



Odando & another v National Environmental Management Authority & 3 others (Environment & Land Petition 43 of 2019) [2023] KEELC 21431 (KLR) (9 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21431 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 43 OF 2019**

JO MBOYA, J

NOVEMBER 9, 2023

IN THE MATTER OF: A CLASS ACTION LAW SUIT IN RESPECT OF CIVIL RIGHTS CLAIMS OVER POLLUTION OF RIVER WATERS AND AIR IN KENYA

AND

IN THE MATTER OF: ENFORCEMENT OF ENVIRONMENTAL RIGHTS UNDER ARTICLE 70 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: INHUMAN TREATMENT OF THE USERS (UPSTREAM AND DOWNSRTEAM) OF THE NAIROBI AND ATHI RIVER WATERS AND CONSUMERS OF TOXIC ARO FROM EMISSIONS FROM DANDORA DUMP SITE AND INDUSTRIES

AND

IN THE MATTER OF: ARTICLES 10, 22(1) AND (2), 23(3) (A), (C), (E) AND (F), 25(A), 299F), 42, 43(1)(D), 69, 70 AND 232 OF THE CONSTITUTION OF KENYA, 2010 AND SECTIONS 3, 71(1) AND 86 OF THE ENVIRONMENTAL MANAGEMENT AND CO- ORDINATION ACT (EMCA) NO. 5 OF 2015

BETWEEN

ISAIAH LUYARA ODANDO 1ST PETITIONER

WILSON YATA 2ND PETITIONER

AND

NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY 1ST RESPONDENT

CABINET SECRETARY- ENVIRONMENT 2ND RESPONDENT

CABINET SECRETARY- WATER AND SANITATION 3RD RESPONDENT

NAIROBI METROPOLITAN AREA AUTHORITY 4TH RESPONDENT



RULING

Introduction and Background:

1. The Applicants herein (who are also the Petitioners in the main Petition) have filed and/or lodged the application dated the 24th August 2023 and in respect of which same have sought for the following reliefs;
 - i. That Mr. Mamo Boru Mamo, EBS, the Director General of National Environment Management Authority (NEMA); Mr. Ibrahim Auma Nyangoya, the County Executive Committee Member for Green Nairobi (Environment, Water, Food & Agriculture); and Mr. Hibrahim Otieno Nyakach, the Chief Officer Department of Environment and Acting Chief Officer Food, Agriculture and Natural Resuourses and Mr. Oscar Omoke Ochola, the Chief Officer Department of Water and Sewerage of the County Government of Nairobi, do appear before this Honorable Court and show cause why they should not be cited for Contempt of court for failing to implement the Court's decree issued on 15th July 2021.
 - ii. That this Honorable Court be pleased to find and hold that Mr. Mamo Boru Mamo, EBS, the Director General of National Environment Management Authority (NEMA); Mr. Ibrahim Auma Nyangoya, the County Executive Committee Member for Green Nairobi (Environment, Water, Food & Agriculture) and Mr. Hibrahim Otieno Nyakach, the Chief Officer Department of Environment and Acting Chief Officer Food, Agriculture and Natural Resourses and Mr. Oscar Omoke Ochola, the Chief Officer Department of Water and Sewerage of the County Government of Nairobi, are in Contempt; and have disobeyed the decree issued by this court on the 15th July 2021.
 - iii. That Mr. Mamo Boru Mamo, EBS, the Director General of National Environment Management Authority (NEMA); Mr. Ibrahim Auma Nyangoya, Mr. Hibrahim Otieno Nyakach, and Mr. Oscar Omoke Ochola, be punished for Contempt of court and be committed to Civil Jail for a period not exceeding six (6) Months.
 - iv. Costs of this Application be borne by the Respondents.
2. The instant Application is premised and anchored on various grounds, which have been enumerated at the foot thereof. Furthermore, the Application is supported by the Affidavit of the 1st Petitioner/ Applicant sworn on even date, namely, the 24th August 2023; and wherein the Deponent has annexed and exhibited three (3) sets of Documents.
3. Upon being served with the Application herein, the 1st Respondent filed a Replying affidavit sworn by one Mamo Boru Mamo; and which is sworn on the 18th September 2023. Instructively, the Deponent of the Replying affidavit has proceeded to and attached two (2) sets of Reports, commissioned and prepared on behalf of the 1st Respondent and which Reports relate to the various activities/ actions taken by the 1st Respondent towards compliance with the court order.
4. Other than the 1st Respondent herein, the rest of the Parties did not file any Reposes to the Application beforehand. Moreover, the Application herein came up for hearing on the 20th September 2023; whereupon the Advocates for the Parties covenanted to canvass and dispose of the Application by way of written submissions.



