Beta Metals KE Limited v Cabinet Secretary For Mining, Blue Economy and Marine Affairs & another (Environment and Land Constitutional Petition E006 of 2024) [2025] KEELC 5185 (KLR) (4 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5185 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E006 OF 2024

LL NAIKUNI, J

JULY 4, 2025

BETWEEN

BETA METALS KE LIMITED .... PETITIONER

AND

CABINET SECRETARY FOR MINING, BLUE ECONOMY AND MARINE AFFAIRS .... 1ST RESPONDENT

THE ATTORNEY GENERAL .... 2ND RESPONDENT

RULING

I. Introduction

1. This Honorable Court was tasked with the determination of the Notice of Motion application dated 19th November, 2024 by Beta Metals Ke Limited, the Petitioner/Applicant herein. The Application was premised under Articles 2, 3, 10, 20, 21, 22, 23, 24, 47,and of *the Constitution*, Rules 10 and 23 of *the Constitution* of Kenya [Protection of Rights and Fundamental Freedoms] Practice And Procedure Rules, 2013 and all other enabling provisions of the Law].

2. Upon service of the application to the Respondents, the 1st Respondent opposed the same through a replying affidavit which according to the court was erroneously sworn 6th November, 2024.

II. The Petitioner's case

3. The Petitioner sought for the following orders:-

   SUBPARA a.

   Spent.

   SUBPARA b.

That a notice to issue to the Cabinet Secretary for Mining, Blue Economy, and Maritime Affairs, Hon. Ali Hassan Joho, the 1st Respondent herein, the Director of Mines, State Department of Mining Mr. Gregory Kituku, and Regional Mining Officer Joshua Boiwo to show cause why contempt of court proceedings should not be instituted against them for contempt the orders of this Honourable Court issued on the 17th of July 2024.

SUBPARA c.

That this Honourable court be pleased to hold the Cabinet Secretary for Mining, Blue Economy, and Maritime Affairs, Hon. Ali Hassan Joho, the 1st Respondent herein, the Director of Mines, State Department of Mining Mr. Gregory Kituku, and Regional Mining Officer Joshua Boiwo in contempt of the orders of this Honourable Court issued on the 17th of July 2024.

SUBPARA d.

That upon grant of [the prayer 3 above], this Honourable Court be pleased to order that Cabinet Secretary for Mining, Blue Economy, and Maritime Affairs, Hon. Ali Hassan Joho, the 1st Respondent herein, the Director of Mines, State Department of Mining Mr. Gregory Kituku, and Regional Mining Officer Joshua Boiwo be committed to civil jail for six months or any such period or pay a fine as this Honourable Court may deem fit and just.

SUBPARA e.

That this Honourable Court be pleased to order that the Respondents herein, debarred and/or denied audience in this suit unless and until they have purged the contempt and in purging the contempt the Respondents be directed to forthwith issue the petitioner with the requisite permits and authorizations in line with petitioner's mineral dealer [trading]license

SUBPARA f.

That any other or further interim relief or reliefs pending Petition as deemed just and expedient by the court in the circumstances.

4. The application by the Applicant herein was premised on the grounds, testimonial facts and averments made out under the 18 Paragraphed Supporting Affidavit of – NAOMI KURIA, the a Director of the Petitioner Company herein sworn and dated on the same day as the Application with Four [4] annextures marked “NK - 1 to NK - 4”. The Applicant averred that:-

    a. On the 17th July 2024, Hon. Justice L.L. Naikuni issued conservatory orders suspending the 1st Respondent’s decision to revoke the Petitioner's mineral dealer[trading] license. The effect of that order was that the petitioner’s license remains valid until the issuance of further court orders. She annexed in the affidavit a copy of the order and mark the same as annexure “NK-1”.

    b. The order was served upon the 1st Respondent and the relevant officers working under the 1st Respondent including the Director of Mines, State Department of Mining. She annexed in the affidavit; the affidavits of service by Daniel Thoya [process server] dated 17th September, 2024 and Daniel Muliro [Advocate] dated 2nd July, 2024 as annexures marked as “NK - 2[a] &[b]”.

