



**Republic v County Assembly of Garissa & 2 others; Farah & 4 others
(Interested Parties); Khalif & 3 others (Exparte Applicants) (Judicial Review
E008 of 2023) [2023] KEHC 25957 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25957 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
JUDICIAL REVIEW E008 OF 2023
JN ONYIEGO, J
NOVEMBER 29, 2023**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF
CERTIORARI IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT**

**CHAPTER 26 OF THE LAWS OF KENYA IN THE MATTER OF ORDER 53 OF
THE CIVIL PROCEDURE RULES 2010, ARTICLE 179 OF THE CONSTITUTION
OF KENYA, SECTION 35 AND 42 OF THE COUNTY GOVERNMENT ACT 2012
AND THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLIES APPROVAL) ACT**

**2017 IN THE MATTER OF THE STANDING
ORDERS OF THE COUNTY ASSEMBLY OF GARISSA**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY ASSEMBLY OF GARISSA 1ST RESPONDENT

SPEAKER, COUNTY ASSEMBLY OF GARISSA 2ND RESPONDENT

CLERK, COUNTY ASSEMBLY OF GARISSA 3RD RESPONDENT

AND

MOHAMMED ABDI FARAH INTERESTED PARTY

AHMED ABDIRAHMAN SHEIKH INTERESTED PARTY

ABDIRAHMAN MUKTAR INTERESTED PARTY

MAHAT ABDIKADIR IBRAHIM INTERESTED PARTY

AZIMIO LA UMOJA COALITION INTERESTED PARTY

AND



ABUBAKAR MOHAMED KHALIF EXPARTE APPLICANT
ABDI IBRAHIM DAAR EXPARTE APPLICANT
OMAR ABDI HASSAN EXPARTE APPLICANT
ABDIRAHMAN MOHAMED ALI EXPARTE APPLICANT

RULING

1. The genesis of the suit herein and by extension the application which is the subject of this ruling is the removal and or ouster of the first exparte applicant from being holder of leader of the majority Garissa county assembly and Hon. Abdi Ibrahim Daar from being majority whip.
2. That between 25th August 2023 and 5th September 2023, while on official trip out of the country together with other government officials among them the deputy majority leader (4th exparte applicant), a group of members of the County Assembly (hereafter referred to as MCAs) from his Azimio la umoja party (coalition) purported to have resolved by majority votes that the party had replaced him as leader of the majority with Mohamed Abdi Farah (1st interested party). That in the same resolution, Hon. Abdi Ibrahim Daar majority whip (2nd exparte applicant) was replaced by Ahmed Abdirahman Sheikh (2nd interested party). Vide two letters dated 3rd September 2023, authored by hon. Ahmed Abdirahman Sheikh (2nd interested party) (1st-letter) and hon. Timira Bishar (2nd letter) addressed to the assembly speaker, the speaker was notified of the changes hence requested to communicate to the house of the same.
3. That vide minutes dated 3rd September 2023, the same MCAs resolved to remove the Deputy majority leader (4th exparte applicant) and the party's public service board representative (3rd exparte applicant). That the four exparte applicants were respectively replaced by the interested parties.
4. Consequently, the speaker (2nd respondent) having received the two letters on 5th September 2023 (communication) expressing the alleged changes, convened a session of the house on 12th September 2023 and accordingly, communicated to the Assembly that pursuant to Azimio la umoja party's resolution and subsequent communication vide the two letters, the majority leader and majority whip had lost their positions in favour of the newly elected leaders whom he recognized as the official majority leader and majority whip.
5. Aggrieved by the said changes, the ousted leaders moved to this court Vide exparte chamber application dated 14.09.2023 and filed on 15th September 2023 seeking orders as hereunder:
 - i. Spent.
 - ii. That leave be granted to the ex parte applicants to apply for an order of certiorari to remove to the high court and quash the decision of the 2nd respondent vide his communication to the Assembly on 12.09.2023 recognizing the 1st, 2nd and 3rd Interested Party as leader of majority party, majority whip, deputy majority leader and board member of the County Assembly Service Board respectively; and declare it illegal, null and void and in breach of the principles of legitimate expectation.
 - iii. That leave be granted to the exparte applicants to apply for an order of Certiorari to remove to the High Court and quash the decision of the 2nd respondent made vide letter dated 3rd September, 2023 and any other ultra vires decision, Order and/or directive of the 3rd



Respondent, 1st, 2nd and 3rd interested party as a leader of a majority party, majority whip, deputy majority leader and the board member of the County Board respectively.

