



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CIVIL MISCELLANEOUS APPLICATION NO. 42 OF 2015

NYANDARUA RESIDENTS

ASSOCIATION (NYANDIRA).....1ST APPLICANT

JAMES GITHINJI MBUGUA.....2ND APPLICANT

AYUB WANG’ONDU KIBII.....3RD APPLICANT

PETER WACHIRA MWANGI.....4TH APPLICANT

KIHIKO KIBUI.....5TH APPLICANT

DANIEL MWANGI.....6TH APPLICANT

-VERSUS-

NYANDARUA COUNTY GOVERNMENT.....1ST RESPONDENT

NYANDARUA COUNTY LEGAL OFFICER.....2ND RESPONDENT

EXECUTIVE MEMBER (FINANCE).....3RD RESPONDENT

NYANDARUA COUNTY SECRETARY.....4TH RESPONDENT

RULING

1. In order to put the present application in context, I find it necessary to reproduce verbatim, the Applicants’ initiating Motion, drawn by Waikenya Advocate, described as an Originating Motion, and filed on 8/7/2015. The Originating Summons expressed to be brought under Articles 35 and 201 of the Constitution and Order 37, 51 and 40 of the Civil Procedure Rules was in the following terms:-

“LET ALL THE PARTIES CONCERNED attend and appear before the Honourable Puisne Judge on day of 2015 at 9.00 O’Clock in the forenoon or sooner or later as the learned puisne Judge may order and/or direct when counsel for the Plaintiffs/Applicant shall move the court for ORDERS:-

“1. THAT the NYANDARUA COUNTY GOVERNMENT be INJUNCTED and STOPPED from utilizing the public funds and finances earmarked for DEVELOPMENT expenditure until the said County Government complies with Section 91 of the County Government Act

No. 17 of 2012 (Establishment of modalities and platforms for citizen participation).

2. THAT the Nyandarua County Government be compelled by this Honourable Court to comply with Article 201(e) of the (constitution of Kenya 2010) and provide FISCAL Report for financial year 2013/2014.

3. THAT this Honourable Court be pleased to order Nyandarua County Government to comply with Section 87(1)(f)(g) regarding promotion of public/ private partnership and Direct-Dialogue of sustained Development.

4. THAT this Honourable be pleased to issue any further and/or better relief it may deem fair, just and Equitable.

5. THAT the cost of this application be provided for in any event

WHICH APPLICATION IS PREMISED ON THE FOLLOWING GROUNDS:-

a. THAT the Plaintiff/Applicants have addressed several petitions to the Defendants/Respondents which petitions have never been acted upon, Replied to and/or addressed since the year 2013.

b. THAT the Plaintiffs/Applicants have been denied the rights of public participation in all development matters and participation in the Budget preparation for the years 2013/2014 and 2014/2015 despite the Plaintiff's/Applicants' sustained efforts to be represented in development and Budget making process."

2. The Originating Summons was supported by the affidavit of **James Githinji Mbugua** the stated Chairman of the **Nyandarua Residents Association**, described as a community based organization (C.B.O.), with the declared mandate of monitoring development projects funded by the Local Authorities Transfer Fund (LATF) and the Constituency Development Fund (CDF) in Nyandarua County.

3. The affidavit further states that the Applicants duly advised the Nyandarua County Government of their "oversight role" by a letter in 2013. However, they were aggrieved that despite sending several petitions to the County Government of Nyandarua and/or County Governor seeking for information by making several inquiries regarding fiscal matters, the County Government had taken no heed. Thus in 2015 they filed the Originating Summons herein.

4. The Originating Summons was met with a Preliminary Objection by the advocate of the County Government to the effect, *inter alia*, that:

"1. THAT the application herein is drawn by a person without capacity as per Section 9 and 24 of the Advocates Act, Cap 16 Laws of Kenya as the advocate herein does not hold a current practicing certificate rendering the suit papers herein null and void.

2. THAT the 1st Plaintiff/Applicant has no legal personality to sue in its own name and its institution thereof of the present application has no basis in law.

3. THAT the application commenced by way of a miscellaneous application without any suit being filed in misconceived, incompetent and totally unfounded.

4. THAT the application herein is in breach of section 2 of the Civil Procedure Act as the application is disguised as an originating summons but the document presented is a chamber summons which is not a manner prescribed for instituting suits and cannot therefore be a pleading within the meaning of that term as used in the Civil Procedure Act and Rules made there under.