    c. The 1st Respondent was aware that the petitioner could not exercise their rights under the mineral dealer license without movement permits and other necessary authorizations from the 1st Respondent and his officers.

    d. In a bid to frustrate and harass the petitioner, the 1st Respondent and or his officers had refused to issue the petitioner with movement permits and authorization to export existing stockpiles

despite several requests and applications. Annexed in the affidavit a copy of the letter dated 15th November 2024 and records of applications on the portal as annexure "NK-3& 4".

e. The actions and inactions of the 1st Respondent and his officers were therefore clearly geared toward frustrating the petitioner by trying to circumvent the conservatory orders of the learned judge and therefore contemptuous.

f. The conservatory orders unlike injunctions were orders meant to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court. Conservatory orders were constitutional remedies and are to be read and interpreted as so.

g. In line with these principles, actions or inactions by parties, especially state actors, that go against or attempt to circumvent conservatory orders not only undermine judicial authority but were unlawful and contemptuous.

h. Further under the provision of Article 10 of *the Constitution* of Kenya, 2010 all State organs, State officers, and public officers are bound by the national values and principles of governance in the performance of their duties.

i. These national values and principles of governance include the rule of law, good governance, integrity, transparency, and accountability.

j. Under the principle of the rule of law, it was expected that state officers will follow the law in making decisions and would not act arbitrarily. As demonstrated herein the 1st Respondent's actions were not anchored in law and therefore arbitrary and illegal.

k. Under the principles of good governance, integrity, transparency, and accountability it is expected that actions and decisions of state officers should be in good faith predictable, and generally above board. For the reason outlined above, the actions by the respondent fall short of the standards expected of state officers under Article 10 of *the Constitution* of Kenya, 2010, and therefore warranting the intervention of this Honourable court.

l. Unless this court intervened in the manner sought herein, the petitioner's rights will continue to be violated unabated.

m. Further and more importantly unless this application was heard and determined on a priority basis, and the interim orders granted, the dignity of this Honourable court was likely to continue being violated.

n. Further legal arguments will be made at the hearing of the Application and petition.

III. The Response by the 1st Respondent

5. The 1st Respondent opposed the application through a 25th paragraphed affidavit sworn by the Gregory Kituku, the Acting Director of Mines in the State Department for Mining, Ministry of Mining, Blue Economy and Maritime Affairs on 6th November, 2024 where he averred that:-

a. This Honourable Court issued conservatory orders on 18th July, 2024 in the following terms:-

> In the meantime, conservatory order be and is hereby issued suspending the decision to revoke the Petitioners mineral dealers [trading] license DTL/2024/2171 contained in a letter dated 8th July, 2024 by the Cabinet Secretary for Mining, Blue

Economy and Maritime Affairs until 30th September, 2024 when it shall be subject to review depending with the emerging circumstances therein."

b. Resultantly and in respect of this Honourable Court orders, the Mineral Dealers Trading License which had been revoked was reinstated and the Petitioner was allowed to deal with minerals under the license including strategic minerals through the National Mining Corporation.

c. The 1st Respondent as a state officer has a constitutional responsibility to promote public confidence in the integrity of his office and to bring honor to the nation and dignity to his office, that Gregory Kituku and Joshua Bolwo are officers under his docket who have at all times worked as directed by the 1st respondent who was the general administrator of the *Mining Act*.

d. To the end, the 1st Respondent and officers working under him have always respected the rule of law and the independence of the institutions in place including the Judiciary, and are therefore not in contempt of the orders issued by this Honorable Court on 18th July 2024.

e. The 1st Respondent wished to reiterate his response in the replying affidavit to the petition in responding to this application as follows:

f. On 20th December, 2023, the Applicant applied for the renewal of DTL/2024/2171 from a previous license i.e. DTL/2022/1410. The renewal application was made one month after the Cabinet made a declaration on strategic minerals.

g. As per the Mining [Strategic Minerals] Regulations, strategic minerals are handled by the National Mining Corporation which was the investment arm of the national government with respect to minerals [*Mining Act*, Section 24]. The regulations further provide that any interested party in strategic minerals could collaborate with the National Mining Corporation where it does not have the financial or technical expertise. [Annexed in the affidavit and marked as GK1 a copy of the Strategic Minerals Regulations, 2017].