- iv. That leave be granted to the Ex-parte applicant to apply for order of mandamus to compel the 2nd Respondent to within 2 days of the said order herein, communicate the orders of this court to the house on the restoration of the ex-parte applicant as the majority party leadership in the house and in particular, the 1st ex parte applicant as a leader of majority party, the 2nd Ex-parte applicant as the majority whip, the 3rd –exparte applicant as the deputy majority leader and the 4th respondent as the board member of the County Assembly service board.
 - v. That leave be granted to the Ex-parte applicant to apply for an order of prohibition against the respondent from directing, interfering and /or in any other way acting as the leadership of the majority party in the assembly or board member in the County Assembly Service Board that is contrary to the laid down provisions of the Law, the Assembly Standing Orders and enabling regulations and statutes.
 - vi. That leave be granted to the Ex-parte applicants to apply for an order of prohibition to prohibit the County Assembly of Garissa and the speaker of the said County Assembly from implementing the letter dated 3rd September, 2023 and implementing the 3rd Respondent's communique of 12th September, 2023.
 - vii. That the grant of leave shall herein does operate as stay to stop the respondents from implementing the 2 letters dated 3rd September, 2023 and the 2nd Respondent's communication dated 12th September, 2023 removing the 1st ex-parte applicant as leader of majority party, 2nd ex-parte Applicant as the majority whip, the 3rd ex-parte Applicant as the Deputy majority leader and the 4th respondent as board member of the County Assembly Service Board.
 - viii. That an order be issued that the respondents be condemned to bear the costs of this application.
 - ix. That this honourable court be pleased to give such further orders and directions as it may deem fit and just to grant.
6. Upon considering the application ex parte on 15th September 2023, the Hon.Justice chigiti granted the orders as follows:
- i. That the application dated 14-9-2023 is hereby certified as urgent.
 - ii. That the application is admitted for hearing during the Court Vacation.
 - iii. That leave be granted to the Ex-parte Applicants to apply for an order of Certiorari to remove to the High Court and quash the decision of the 2nd Respondent vide his communication to the assembly on 12th September, 2023 recognizing the 1st, 2nd and 3rd interested party as leader of majority party, majority whip, Deputy majority leader and Board member of the County Assembly Services and declare it illegal, null and void in breach of the principles of legitimate expectation.
 - iv. That leave be granted to the ex-parte applicant to apply for an order of Certiorari to remove to the High Court and quash the decision of the 2nd respondent made vide letter dated 3rd September, 2023 and any other ultra vires decision, Order and all directives of the 3rd



Respondent. 1st, 2nd and 3rd interested party as a leader of a majority party, majority whip, deputy majority leader and the board member of the County Board respectively.