5. THAT the orders sought cannot be granted against the Respondent as requested in the application before this honourable court since this honourable court has no jurisdiction to hear and determine this matter in its current form as the same can only be granted in a substantive suit.

6. THAT the prayers sought can only be granted in a judicial review application and no leave was sought as the applicants seek the orders of mandamus to compel the Respondents to perform their mandate.

7. THAT an injunction as sought cannot be granted in a vacuum as no substantive prayer has been sought as there is no substantive suit.

8. THAT the application herein offends the provisions of Order 37 of the Civil Procedure Rules, 2010 as the Applicants herein do not fall within the category of persons who may institute suit vide an originating summons.

9. THAT the application herein offends the provisions of Rule 4 and 10 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 as it alleges breach of rights and fundamental freedoms but fails to put in the substantive application, Petition.”(sic)

5. In their response to the Preliminary Objection the Applicants asserted as follows:-

“1. THAT this case will be heard under Articles 22 and 23 of the Constitution and such the credibility of the person mentioned in item (i) of the objection can no longer be an issue in this case.

2. THAT, in reference to Item (2) of the objection, Article 22 sub-article (i) and sub-article (2) (d) are clear on our right as an association to sue.

3. THAT, items 3, 4, 5,6,7,8 and 9 of the Objection touch on formalities and technicalities of the application and so we wish to bring to the attention of defendants/respondents that Article 22 sub-article (3) (b) and (d) have taken care of our rights in relation to technicalities and formalities addressed in the objection.

4. THAT, item 9 of the objection that refers to rule 4 and 10 of the constitution fails to note that rule 10 is an extension of rule 4 and that sub-article (2) (a) is so specific on ‘the participation of the people which is the dominant criteria of this application.

5. THAT the objection in question does not in any way invalid the prayers made in this case and so this Honourable Court can hear and determine this case.”(sic)

6. On 2/3/2016 this court fully heard the parties in respect of the Preliminary Objection. However the court, at the close of submissions, observed as follows:-

“Before I give a date for ruling, I would urge counsel for the Respondents to seek instructions from his client concerning the grievances raised in the present application with a view to finding an amicable settlement. It is so ordered.

Let matter be mentioned before me on 21/4/2016 to confirm what the parties have agreed. It is hoped that the parties are able to resolve the issue of the participation sought by the Applicants and to save the court’s time.”

7. It must be noted that since filing the Motion, the Applicants have appeared in person. Pursuant to the court’s directions on 2/3/2016 the court was informed that an *ad hoc* committee had been formed by the Respondent Government to deal with the issues raised by the Applicants, and that a settlement was

likely. In subsequent mentions it seemed that the parties were communicating in that regard. Eventually, on 20/5/2016 a duly signed consent recorded by the parties was filed and accepted by this court as a judgment of the court.

8. However, the Applicants, aggrieved that the court had ordered that each party bear own costs, subsequently filed a notice of appeal to the Court of Appeal on 14/6/2016. As early as 19/9/2016 the Applicants were back to court, claiming that the Respondents had “flouted and trashed” the consent order. They urgently sought a mention date, which request was granted and mention set for 21/11/2016. This was followed by the filing of what is described as a “statement” by **James Githinji Mbugua**, on 18/11/2016, reiterating the complaint. The court advised the parties on 21/11/2016 to file a formal application for contempt so that the issues could be determined.

9. Eventually, on 30/11/2016 the Applicants filed a Notice of Motion, expressed to be brought under Article 159 of the Constitution and Section 5 (1) Judicature Act *inter alia* seeking, an order that the Governor, Legal Officer and County Executive Member for Finance of the County Government of Nyandarua be summoned to appear in court, and to stand committed to civil jail for contempt of the court’s orders in the consent judgment.

10. On 10/2/2017 the Applicants filed a fresh application to have this suit transferred to Nairobi or any other High Court station, citing delay. On 17/1/2017 the matter was placed before **Mulwa J**, (as the trial court was on annual leave) who certified the instant application urgent and directed it be heard before me on 7/2/2017. On 9th February, 2017 the Applicants filed a Notice of Appeal to the Court of Appeal citing “dissatisfaction by the slow pace” of handling and disposing of this application by High Court at Naivasha. They prayed that the Court of Appeal “urgently handles the matter to forestall the entire application being rendered NUGATORY”. This notice was withdrawn on 17/2/2017.