h. The Dealers Trading License allowed the applicant to trade in Base and Rare Metals as per the first schedule of the *Mining Act*, which contains 35 minerals. However, following the declaration of strategic minerals by the Cabinet and the subsequent gazettement of copper as a strategic Mineral, the 1st Petitioner by law cannot allow the 1st respondent to move or export copper as such action will be perpetuating an illegality. [Annexed in the affidavit and marked as “GK - 2 and 3” respectively a copy of the Mineral Dealers Trading License and the gazette Notice listing strategic Minerals].

i. The regulations clearly provide the functions of the National Mining Corporation regarding strategic minerals to include; the processing, refining, or smelting of a strategic mineral; the marketing or sale of a strategic mineral: import and export of a strategic mineral among others.

j. The Petitioners case was the alleged irregular revocation of the Mineral Dealers License and did not at any one point challenge the gazettement of copper as a strategic mineral.

k. Upon issuance of the court’s conservatory orders, the petitioner’s Mineral Dealers Trading License was reinstated. She was at liberty to trade in any mineral including those already declared as strategic minerals as guided by the *Mining Act* and attendant regulations.

l. The Petitioner, however, did not by law approach the National Mining Corporation on dealing with copper which was among the minerals declared as strategic to this country and the global shift towards green energy. The Petitioner was on the contrary, using these conservatory

orders as a means of bypassing the laid out rules and procedures, which was not the essence of the orders.

m. The Petitioner therefore in filing this case was not only approaching this court with unclean hands but is also trying to use this Honorable court as an avenue of perpetuating an illegality.

n. As the general administrator of the *Mining Act*, the 1st Respondent was accountable to the people of Kenya for how minerals are dealt with and should at all times protect the public interest.

o. The Black's Law Dictionary defines Public Interest as: -

> "The general welfare of a populace considered as warranting recognition and protection. Something in which the public as a whole has a stake, especially something that justifies government regulation."

p. The process for the declaration of minerals as strategic was thorough, and anchored in law and at the heart of the consideration is the people of Kenya, the accruing benefits' the fact that minerals deplete and can never be recovered.

q. For the 1st Respondent to issue a movement and export permit for a mineral already declared as strategic without involving the National Mining Corporation, would not only be illegal but also against public interest which demands that *the constitution* and the law be respected and upheld at all times.

r. It was settled in law that conservatory orders are meant to protect applicants from suffering prejudice, reduce chances of rendering the petition as nugatory, and protect public interest. Yet in this instance, public Interest tils in favor of the 1st Respondent.

s. On the contrary, the Applicant has resorted to mudslinging antics by discussing a matter that was already "Sub – Judice" and trying to paint the 1st respondent in a negative light on electronic media to elicit comments that might prejudice judicial officers and thus eventually affect the outcome of this case.

t. The 1st Respondent implores this Court to issue cease and desist orders against the Petitioner and allow this Honorable Court to decide on this matter based on merit and not on public opinion. The petitioner's actions are in bad taste. [Attached is a copy of a newspaper article published on 4th December 2024 marked as GK - 4].

u. It was trite law that one who seeks equity must do equity. This maxim of equity summarizes the 1st Respondent's case, that where the petitioner was required to follow the law, she must fulfill all obligations required by law.

v. The 1st Respondent averred that all the allegations of contempt brought against him and the officers working in his docket are frivolous, vexatious, baseless, unfounded, and only meant to mislead this Honorable Court.

w. This affidavit was sworn in opposition to the application for issuance of orders citing contempt and prays that the same is dismissed with costs to the Respondents.

IV. Submissions

6. On 11th December, 2024 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 19th November, 2024 be disposed of by way of written submissions

and all the parties complied. Unfortunately, by the time the Honourable Court was peening down this Ruling it had not been in a position to access any of the files submissions the parties herein. Therefore, it proceeded to deliver its Ruling on its own merit accordingly.

V. Analysis & Determination.

7. I have carefully read and considered the Notices of Motion applications dated 19th November, 2024 by the Petitioner, the submissions and the myriad of cases cited herein by parties, the relevant provisions of *the Constitution* of Kenya, 2010 and statures.