- v. That leave be granted to the Ex-parte applicant to apply for order of mandamus to compel the 2nd Respondent to within 2 days of the issue of the said order herein, communicate the orders of this court to the house on the restoration of the ex-parte applicant as a leader of the majority party, the 2nd Ex-parte applicant as the majority whip, the 3rd –exparte applicant as the deputy majority leader and the 4th respondent as the board member of the County Assembly service board.
 - vi. That the leave be granted to the Ex-parte applicant to apply for orders of prohibition against the respondent from directing, interfering and or in any other way acting as the leadership of the majority party in the assembly or board member in the County Assembly Service Board party that is contrary to the laid down provisions of the Law, the Assembly standing orders and enabling regulations and statutes.
 - vii. That leave be granted to the Ex-parte applicants to apply for an order of prohibition to prohibit the County Assembly of Garissa and the speaker of the said County Assembly from implementing the letter dated 3rd September, 2023 and implementing the 3rd Respondent communique of 12th September, 2023.
 - viii. That the leave shall operate as stay pending the hearing and the determination of the application dated 14-9-2023 that the grant of leave herein does operate as stay to stop the respondents from implementing the 2 letters dated 3rd September, 2023 and the 2nd Respondent communication dated 12th September, 2023 removing the 1st Ex-party applicant as leader of majority party, 2nd Ex-party Applicant as the majority whip, the 3rd Ex-party Applicant as the Deputy majority leader and the 4th respondent as board member of the County Assembly service board.
 - ix. That the matter shall be mentioned before the Presiding Judge in Garissa High Court for further directions.
 - x. That the Deputy Registrar Garissa High Court shall facilitate the assignment of a date convenient to the Presiding Judge in Garissa High Court.
7. Despite service of the said order, the respondents and interested parties did not act as directed thus prompting the exparte applicants to file contempt proceedings vide the notice of motion application dated 21st September 2023 seeking orders;
1. That this application be and is hereby certified urgent and to be heard ex-parte in the first instance and on priority basis.
 2. That pending the hearing and determination of this Application, this Honourable court issues orders limiting or denying audience of the Contemnors before this Honourable court until and unless they comply with the Orders of this Honourable court or purge themselves of contempt.
 3. That this Honourable court do issue an Order directed at the 1st – 3rd Respondent and 1st to 4th Interested party to purge themselves of contempt of this Court orders and comply with the Stay orders of this Honourable Court issued on 18th September, 2023.
 4. That this Honourable court herein be pleased to cite the Speaker of the County Assembly of Garissa Hon. Abdi Idle Gure in his capacity as the Speaker of the Assembly for contempt of the Court and breach of the Orders of this Honourable court issued on 18th September, 2023.



5. That this Honourable court be pleased to cite Hon. Mohamed Abdi Farah and Hon Ahmed Abdirahman Sheikh, Abdirahman Muktar Mahat, Abdikadir Ibrahim the 1st, 2nd, 3rd and 4th Interested Parties herein respectively for contempt of court and breach of the Orders of this Honourable court issued on 18th September, 2023,
6. That the OCS and/or OCPD Garissa Police Station be directed to provide security and ensure compliance of the orders issued by this Honourable Court on 18th September, 2023 and in this Application.
8. The application is premised upon grounds set out on the face of it and averments contained in the affidavit sworn on 21st September 2021 by Humprey Manyange counsel for the applicants. Basically, the applicant's case is anchored on the alleged disobedience of the court order by the respondents. That the respondents have with impunity disregarded the order in question hence the need to punish them.
9. The respondents through the firm of Sheikh & Shariff Advocates filed a replying affidavit sworn on 26.09.2023 by Honourable Abdi Idle Gure, the 2nd responded herein who deponed that the orders obtained by the ex parte applicants were obtained through non-disclosure of material facts to the Honourable Court.
10. That the 1st and 2nd ex parte applicants had filed a complaint and an application dated 13.09.2023 before the Political Parties Disputes Tribunal Complaint No. PPDT C/E017 of 2023; Abubakar Mohamed Khalif & Another v Mohamed Abdi Farah & 5 Others and obtained orders. That filing of the suit herein while Judicial Review Application No. E007 of 2023 and Complaint No. PPDT/E017 of 2023 were still pending is a gross abuse of the justice system.
11. That as per the provisions of the standing Orders No. 15 and 16, the- speaker is only required to make communications to the House regarding the changes in Leadership of both the Majority party to which he effectively did on 05.09.2023 when the house session resumed. It was his case that going by the changes and communication that he made on 05.09.2023 and the fact that the 1st and 2nd interested parties had already assumed office, the orders obtained by the ex parte applicants have since been overtaken by events.
12. That from the foregoing, he had no powers in law to alter and/or interfere with the decision of the majority party unless he receives further communication from the same party regarding such further changes.
13. Hon Ali Abdi Gure on behalf of the 1st -3rd respondents swore on 02.11.2023 a further affidavit where he deponed that he was the speaker of the County Assembly and that he wished to reiterate the contents of his supporting affidavit dated 11.10.2023. That the Judicial Review No. E007 of 2023 was still pending in court as they had not been served any notice of withdrawal. It was his position that the proceedings before the Tribunal were struck out on account of the tribunal not having jurisdiction to hear and determine the matter for the reason that the ex parte applicants did not attempt to employ the Internal Dispute Resolution Mechanism as required under the provisions of Section 40(2) of the *Political Parties Act*, No. 11 of 2011. As such, this court consequently could not give itself the jurisdiction that it has not.
14. It was deponed that the instant application is defective, incompetent, misconceived and devoid of any merit for the reason that the ex parte applicants did not comply with the strict statutory timelines in filing of their substantive application for judicial review. Further, that the annexures marked CT1, that the ex parte applicants have relied on did not originate from the Assembly. This court was therefore urged to dismiss the application in totality.