11. There are two affidavits filed by the Applicants through **James Githinji Mbugua** one of them after the application filed on 30/11/2016, in addition to the affidavit originally sworn and filed with the Notice of Motion. The gist of the Applicants’ affidavits is that the Respondents had, despite the consent judgment, disobeyed the terms of the judgment and the “**Memorandum of Understanding**” between the Applicants and the *ad hoc* committee representing the Respondents. That despite reminders sent to the Respondents, *vide* letters by the Applicants dated 23rd May 2016 and 12th June 2016, as well as personal visits to the offices of the Nyandarua County Government, there had been no response to the issues raised.

12. In response to the application, **Daniel Mwangi Irungu** the County Secretary and Head of Public Service of the Nyandarua County Government swore a long affidavit. The deponent views the contempt application by the Applicants as misconceived and incompetent. The substantive paragraphs of the affidavit reiterate compliance with the consent judgment as follows:

“7. THAT in seeking to implement the Consent Judgment and more specifically on the Public participation structures as agreed thereon, the Respondent did in fact advertise through the Media and more specifically via the Royal Media Services calling for public participation of the fiscal report. Attached hereto and marked “DMI 1” is a copy of the Local Services Order dated 10th February, 2016.

8. THAT further, through an advertisement on the Nation Daily Newspaper of 11th February, 2016 the residents of Nyandarua County and all relevant stakeholders were informed of the fiscal paper and further called upon to participate in the said preparation. Attached hereto and marked “DMI 2” is a copy of the excerpt from the said newspaper.

9. THAT the Respondents did further conduct an open forum with the residents of the county and different sub-counties including but not limited to; Olkalou, Kinangop, Ndaragwa Sub-County and Kipipiri where it directly took in their input on the same. Attached hereto and marked as “DMI 3” are copies of the attendance lists during the said forum held on 18 – 19th

February, 2016.

10. THAT the Respondent by virtue of placing the advertisement, the media communication and in conducting the open forums did reasonably ensure that as many as its constituents were aware of its intention to prepare and implement the Fiscal paper and the budget.

11. THAT the Applicants herein are seeking preferential treatment in the said participation whereas the public invitation through advertisement, media and the forum was open to any person and/or organization that wished to participate in the same.

15. THAT the Applicants herein have taken the phrase “Public Participation” as set out in the consent and are interpreting it in a selective and selfish manner to mean that they ought to have been consulted and/or Interviewed personally.

18. THAT I am advised by my advocates on record that the standard of proof in contempt proceedings must be higher than the proof on balance of probabilities which threshold the Respondent has not met.

20. THAT the Applicants have not adduced any concrete evidence before this Honourable court to show that the actions and/or decisions of the Respondents were not consultative and that said action lacked the ingredients of public participation, there’s are but bare allegations.” (sic)

13. In a further affidavit (the third) filed on 9/3/2017 the Applicants dismiss the deponent to the Replying affidavit as a stranger, not having participated in the deliberations of the *ad hoc* committee leading to the “memorandum of understanding”, and consent judgment. They asserted that the material dates in this case are post 20th May 2016, hence the activities detailed in the Respondent’s affidavit relating to prior dates are of no consequence.

14. That further, no activity was carried out by the Respondents after the said date, despite reminders from the Applicants. That the Applicants are not seeking preferential treatment as they have a right to seek public information. They cite intervention by the Controller of Budget and the Chairman, Commission for Revenue Allocation (CRA) which overtures were allegedly spurned by the County Government. Other matters relate to the right to public participation in budget allocations, identification of public projects and monitoring through the “agreed” formation of committees at ward level in respect of the financial year 2016 -2017 budget.

15. That the Applicants’ technical team was to be allowed to peruse the said budget before implementation, pursuant to the terms of the consent judgment. That the stated and proved defaults by the Respondents amount to disobedience of court orders, and contempt on the part of the Respondents

16. At the hearing of the application, the Applicants argued that the Respondents did not adhere to the legal requirements on public participation and have since embarked on public expenditure. For her part, Miss Gitau for the Respondents asserted that the Applicants misconceived the nature of public participation to be personal hearings for themselves. Referring to activities carried out in facilitation of public participation, she asserted that the Respondents could not be expected to do more, nor have they flouted the consent judgment.