8. In order to arrive at an informed, just, equitable and reasonable decision, the Honorable Court has three [3] framed issues for its determination. These are:-

    a. Whether the Cabinet Secretary for Mining, Blue Economy, and Maritime Affairs, Hon. Ali Hassan Joho, the 1st Respondent herein, the Director of Mines, State Department of Mining Mr. Gregory Kituku, and Regional Mining Officer Joshua Boiwo are in contempt of the orders of this Honourable Court issued on the 17th of July 2024 and in the affirmative should be committed to civil jail.

    b. Who will bear the Costs of Notice of Motion application dated 19th November, 2024.

IssueNo. a]. Whether the Cabinet Secretary for Mining, Blue Economy, and Maritime Affairs, Hon. Ali Hassan Joho, the 1st Respondent herein, the Director of Mines, State Department of Mining Mr. Gregory Kituku, and Regional Mining Officer Joshua Boiwo are in contempt of the orders of this Honourable Court issued on the 17th of July 2024 and in the affirmative should be committed to civil jail

9. Under this Sub heading, the Honourable Court now wishes to apply the able legal principles, the first issue for determination under this subtitle is contempt of court orders and whether the Cabinet Secretary for Mining, Blue Economy, and Maritime Affairs, Hon. Ali Hassan Joho, the 1st Respondent herein, the Director of Mines, State Department of Mining Mr. Gregory Kituku, and Regional Mining Officer Joshua Boiwo are in contempt of the orders of this Honourable Court issued on the 17th of July 2024.

10. Contempt of court is that conduct or action that defies or disrespects authority of court. Black's Law Dictionary 9th Edition, defines contempt as:

    The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.

11. The Black's Law Dictionary [11th Edition] defines contempt of court as:-

    > "Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment."

12. Properly put, contempt is conduct that impairs the fair and efficient administration of justice. The provision of Section 5 of the *Judicature Act* confers jurisdiction on the superior courts to punish for contempt. The applicants also cited provisions of the *Contempt of Court Act* No. 46 of 2016. However, its instructive to note that this legislation was declared constitutionally invalid and nullified in the

year 2018, [See "Kenya Human Rights Commission v Attorney General & 2 Others [2018] eKLR"]. Additionally, for this court, Section 29 of the *Environment and Land Court Act* provides that:-

> " Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both."

13. In the case of:- "Republic v Mohammed & another Petition 39 of 2018 [2019] KESC 47 [KLR] [15th March 2019] [ruling]", the court said that an act in contempt of court constitutes an affront to judicial authority and the court has liberty and empowerment to mete out the penalty for such conduct in a proper case, the object being to vindicate the courts authority, secondly, to safeguard its processes so as to sustain the rule of law and the administration of justice.

14. Similarly, in the case of:- "Ochino & another v Okhombo & others [1989] KLR" the court said that as a general rule, no court order 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 it.

15. Striving to abide by court orders is not an option. It protects the dignity and the authority and a rule of law. It must be zealously guarded by the court by dealing firmly with any person who deliberately disobeys court orders or attempts to scuttle the court's process. Contempt of Court is constituted by conduct that denotes willful defiance of or disrespect towards the Court or that willfully changes or affronts the authority of the court or the supremacy of the law whether in civil or criminal proceedings. The court said that the power to punish for contempt is inherent in a system of administration of justice and such power is held by every judge.

16. It is imperative that every person against whom or in respect of whom an order is made by a Court of competent jurisdiction has an obligation to obey it unless and until the order is discharged. This obligation is uncompromising and it applies even where one believes the order to be irregular or void. Consequently, courts do not condone deliberate disobedience of orders and will deal firmly with proved contemnors. Courts possess inherent power to enforce compliance with their lawful orders and impose sanctions through contempt of court. The power to punish for contempt is meant to ensure that court processes are not abused and the authority and dignity of the courts is upheld at all times because contempt of court by its very nature demeans the integrity and authority of Courts and disparages the rule of law.