15. The 1st - 4th ex parte applicants filed a further supplementary affidavit to the 1st -3rd's respondents replying affidavit sworn on 06.11.2023 wherein it was deponed that the said documents annexed as CT1 indeed originated from the Assembly. That the reason the respondents wish to run away from the very documents is the fact that they are guilty of contempt of the court orders. It was deponed that neither the speaker nor the clerk provided evidence regarding the payroll on the change of leadership as adduced under the annexed documents referred to as CT1.
16. In reference to the averment that the substantive application did not meet the strict statutory timelines, the deponent swore that the said substantive motion was filed on 26.09.2023 and served upon the parties. That the respondents and the interested parties have adopted a strategy of deny and pretend to decline adherence to the orders issued by the court. This court was therefore urged to reprimand such despicable behaviours in the court.
17. The 1st, 2nd, 3rd and 4th interested parties in response to the application deposed that at no particular point in time did they willfully disobey the orders of this Honourable Court and therefore the said application is laced with malice as the same is premature and an abuse of the court process. That on 18.08.2023, they attended a meeting of the majority party's members of the county Assembly in the County Assembly of Garissa where they were unanimously elected in their respective positions.
18. It was their case that upon their election on 03.09.2013, they communicated, to the speaker of the Assembly who communicated the same to the members of the house lawfully convened.
19. It was stated that the orders sought herein had previously been sought before the High court, although differently constituted. That Hon. Justice Ngaah declined to issue injunctive orders as sought in Judicial Review Misc. Case No. E007 of 2023. Additionally, it was averred that previously, the Political Parties Disputes Tribunal, hereinafter PPDT downed its tools upon realizing that it lacked jurisdiction to hear the matter herein as the internal Dispute Resolution Mechanisms had not been employed. That the orders herein were obtained through gross non-disclosure of fundamental material facts to court namely that the situation had been overtaken by events.
20. That the three applications are similar in nature seeking the same orders. That the applicants have come to court with unclean hands and this Honourable Court should thus dismiss the application as the same is without merit.
21. The firm of Njengo Advocates filed a supplementary affidavit sworn by the 1st, 2nd, 3rd and 4th interested parties where it was deponed that the orders issued on 18.09.2023 by Chigiti J were not served upon them. That whereas the time of service is indicated in the affidavit of service as 12.37 p.m. the time of service via WhatsApp is different; that the same reflected that the purported court order was served on the respondents in the morning hours. That the discrepancy in the affidavit cannot be wished away.
22. It was further deposed that the procedure for removing and electing new leaders was in accordance with the rules of the House/Assembly and the Azimio Coalition party's decision. Additionally, that the application herein be dismissed as the same was not made in good faith.
23. The court gave directions that the application be canvassed by way of written submissions. The 1st - 4th ex parte applicants submitted that the respondents and the interested parties have indicated their disagreement with this court's order and that the same does not exempt them from compliance with the orders of stay of this Honourable Court. Reliance was placed on the case of William Muga Aketch v Tailors and Textile Workers Union [2019] eKLR where the court stated that:

“...a party who has failed to comply with the court orders has no audience before the court...”



