



27. 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...”

[15] It is important to bear in mind that contempt of court is an offence of a quasi-criminal character, therefore an application of this nature requires credible proof beyond the standard applicable to ordinary civil cases to warrant imprisonment of an alleged contemnor. The standard of proof in this regard was well discussed by the Court of Appeal in *Mutitika v Baharini Farm Ltd* [1985] eKLR thus: In, *Re Breamblevale Ltd* [1969] 3 All ER 1062, Lord Denning MR. (as he then was), at page 1063, had this to say,

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt”.

With the greatest possible respect to that eminent English judge, that proof is much too high for an offence “of a criminal character” and, ipso facto, not a criminal offence properly so defined...

...In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence which can be said to be quasi-criminal in nature...”

[16] That said, the two issues for consideration in the instant application are:

- (a) Whether the application has been brought against the correct parties; and if so,
- (b) Whether the elements of contempt of court have been proved by the applicant.

**A. On whether the application has been brought against the right parties:**

[17] Section 21(3) of the *Government Proceedings Act* is explicit that:

- (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...”

[18] The term “the accounting officer” has been the subject of interpretation in various decisions. For instance, in *Council of Governors & Others v The Senate* Petition No. 413 of 2014 [2015] eKLR it was held:

(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 (3) 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*.

[19] Likewise, in *Republic v Kisii County Government Ex-Parte Peter Kaunda Nyamosi & 2 others* [2018] eKLR, the position taken was:

25. It is therefore clear that the accounting officer for the County Government is the County Executive Member for Finance. Since the order of mandamus was against the County Government, I do not think that this is fatal as the order of mandamus remains alive and the court may issue a notice to show cause against the accounting officer, upon whom the statutory duty is imposed, to ensure that its decision is enforced (see *Consolata Kihara & 21 Others v Director of Kenya Trypanosomiasis Research Institute* [2003] KLR 582 and *Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County (Ex Parte David Mugo Mwangi)* NBI HC Misc. App. 222 of 2016 [2018] eKLR).”

[20] The same position was taken in *Soloh Worldwide (supra)* thus:

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...”

[21] On the other hand, Section 44(3) outlines the duties of a County Secretary as follows: -



- (3) The county secretary shall—
- (a) be the head of the county public service;
  - (b) be responsible for arranging the business, and keeping the minutes, of the county executive committee subject to the directions of the executive committee;
  - (c) convey the decisions of the county executive committee to the appropriate persons or authorities; and
  - (d) perform any other functions as directed by the county executive committee.

[22] It is plain therefore that, in the absence of proof of appointment by the County Executive Committee member for finance of the accounting officer for the County Government of Mombasa, the proper person to look to for the settlement of debts owing from the County Government of Mombasa is the County Executive Committee member for finance. Accordingly, the application has been properly brought against the 2<sup>nd</sup> respondent.

**B. On whether the elements of contempt of court have been proved to the requisite standard against the 2<sup>nd</sup> respondent:**

[23] Contempt of court has been defined to mean conduct or action that defies or disrespects the authority of the Court. Hence, in *Sheila Cassat Issenberg & Another v Antony Machatha Kinyanjui* (supra) it was held:

57. As was again stated by the Supreme Court of India in *Mahinderjit Singh Bitta v Union of India & Others* 1 A NO. 10 of 2010 (13th October, 2011):

In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is lis before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. (Emphasis).

[24] As to the elements that must be proved for an alleged contemnor to be held to be in contempt of court, the court in the *Sheila Cassat Issenberg & Another v Anthony Machatha Kinyanjui* (supra), after reviewing applicable precedents, continued thus:

58. The emphasis as shown in the above cases is that there must be “willful and deliberate disobedience of court orders.” There cannot be deliberate and willful disobedience, unless the contemnor had knowledge of the existence of that order. And because contempt is of a criminal nature, it is always important that breach of the order be proved to the required standard; first, that the contemnor was aware of the order having been served or having personal knowledge of it, and second; that he deliberately and willfully disobeyed it.

59. In *Peter K Yego & others v Pauline Wekesa Kode*, (Acc No. 194 of 2014, the court stated that “it must be proved that one had actually disobeyed the court order before being cited to contempt.”

60. And in *Katsuri Limited v Kapurchand Depor Shah* [2016] eKLR, citing *Kristen Carla Burchell v Barry Grant Burchell* (Eastern Cape Division case No 364 of 2005), it was stated that “in order for an applicant to succeed in civil contempt proceedings, the applicant has to prove



(i) the terms of the order, knowledge of the terms by the respondent, failure by the respondent to comply with the terms of the order.”

61. The Cromwell J, writing for the Supreme of Canada in Carey v Laiken, 2015 SCC 17 (16th April 2015), expounded on the three elements of civil contempt of court which must be established to the satisfaction of the court, thus:

- i) The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.
- ii) The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.
- iii) The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels. (emphasis)...”

[25] Similarly, in case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR Mativo, J (as he then was) held as follows: -

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....”

[26] Hence, the four elements of contempt that the applicant needed to prove are:

- (a) was there an order of the court;



- (b) was it clear and unambiguous;
- (c) was it served and
- (d) was it willfully and intentionally disobeyed?