17. This Court, therefore, has inherent powers under the *Judicature Act* as well as the provision of Section 29 of the *Environment and Land Court Act*, No. 19 of 2011. The jurisdiction of the superior courts to punish litigants for contempt of court when they fail or refuse to obey court orders is aimed at protecting the dignity and legitimacy of the courts. The test applicable in an application for contempt, was well set out in the case of:- "Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR" where the court held that:-

> " 40. 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'."

18. The first question for determination with regards to contempt of court is whether there is a valid order capable of being obeyed. On the 17th July 2024, Hon. Justice L.L. Naikuni issued conservatory orders suspending the 1st Respondent's decision to revoke the petitioner's mineral dealer [trading] license. The effect of that order was that the petitioner's license remains valid until the issuance of further court orders. The Order 5 stated as follows:-

> " That in the meantime, conservatory order be and is hereby issued suspending the decision to revoke the petitioner's mineral dealer,[trading]license DTL/2024/2171 contained in a letter dated 8th July 2024 by the Cabinet Secretary for Mining, Blue Economy, and Maritime Affairs until 30th September 2024 when it shall be subjected for review depending with the emerging circumstances therein."

19. The order is clear and unambiguous and there has been no complaint from the Respondents that it was ambiguous or confusing in any way. For this reason, this court finds that there were in existence clear and unambiguous orders capable of being executed and/or obeyed by the Respondents.

20. The Second requirement is that the party alleged to have breached the order must have had actual knowledge of it. According to the Petitioner, the 1st Respondent was aware that the petitioner could not exercise their rights under the mineral dealer license without movement permits and other necessary authorizations from the 1st Respondent and his officers. In a bid to frustrate and harass the petitioner, the 1st Respondent and or his officers had refused to issue the petitioner with movement permits and authorization to export existing stockpiles despite several requests and applications.

21. A party 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. According to the 1st respondent in respect of this Honourable Court orders, the Mineral Dealers Trading License which had been revoked was reinstated and the Petitioner was allowed to deal with minerals under the license including strategic minerals through the National Mining Corporation. From the foregoing it is evident that the said contemptors were aware of the orders issued by the Honourable Court on 18th July, 2024.

22. On the final issue as to whether the alleged Contemptors were in contempt of court orders. It is trite that a court order must be obeyed whether a party agrees with its contents or not, and as long as the order still subsists, then it remains a valid court order that must be adhered to. The adherence to the

court order is not optional even if a party has applied for review, variation or appeal of the said order. In the case of "Kenya Tea Growers Association v Francis Atwoli and 5 Others [supra]" Lenaola J cited with approval the case of "Clarke and Others v Chadburn & Others [1985] 1All E.R [PC], 211" in which the court observed that:

> " I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal…even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it."

23. This court has already found that the 1st Respondent had knowledge of the orders of the Court. There is no doubt that the orders had been in force since they were issued and have neither been discharged, varied or set aside. The Court granted a conservatory order on temporary basis pending the hearing and determination of the Petition herein. The question now is whether the 1st Respondent and his counterparts had contravened the order of the court as well as whether the contravention was deliberate.

24. Among the prayers sought in the instant Application is committal to civil jail, which will result in denying the 1st Respondent and his counterparts their liberty. It is for this reason that the standard of proof in contempt matters is higher than that of ordinary civil matters. In the case of "Mutitika v Baharini Farm Limited [1985] KLR 229, 234" the Court of Appeal held that: -

> " 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…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 an offence which can be said to be quasi-criminal in nature. The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor's conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order."

25. This then means that the violation that the 1st Respondent and the other alleged contemptors are accused of must be proved to a standard which though not as high as proof beyond reasonable doubt, must is higher than proof on a balance of probabilities. The threshold is quite high as it involves possible deprivation of a person's liberty. It is important therefore that the court satisfies itself that first, the acts complained of actually happened, secondly, that the person alleged to be in contempt committed the acts complained of and lastly, he did so with full knowledge of the existence of the order of the court forbidding it. It needs no mention that the burden of proving that the Contemptors did disobey the court order lays squarely on Petitioner.