5. Flowing from the foregoing, the Honourable court proceeded to and circumscribed the timelines for the filing and exchange of written submissions. In this regard, the Applicants' thereafter filed their written submissions dated the 25th September 2023.
6. Nevertheless, despite being afforded various indulgence, to facilitate the filing of written submissions, neither the 1st Respondent nor the rest of the Respondents' filed any written submissions or at all.

Parties' Submissions:

a. Applicants' Submissions:

7. The Petitioners/ Applicants herein filed written submissions dated the 25th September 2023; wherein the Applicants' have adopted and reiterated the grounds contained at the foot of the Application; as well as the contents of the Supporting affidavit.
8. Furthermore, Learned counsel for the Applicants' has thereafter highlighted, raised and canvassed three (3) salient issues for consideration by the Honourable court.
9. Firstly, Learned counsel for the Applicants has submitted that this Honorable court (differently constituted) delivered a Judgment on the 15th July 2021; wherein the court issued various orders and or directives, which were to be implemented by the Respondents herein.
10. Further and in addition, Learned counsel for the Applicant has also submitted that the Judgment of the court, which was rendered on the 15th July 2021, was delivered in the presence of the advocates duly retained by the Respondents herein. Consequently and in this regard, Learned counsel for the Applicants, has added that the Respondents were therefore knowledgeable of and privy to the terms of the Judgment of the court.
11. Secondly, Learned counsel for the Applicants' has submitted that even though the Respondents' were knowledgeable of and privy to the terms of the Judgment, the Respondents herein have neither complied nor adhered to the terms of the Judgment of the Honourable court.
12. In particular, it has been contended that the 1st Respondent herein has (sic) failed to put in place measures and mechanisms to ensure that Nairobi and Ardhi Rivers; are free from various forms of pollution.
13. On the other hand, Learned counsel for the Applicants' has also submitted that the Respondents' herein have remained in contempt of the lawful court orders by failing to de-commission Dandora Dumpsite, either within the set timeline or at all. For coherence, Learned counsel for the Applicants has contended that the Respondents have continued with the unlawful and illegal operations at Dandora dumpsite.
14. Based on the foregoing, Learned counsel for the Applicants has submitted that the actions and/or omissions by the Respondents herein constitutes and/or amounts to contempt of lawful court orders; and thus the Respondents and/or their officers ought to be cited and punished by the court.
15. Thirdly, Learned counsel for the Applicants has submitted that court orders are not made for cosmetic purposes and hence it behooves all and sundry, the Respondents not excepted to comply with such court orders.
16. In support of the submissions that the Respondents and in particular the named officers, (whose names have been alluded to on the face of the application), have disobeyed lawful court orders, Learned counsel has cited and relied on, inter-alia, the case of Council of Governors vs Kenya Medical



Practitioners, Pharmacists and Dentists Union Employment and Labour Relation No. 2486 of 2016 (UR), Samuel Mweru & Others vs The National Land Commission; Nairobi City Water and Sewerage & Co Ltd Milimani HCC Misc. Application No. 443 of 2017 and Jaribu Credit Traders Ltd vs Nairobi County Government (2018)eKLR.