[27] This threshold was further discussed by the Supreme Court of India in *Mahinderjit Singh Bitta v Union of India & Others* IA No.10 of 2010, in which it was stated as follows: -

...In exercise of its contempt jurisdiction, the courts are primarily concerned with whether the contemnor is guilty of intentional and willful violation of the orders of the court, even to constitute a civil contempt. Every party is *lis* before the court, and even otherwise, is expected to obey the orders of the court in its true spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution..."

[28] It is plain from the factual basis of the instant application that an order of *Mandamus* was issued herein on the 27<sup>th</sup> October 2022, that it was clear and unambiguous. The only question to pose is whether the Order was served. In *Ochino & Another v Kombo & 4 Others* (*supra*), it was held that:

As a general rule, no order of court requiring a person to do or abstain from doing any act may be enforced (by committing him for contempt) unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question."

[29] This must be why, in their written submissions, the respondents contended that since they were not in attendance on 28<sup>th</sup> July 2022 when the judgement dated 27<sup>th</sup> July 2022 was delivered, the applicant ought to have proved service. I however have no hesitation in dismissing that argument since, in *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR the Court of Appeal made it clear that:

...this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved... Kenya's growing jurisprudence right from the High Court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for purposes of contempt proceedings. For instance, *Lenaola, J.* in the case of *Basil Criticos vs Attorney General and 8 Others* [2012] eKLR pronounced himself as follows:

"...the law has changed and as it stands today knowledge supersedes personal service... where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary."

[30] Hence, given the background of this matter, there can be no doubt that the alleged contemnor has all along been aware of the orders. The existence of the judgment is acknowledged at paragraph 3 of the 1<sup>st</sup> respondent's *Replying Affidavit*. The record further shows that the alleged contemnor's counsel, Ms. Kuria, has been acting for the respondents and attended court since 31<sup>st</sup> January 2022. In the premises, I entertain no doubt that the respondents had knowledge, not only of the judgment dated 27<sup>th</sup> October 2022 but also the predicate judgment and decree of the lower court. Indeed, in *Shimmers Plaza*, the Court of Appeal further held:

...The notice of the order is satisfied if the person or his agent can be said to either have been present when the judgment or order was given or made; or was notified of its terms by telephone, email or otherwise. In our view, 'otherwise' would mean any other action that can be proved to have facilitated the person having come into knowledge of the terms



of the judgment and/or order. This would definitely include a situation where a person is represented in court by counsel. Once the applicant has proved notice, the respondent bears an evidential burden in relation to willfulness and mala fides disobedience...There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client's case."

- [31] In the premises, I am in full agreement with the position taken by Hon. Tuiyott, J. (as he then was) in *Oil Fields Ltd v Zahara Oil and Gas Limited* [2020] eKLR that service is no longer necessary where a party is represented by counsel. The learned judge held:

Where a party clearly acts and shows that he had knowledge of a Court order, the strict requirement that personal service must be proved is rendered unnecessary. That should be the correct legal position and I subscribe to it.

20. This position has been endorsed repeatedly by the Court of Appeal. See for instance *Shimmers Plaza Limited -vs- National Bank of Kenya* [2015] eKLR.
21. It would seem that the rationale for the rule is to protect the integrity and dignity of Court orders. To excuse a contemnor who has knowledge of a Court order simply because he has not been personally served is to open up Court orders and process to contemptuous and cynical disobedience.
22. And where a party is represented by an advocate, the party is deemed to have knowledge of a Court order if the party's advocate is aware of it."

- [32] It is a cardinal principle that court orders must be strictly obeyed, unless and until set aside, varied or discharged. This principle was aptly stated by Romer LJ in *Hadkinson v Hadkinson* [1952] ALLER 567 thus:

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)

- [33] No effort has been made to comply with the order. Instead, the respondents have been busy scapegoating, including blaming the applicant for not having registered itself in the IFMIS without any correspondence to show that they advised the applicant so to do. The Respondent also stated that the money has not been paid as it has not been budgeted in any financial year and it thus becomes a pending bill that is either factored into the supplementary budget or carried forward to the next fiscal year, without demonstrating how that is the fault of the applicants. Thus, it is my finding that there is no justification at all in the respondent's Replying Affidavit for non-payment. I therefore find that the



2<sup>nd</sup> respondent, as the Accounting Officer on whose shoulders the duty to pay rests, has willfully and intentionally disobeyed the Court Order dated 27<sup>th</sup> July 2022 and is therefore in contempt of court.

[34] Accordingly, the application dated 21<sup>st</sup> August 2023 is hereby allowed and orders granted in respect thereof as hereunder:

- (a) That the County Executive Committee Member for Finance, County Government of Mombasa, be and is hereby found in contempt of the Court's orders given on 27<sup>th</sup> July 2022;
- (b) The 2<sup>nd</sup> respondent, the County Executive Committee Member for Finance, County Government of Mombasa, be summoned to attend court to show cause why he should not be detained in prison for a period of six months or such period that the Court may please for contempt of court.
- (c) That costs of the application be borne by the County Government of Mombasa.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 19<sup>TH</sup> DAY OF MARCH  
2024**

**OLGA SEWE**

**JUDGE**