17. She argued that the burden of proving contempt of court is high and has not been borne out in this case. The Applicants responded by stating that their case was not that there was no public participation, but rather that their letters to the Respondents, were not addressed and information sought has not been given.

18. Before embarking on the determination of this motion, it is necessary to restate verbatim the terms of the consent judgment recorded on 20th May 2016, by the parties. These were as follows:

“1. THAT the County Government of Nyandarua, the 1st Defendant/Respondent herein shall establish structures for citizen participation in accordance with Section 91 of the County Government Act No. 17 of 2012 including establishment of structures at the Ward levels.

2. THAT the County Government of Nyandarua, the 1st Defendant/Respondent herein having provided the Plaintiffs/Applicant with the FISCAL REPORT for the year 2013/2014 shall further provide the plaintiffs/Applicant with the FISCAL REPORT for the said year and subsequent years in an agreed format understandable to the Applicants.

3. THAT the County Government of Nyandarua, the 1st Defendant/Respondent herein proposed structures for citizen participation shall conform to the principles set out at Section 87 of the County Government Act, 2012.

4. THAT prayers 1, 2 and 3 of the plaint be marked as settled as agreed in the Memorandum of Understanding.

19. I further find it useful to juxtapose the said consent judgment orders against the terms of the undated “Memorandum of Understanding” (MOU) annexed to the Applicant’s affidavit as annexure **JGM2B**.

20. Order 1 of the consent judgment is in consonance with item 1 of the Memorandum of Understanding, in so far as establishment of *structures* for public participation at ward level in accordance to the County Governments Act is concerned. The order is silent on the timelines set. The structures contemplated are not stated in the order whereas item 1 of the Memorandum of Understanding refers to ward committees. The Memorandum of Understanding counterpart regarding structures in the county wards indicates that these structures would **“be functional in the Financial Year 2016/2017 that begins 1st July 2016 to 30th July 2017.”**

21. Order 2 of the consent judgment contains an acknowledgment of receipt by the Applicants of the FISCAL REPORT of the Financial Year 2013/2014. The Respondents further bound themselves to produce a more “user friendly” format of the said report (Financial year 2013/2014) and in the future years. Item 2 of the Memorandum of Understanding, not only acknowledges the provision of the Fiscal Report on Financial Year 2013 – 14 to the Applicants, but goes on to state that:

“on perusal (Nyandarua) representations recommended that each of the county organ(s) managing each vote head in the budget to provide detailed breakdown of the expenditure of the project implemented or service provided to enable citizens understand and participate according to Article 201 (a) and (e) of the Constitution.....”

22. The consent judgment provided in order number 3 that the Respondents in setting up the proposed participation structures would conform to the principles articulated in Section 87 of the County Governments Act (CGA). But item 3 of the Memorandum of Understanding contains a list of seven sub items, as to what precisely was required of the County Government.

23. It can be readily seen that most of the details in the Memorandum of Understanding did not enter the filed consent, which was the basis of the consent judgment. The second general observation in respect of the two documents is that both are concerned with public participation in respect of the budget preparation, implementation generally. However the Memorandum of Understanding specifically targeted the budget process of the Financial Year 2016 – 2017.

24. The first order of the consent is clearly in keeping with Section 91 of the County Governments Act which states:

“The county government shall facilitate the establishment of structures for citizen participation including-

- (a) **information communication technology based platforms;**
- (b) **town hall meetings;**
- (c) **budget preparation and validation fora;**
- (d) **notice boards: announcing jobs, appointments, procurement, awards and other important announcements of public interest;**
- (e) **development project sites;**
- (f) *deleted by Act No. 13 of 2014, s. 3;*
- (g) **establishment of citizen fora at county and decentralized units.”**

25. The said order is reinforced by order 3 which also borrows from the provisions of Section 87 of the County Governments Act which provides that:

“Citizen participation in county governments shall be based upon the following principles-