24. The 1st, 2nd, 3rd and 4th interested parties in their joint submissions dated 11.10.2023 submitted that the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, close to but not exactly as that of beyond reasonable doubt. That this is so because liberty of the subject is at stake and the applicant must prove willful and deliberate disobedience of the court order.
25. That the applicants as per the record did not discharge the standard of proof to warrant their application for contempt of court. Learned counsel posed the issues for determination as follows; Whether the interested parties are in breach of any court orders given in this matter in contempt of court; Whether this Honourable court has jurisdiction to entertain the instant proceedings.
26. On the first issue, it was urged that the orders by the court could not be executed and/or implemented hence incapable of being stayed since the interested parties had already assumed the office having been lawfully elected.
27. That nonetheless, the said orders were obtained unlawfully and by gross non-disclosure of material facts. Further, it was urged that it was not proved that the ex parte applicants were guilty of contempt of court. To buttress this fact, reliance was placed on the case of *Mutitika v Baharini Farm Limited* (1985) KLR where the Court of Appeal stated that:

“In our view, the standard of proof in a contempt proceeding must be higher than proof on the balance of probabilities, close to but not exactly as that of beyond reasonable doubt.”
28. On the second issue, it was contended that this Honourable Court lacked the requisite jurisdiction to entertain this matter. That the nature of the dispute herein is political and the parties involved are members of political parties affiliated to a coalition known as Azimio la Umoja coalition. It was contended that the right jurisdiction therefore ought to be the Political Parties Disputes Tribunal, hereinafter PPDT. To buttress the fact that this court is bereft of the requisite jurisdiction, reliance was placed on section 40 (1) (2) and the (3) of the *Political Parties Act*, article 169 (1) (d) of *the Constitution* and further on the case of *Phoenix of E.A Assurance Company Limited v S.M. Thiga t/a Newspaper Service* [2019] eKLR.
29. The respondents equally filed their submissions which I could not trace through the e-filing system (VPN). However, in his oral submissions, counsel basically reiterated the averments contained in their replying affidavit. Learned Counsel contended that the speaker did not make any decision capable of setting aside or revising. That he only informed the assembly of the majority party’s decision. Counsel opined that the standing orders of the house do not allow the speaker to interfere with party affairs.
30. Mr. Mohamud further submitted that there was no deliberate disobedience to the court order as alleged and that the order of the court was not capable of implementation. That the said order lapsed on 5th October 2023 as the substantive application was filed outside the specified time.

Determination

31. I have considered the application herein and the respective response by the respondents and interested parties. In my view, this court has been called upon to determine whether the respondents and the interested parties are in contempt of the court orders issued on 18.09.2023.
32. It is trite that the *Contempt of Court Act* is no longer operational as from the date of the judgment declaring it unconstitutional. [See *Kenya Human Rights Commission v Attorney General & Another* 2018 eKLR. I am therefore obliged to revert to the provisions of the law that operated before the enactment of the *Contempt of Court Act* to avoid a lacuna in the enforcement of Court orders. It was in this respect observed in *Republic v Returning Officer of Kamkunji Constituency & The Electoral*



Commission of Kenya HCMCA No. 13 of 2008, that the High Court has the responsibility for the maintenance of the rule of law, hence there cannot be a gap in its application.

33. The Court of Appeal in *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others*, [2014] eKLR 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 provides 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.”

34. 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,
- ii. Knowledge of these terms by the Respondent,
- iii. Failure by the Respondent to comply with the terms of the order.

35. Upon proof of these requirements, the presence of willfulness and bad faith on the part of the respondents would normally be inferred, but the respondents could rebut this inference by contrary proof on a balance of probabilities.

36. In the instant case, there is no dispute that there was a court order issued by a court of law hence a lawful order; The issues that beg for answers are; whether the order in question was served; whether it was clear and unambiguous and; whether there was deliberate disobedience to the order in question hence contempt proceedings which are quasi criminal in nature.

37. It is trite that unless the court dispenses with service, a judgment or order may not be enforced by way of an order for contempt unless a copy of it has been served on the person required to do or not do the act in question.

38. It has been held in several judicial decisions that if personal awareness of the court orders by the alleged contemnors is demonstrated, they will be found culpable of contempt even though they had not been personally served with the orders and penal notice. [See Court of Appeal decision in *Shimmers Plaza Limited vs National Bank of Kenya Limited* [2015] eKLR] where it was held that: –

“Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings” We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. 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.”