26. In the Application herein no specific date[s] have been given as the date[s] when the 1st Respondents and the other alleged Contemptors deliberately carried out the acts of disobedience of the court order. This Court cannot dismiss the 1st Respondent's claim that the said order was never disobeyed. No doubt, if the Petitioner had tendered sufficient evidence of the 1st Respondent's disobedience, this court would have made a finding to that effect. However, the evidence presented in this instant Motion falls short of the required standard.Parties should thus bear in mind that this application or

the outcome herein will not act as a bar to subsequent prosecution for any future acts of disobedience of court orders.

27. However, for purposes of the Application herein, the Petitioner has failed to prove that the acts of contempt took place after the issuance of conservative orders by this court. That being so, the Petitioner's application has fallen short of establishing that the 1st Respondent and the other alleged contemptors are guilty of disobeying the order of this court issued on 18th July, 2024. The sum total is that application is dismissed with costs to the 1st Respondent.

IssueNo. c]. Who will bear the Costs of Notice of Motion application dated 19h November, 2024.

28. It is now well established that the issue of costs is discretionary of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The Black Law Dictionary defines cost to means:-

> " the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other"

29. The proviso of Section 27 of the *Civil Procedure Act*, Cap. 21 grants the High Court discretionary power in the award of costs which ordinarily follow the event unless the Court for good reasons orders otherwise. Section 27 [1] provides as follows:-

> " 1. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order."

30. A careful reading of Section 27 indicates that it is considered trite law that costs follow the cause/event, as described by Sir Dinshah Fardunji Mulla in his book The Code of Civil Procedure, 18th Edition, 2011 reprint 2012 at 540, is that costs must follow the event unless the court, for some good reasons, orders otherwise. See the decisions of Supreme Court "Jasbir Rai Singh v Tarchalan Singh" eKLR [2014] and "Cecilia Karuru Ngayo v Barclays Bank of Kenya Limited, [2014] eKLR".

31. Additionally, the provision provides for 'costs of and incidental to all suit or application' which expression includes not only costs of suit but also costs of application in suit as described by Mulla [supra] at 536. Furthermore, Rtd. Justice Richard Kuloba in his book Judicial Hints on Civil Procedure, 2nd Edition, 2005 at 95 notes that the words 'the event' means the result of all the proceedings incidental to the litigation. Accordingly, the event means the result of the entire litigation. The order as to costs as provided for under section 27 remains at the discretion of the court.

32. The award of costs is therefore not cast in stone but courts have ultimate discretion. In exercising this discretion, courts must not only look at the outcome of the suit but also the circumstances of each case. In "Morgan Air Cargo Limited v Evrest Enterprises Limited [2014] eKLR" the court noted that;

> " The exercise of the discretion, however, depends on the circumstances of each case. Therefore, the law in designing the legal phrase that ''Cost follow the event" was driven by

the fact that there could be no "one-size-fit-all" situation on the matter. That is why section 27[1] of the *Civil Procedure Act* is couched the way it appears in the statute; and even all literally works and judicial decisions on costs have recognized this fact and were guided by and decided on the facts of the case respectively. Needless to state, circumstances differ from case to case."

33. In this case, as this Honourable Court is of the opinion that the 1st Respondent shall have the costs of the Notice of Motion application dated 19th November, 2024.

VI. Conclusion & Disposition

34. In long analysis, having caused an indepth analysis to the framed issues and based on the Principles of Preponderance of Probabilities and the balance of convenience, the Honorable Court proceeded to make the following decision:-

    a. That the Notice of Motion application dated 19th November, 2024 be and is hereby found to lack merit and the same is dismissed entirely with costs.

    b. That there shall be a mention in the presence of all parties on 24th July, 2025 before Justice Hon. Olola for further direction.

    c. That the 1st Respondent shall have the costs of the Notice of Motion application dated 19th November, 2024 to be paid by the Petitioner.

    It is soOrdered Accordingly.

RULING DELIVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 4TH DAY OF JULY 2025.

HON. MR. JUSTICE L. L. NAIKUNI,

ENVIRONMENT AND LAND COURT

AT MOMBASA

Ruling delivered in the presence of:

a. M/s. Firdaus Mbula, the Court Assistant.

b. Mr. Muliro Advocate for the Petitioner/Applicant.

c. Mr. Koech Advocate holding brief for M/s. Saru Advocate for the 1st & 2nd Respondents.