- (a) **timely access to information, data, documents, and other information relevant or related to policy formulation and implementation;**
- (b) **reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards;**
- (c) **protection and promotion of the interest and rights of minorities, marginalized groups and communities and their access to relevant information;**
- (d) **legal standing to interested or affected persons, organizations, and where pertinent, communities, to appeal from or, review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalized communities, including women, the youth, and disadvantaged communities;**
- (e) **reasonable balance in the roles and obligations of county governments and non-state actors in decision-making processes to promote shared responsibility and partnership, and to provide complementary authority and oversight;**
- (f) **promotion of public-private partnerships, such as joint committees, technical teams, and citizen commissions, to encourage direct dialogue and concerted action on sustainable development; and**
- (g) **recognition and promotion of the reciprocal roles of non-state actors’ participation and governmental facilitation and oversight.”**

26. What I hear the Respondents say by their affidavits and submission is that in respect of the Financial Year 2016 - 2017 budget they had already complied with order 1 and 3 of the consent order, through the advertising and holding of different fora to facilitate public participation (see annexures **DMI 1, DMI 2, DMI 3** in that regard). They complain that what the Applicants are seeking is preferential treatment.

27. For their part the Applicants assert that the Respondents have not taken any steps to effect the decision of the court. While not specifically stating what particularly has not been done, the Applicants seem unaware that the undated Memorandum of Understanding was not the basis of the consent judgment. Although the Memorandum of Understanding was filed on the same date as the consent judgment there is no reference thereto in the signed consent judgment. Nor was reference made thereto in

the court proceedings of 20/5/2016.

28. From the arguments of the parties, it seems to me that they want to draw the court into making a determination whether in respect of the Nyandarua County Financial Year 2016 – 2017 budget, there was full public participation. The Applicants’ position is that if the Respondents failed to facilitate public participation, that is evidence of contempt of court on the part of the Respondents. The Respondents for their part would have me give a clean bill of health to the process undertaken in respect of the budget in question so far as public participation is concerned.

29. With the limited material available, and the nature of initiating proceedings herein, I think that the parties’ expectation on the court is unfair. The budget cycle for Financial Year 2016 – 2017 is almost at an end. However the Applicants demand that **“only activities done after May 2016 can prove they (Respondents) obeyed the orders(of)..... the court but not activities done before 10th May 2016.....”** (See paragraph 11 of the Applicants Further affidavit.) This, despite the fact that the said budget cycle was not the express object of the Originating Summons herein or consent judgment.

30. It is true that the consent judgment of the court was forward looking, but a party who is asking the court to find another guilty of contempt must demonstrate in what precise manner the said party has disobeyed the court order. The Applicants cannot merely latch on the futuristic nature of the consent judgment to link it to the 2016 – 2017 budget cycle as proof of contempt.

31. The Applicants herein relied on Section 5 of the Judicature Act which was repealed by virtue of the passage of the Contempt of Court Act No. 46 of 2016. The Act came into force on 23rd December 2016. Section 36 states that:

“The provisions of this act shall supersede any other written law relating to Contempt of Court.”

32. Section 4 (1) (a) of the Contempt of Court Acts defines Contempt of Court as follows:

“(1) Contempt of court includes

(a) civil contempt which means willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court;

(b)”

33. Further Section 27 (b) of the Acts stipulates:

“A person who willfully and without lawful excuse disobeys an order or directions of a superior or subordinate court..... commits an offence.”

The penalty is in Section 28 (1) of the Act.

34. In **Titus Musyoki Nzioka –Vs- John Kimathi Maingi & Another [2013] eKLR, Havelock J** (as he then was) cited a portion of the judgment in **Dean -Vs- Dean [1978] 1 FLR 517** as follows:

“An applicant for contempt of court or its antecedent orders has to establish clearly and precisely of what the Respondent was in contempt. The issue of contempt belittles and undermines the authority and powers of the court; that is why a party has to establish that the actual act of contempt took place in utter disregard and contempt of the court and its orders.....

In the case of Redwing Limited -Vs- Redwing Forest Products Limited [1974] 64 RP6J, it was held

.....a defendant cannot be committed for contempt on the ground that upon one or two possible constructions of an undertaking being, given, he has broken that undertaking. For the purpose of relief of this character, I think the undertaking must be clear and the breach must be clear beyond all question.” (emphasis added).

35. The timeless principles set out by the Court of Appeal in **Mutitika –Vs- Baharini Farm Limited [1985] KLR 229** still hold true:

“The standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt.”

The court further held that:

“The principle must be borne in mind that the jurisdiction to commit for contempt should be carefully exercised with the greatest reluctance and anxiety on the part of the court to see whether there is no other mode which can be brought to bear on the contemnor.”