39. In the same breadth, in *Basil Criticos v Attorney General and 8 Others* [2012] eKLR Lenaola J. (as he then was) 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.”
40. In the instant case, the orders sought are in relation to stay of errant actions of members of the Azimio Coalition in the Assembly, who purported to effect change of leadership in the house, namely the 1st – 4th interested party. That the order was served to the respective individuals holding the respective positions at that very time via WhatsApp.
41. The interested parties on the other hand opposed the same by stating that the orders obtained by the ex parte applicants were obtained through non-disclosure of material facts to the Honourable Court. That the 1st and 2nd ex parte applicants had filed a complaint and an application dated 13.09.2023 before the Political Parties Disputes Tribunal Complaint No. PPDT C/E017 of 2023; *Abubakar Mohamed Khalif & Another v Mohamed Abdi Farah & 5 Others* and obtained orders. That filing of the suit herein while Judicial Review Application No. E007 of 2023 and Complaint No. PPDT/E017 of 2023 were still pending is a gross abuse of the justice system. Further, that the new office bearers had already occupied their respective positions and therefore, the speaker could not order otherwise.
42. The applicants in a rejoinder reiterated that there are no parallel proceedings in this matter in that the proceedings before the PPDT are distinct from the ones herein and JRE007 was withdrawn.
43. From the circumstances of this case, the respondents do not deny service or knowledge of the order. They are contesting the legality of the order in view of the existence of other similar proceedings which the ex parte applicant controverted by stating that JR E007 of 2023 was withdrawn a fact that was not disputed as there was notice of withdrawal displayed and that proceedings before the political parties’ tribunal were distinct from the proceedings herein. In my view, the respondents were only supposed to obey the order and then challenge it during interpartes hearing.
44. For the 2nd respondent to argue that he will only communicate changes of the disputed leadership if the relevant majority party communicates is akin to disobeying order Number 4 and 8 of the court order in question which directed that the speaker communicates to the house within two days of issuance of the order of the restoration of the applicants to their positions. The 2nd respondent’s role was to communicate to the house the court order which reinstated the ex parte applicants to their positions pending the hearing of the application interpartes.
45. The claim that the order is overtaken by events is not for the speaker to determine. The court was fully aware of the effect of a restorative order hence the speaker cannot qualify it. His hands are not tied as he claims. It was his non-communication of the order to the assembly that occasioned these unnecessary contempt proceedings. In my view, the speaker’s actions were in contempt of the court order.
46. From the foregoing, it cannot be said that the 1-3rd respondents were not aware of the said orders as they urged that the orders were obtained through non-disclosure of material facts. I am satisfied that service was made upon the respondents and interested parties electronically and further that they were in the know of the court orders throughout these proceedings and through their lawyers but opted to ignore.
47. It is now established that the mental element for liability for contempt arising out of disobedience of a court order is simply that the disobeying party either intended to disobey or made no reasonable



attempt to comply with the order. [See in this respect the English House of Lords decision in *Heatons Transport (St Helens) Ltd v Transport and General Workers Union* (1973) AC 15].

48. In the same breadth, the court in the case of *Canadian Metal Co. Ltd v Canadian Broadcasting Corp* (No.2) 48 D.L.R. (30), stated that:

“To allow court orders to be disobeyed would be to tread the road to anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn.... if the remedies that the courts grant to correct.... wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the courts will quickly result into the destruction of our society.”

49. It is essential for the maintenance of the Rule of Law and Order that the authority and the dignity of courts is upheld at all times. The court will neither condone deliberate disobedience of its orders nor shy away from its responsibility to deal firmly with proved contemnors.

50. In the instant case herein, the said orders made by this court have not been appealed nor set aside. It therefore follows that therein lies a 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.

51. It does not matter that in the perception of the contemnor, the order was bad or erroneously issued. That the same is a matter to be argued after the contemnor has complied; thereafter, the contemnor may then seek to discharge the order if it is non-deserving. 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 void. [See *Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another* [2005] 1 KLR 828 Ibrahim, J (as he then was)].

52. In the case of *Hadkinson Vs. Hadkinson* [1952] 2 ALL ER 562, the English Court of Appeal returned these categorical holdings;

“Held (per Somervell and Romer, L.JJ.), that it was the unqualified obligation of every person against, or in respect of whom, an order had been made by a court of competent jurisdiction, to obey it unless and until that order was discharged; that the mother in the present case had not brought herself within any of the exceptions to the general rule which debarred a person in contempt from being heard by the courts whose order he had disobeyed; and that she being in continuing contempt by retaining the infant out of the jurisdiction her appeal could not be heard until she had taken the first and essential step towards purging her contempt by returning the child within the jurisdiction.