36. In the present case, all that the Applicants seem to say to the Respondents is this:

“Show us what you have done since 20th May 2016 in connection with the judgment recorded.”

In the Applicants’ supporting affidavits, reference is made to two letters they sent to the Respondents in connection with the consent judgment. These letters are annexed as **JGM 3B** and **5B** and are dated 23rd May 2016 and 12th June 2016, respectively. It is useful to set out part of the contents of the first letter addressed to the Speaker of the Nyandarua County Government.

37. The letter states:

“RE: MISCELLANEOUS CIVIL CASE NO. 42 OF 2015 AT NAIVASHA HIGH COURT

This association finds if necessary to bring to your notice that the above named case.....came to an end on 20th May 2016 with a Memorandum signed by both parties and the same filled at the court (Copies attached).

Some of the issues agreed by the two parties touch on Nyandarua County Gazette Supplement bill No. II of 2015 (Public Participation Budget. (See the Memorandum of understanding item 3(f)) and should be ready for implementation in the 2016/17 financial year, of equally important attention to you is the issue of the FY 2016/2017 budget.

Item 3 (g) of the memorandum require that your assembly Budget Preparation Committee sit with our Technical Team to peruse the proposals on budget before they are set for approval by members of the public, the issues we have mentioned here need very urgent attention by the County Assembly because time is not on our side.

Please address the issues and any other that may be of your concern on the Memorandum of understanding.” (sic) (emphasis added)

38. Apparently receiving no response the Applicants wrote to the Chairman of the Respondents’ Budget Committee on 12/6/2016 as follows:

“RE: FINANCIAL YEAR 2016/2017 BUDGET

This association is of the opinion that issues raised at Naivasha High Court (Case No. 42 of 2015).....concerning 2016/2017 budget are yet to be addressed. In our letter of 23/5/2016

to the speaker of County Assembly (copy attached) we told him it is important to note that issues agreed and signed of in our Memorandum of Understanding and mentioned in the ORDERS have to be addressed before the implementation of the budget. We therefore wish to warn that if the said issues are not addressed immediately, a court action may be taken to enforce the same. sic (emphasis added)

39. Eliciting no response, the Applicants approached the court on 19/9/2016 seeking a mention and eventually filing the contempt proceedings. It seems to me from the affidavit evidence of the Applicants and the contents of the letters above, that the Applicants laboured under the belief that the memorandum of understanding was part of the court sanctioned consent-judgment of 20/5/2016.

40. Further, that the terms of the consent judgment specifically related to the budget process in respect of the Financial Years 2016 – 2017. Nothing could be further from the truth. The basis of the consent judgment was the filed consent which was general in terms, and did not incorporate the details of the Memorandum of Understanding. It seems however that the Applicants merged the Memorandum of Understanding with their signed consent letter, and indeed appear to give precedence to the undated Memorandum of Understanding in their dealings with the Respondents, subsequent to the judgment.

41. In effect, the Applicants have not shown how the Respondents have, according to them, disobeyed the consent judgment. And as I said earlier, the gist of the consent judgment was futuristic and to the general effect that the Respondent would comply with the requirement on public participation as prescribed in Section 87 and 91 of the County Governments Act. As similarly intimated, I do not feel assured that at this stage of these proceedings, this court should accept the invitation of the parties to make a foray into the determination of the question whether, in respect of the Financial Year 2016 – 2017 budget process (itself not a specific subject of the consent order), the Respondents fully facilitated public participation as required by the law.

42. Thus in my view, the Applicants have not borne the onus of the proof placed on their shoulders by the law in this instance. But even if they had, I am of the view that this may not be a suitable matter for committing the alleged contemnors to jail as sought by the Applicants. Where no adequate public participation has been facilitated, there are other remedies available to parties aggrieved by any process undertaken by a County Government including the budget process.

43. I find therefore that the application filed on 30/11/2016 must fail and will dismiss it. In light of the fact that the Applicants were acting in person, and possibly acted on a misconception of the key issues and actual scope of the consent judgment recorded herein, I will order each party to bear own costs in respect of the application.

Delivered and signed at Naivasha this 28th day of March, 2017.

In the presence of:-

Mr. Githinji on behalf of the Applicants

Mr. Mburu holding brief for Miss Gitau for the Respondents

Court Assistant – Barasa

C. MEOLI

JUDGE