Held Per Denning L.J, the fact that a party to a cause had disobeyed an order of the court was not of itself a bar to his being heard, but if his disobedience was such that, so long as it continued, it impeded the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it might make, then the court might in its discretion refuse to hear him until the impediment was removed. The present case was a good example of a case where the disobedience of the party impeded the course of justice.”



53. In the case of Fred Matiang'i the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others [2018] eKLR the court of appeal had this to say against contemnors;

“In deserving cases, this Court has itself set its face firmly against granting contemnors audience until and unless they first purge their contempt and it shall continue to do so in such cases as evince a headstrong contumaciousness proceeding from a bold impunity, open defiance or cynical disregard for the authority of the Court and the integrity of the judicial system. Such pernicious conduct cannot be countenanced and those hell-bent on it will find neither help, nor refuge under a convenient and self-serving appeal to natural justice when their impudent conduct threatens the very foundation of the rule of law. While the right to fair hearing is sacrosanct and is one of the non-derogable rights in Article 25 of *the Constitution*, we affirm with this Court in A. B. & Another vs. R.B. 2016 eKLR that there may be instances where due to the risk of the rule of law being deliberately undermined, such right may be denied and the hearing of an application for stay denied until there is full compliance with the orders of the High Court. (See also- Communications Commission Of Kenya Vs. Tetra Radio LTD, [2013] eKLR.

54. It is trite law that it is not upon a party to choose which order to obey and which one not to obey. The orders in question were issued by a court of law. They were duly served and acknowledged. Whether bad or not, they must be obeyed. They were clear on the face of it hence unambiguous. In particular, order number 4 and 8 clearly directed the speaker on what to do in order to implement the order in question.
55. Unfortunately, the speaker chose to close his eyes by deliberately refusing to honour the order. I have no choice but to protect the rule of law and the integrity of the court. This court cannot sanction and sanitize disobedience of the court order. To that extent, I can safely state that the 2nd respondent acted in disobedience to the court order hence liable for acting in contempt. I however do not find the 3rd respondent culpable in the circumstances as he had nothing to communicate. In the same vein it is my finding that the 1st to 4th interested parties were aware of the order but chose to ignore its implementation. Accordingly, they are equally guilty of court contempt.
56. However, using my discretion and to enhance cohesion and co-existence in the Assembly, I will give the 2nd respondent a chance to purge the contempt by communicating the subject court order to the Assembly which effectively will restore the exparte applicants to their leadership positions prior to their ouster pending interpartes hearing of the substantive application. Unless the speaker is aligned to one of the opposing groups, he should not find it difficult in communicating the court order as directed and recognize the restored leaders in their leadership capacity. He should not play ball to internal party differences.
57. I will also give the interested parties a chance to purge the contempt by complying with the court order in default a warrant of arrest shall issue for appropriate punishment including but not limited to sentence and denial of right of audience to apply.
58. Accordingly, having taken into account the totality of events culminating to this suit, it is my finding that the application for contempt is meritorious and is allowed with orders that;
- i. The 2nd respondent and 1st - 4th interested parties are found to be in contempt of court orders made on 15th September 2023 and issued on 18th September 2023.



- ii. The 2nd respondent to comply with the court order made on 15th September 2023 and issued on 18.09.2023 by purging immediately through communication to the assembly the directions contained in the said order in default an order for issuance of warrant of arrest shall automatically issue for necessary punishment including but not limited to sentence and or denial of right of audience.
- iii. That the interested parties shall purge the contempt by complying with the court order in question in default warrant of arrest shall issue automatically for appropriate action and or punishment including but not limited to sentence and or denial of right of audience.
- iv. The matter shall be mentioned on 4th December 2023 at 11.00 am for the speaker to confirm compliance with the said order in default warrant of arrest shall issue for appropriate punishment including but not limited to sentence and denial of right of audience.
- v. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF NOVEMBER, 2023.

J. N. ONYIEGO

JUDGE