17. In a nutshell, Learned counsel for the Applicants has thus implored the Honourable court to find and hold that the actions complained of; amounts to and constitutes contempt of court, for which the contemnors ought to be cited and punished.

b. 1st Respondent's Submissions

18. It suffices to point out that though the 1st Respondent herein was in attendance during the court session held on the 20th September 2023; and wherein directions were taken for filing and exchange of written submissions; same however, failed and/or neglected to file the written submissions.
19. Furthermore, after seeking for and obtaining three indulgence with a view to filing written submissions, Learned counsel Mr. E K Gitonga, thereafter intimated to the court on the 24th October 2023; that same would not be filing any written submissions as hitherto proposed.
20. Nevertheless, Learned counsel Mr. E K Gitonga, proceeded to and invited the court to take cognizance of the elaborate Replying affidavit sworn by Mamo Boro Mamo on the 18th September 2023; together with the Reports which had been commissioned by the 1st Respondent attached thereto.
21. Suffice it to point out that at the foot of the Replying affidavit, (details in terms of the preceding paragraph), the Deponent therein, explained the various efforts/ actions that have been taken by and on behalf of the 1st Respondent towards compliance with the terms of the Judgment of the court.
22. Additionally, the Deponent of the Replying affidavit has also contended and/or averred that the issue of the relocation of Dandora dumpsite does not fall within the Jurisdiction and/or mandate of the 1st Respondent. In any event, it has similarly been averred that the relocation does also not fall within the mandate of the rest of the Respondents.
23. Finally, the Deponent of the Replying affidavit has averred that the 1st Respondent, in the discharge of her statutory mandate and in furtherance of the orders of the court, has held various engagements with the stakeholders, towards and in a bid to ensure that Nairobi and Ardhi Rivers are cleaned up and the pollution thereof taken care of.
24. Arising from the foregoing, the Deponent of the Replying affidavit has therefore contended that neither the 1st Respondent nor the Director General thereof, have disobeyed the orders of the court; either in the manner alleged or at all.
25. In view of the foregoing, the Deponent of the Replying affidavit has therefore contended that the Application before the court is driven by ulterior motives and in any event, same is misconceived.

c. Submissions by the Rest of the Respondents

26. Though served with the subject Application, neither the Cabinet Secretary, Environment; nor Cabinet Secretary, Water and Sanitation, filed any Replying affidavit or at all.
27. Notably and for reasons best known to same, the named Respondents, did not deem it fit, appropriate and/or expedient to file any Response(s) to the Application beforehand.



Issues for Determination:

28. Having reviewed and evaluated the Application beforehand; as well as the Response filed thereto and upon taking into consideration the submissions filed by the Applicants; the following issues do arise and are thus worthy of determination;
 - i. Whether the Applicants' herein have impleaded the allegations of Contempt with the requisite specificity, clarity and necessary precision, or otherwise.
 - ii. Whether the Respondents' herein and in particular; the named Officers, are in Contempt of court.

Analysis and Determination

Issue Number 1; Whether the Applicants herein have impleaded the allegations of contempt with the requisite specificity, clarity and necessary precision.

29. Before venturing to address the issue herein before alluded to, it is appropriate to state and underscore that the Applicants' herein filed the Petition as against the named Respondents, as well as various Interested Parties.
30. Subsequently, the Petition that was filed by and on behalf of the Applicants herein was heard and determined vide Judgment rendered on the 15th July 2021; whereupon the court issued a plethora of orders and/or directives.
31. Instructively, the various orders and directives which were issued by the Honourable court were directed to various agencies, inter-alia, Nairobi Metropolitan Services (NMS), which was inter-alia directed to take necessary steps to de-commission Dandora Dumpsite and to relocate same to another place (sic) within six months from the date of the Judgment.
32. Other than the aspects of the Judgment which were directed to and or against NMS, (now defunct), there is an aspect of the Judgment which directed to the Respondents and in particular , National Environment Management Authority, NEMA; to put in place appropriate mechanism and action plan for the cleaning up of the Nairobi and Ardhi Rivers, respectively.
33. It was necessary to highlight and/or rehash the various directives which were given at the foot of the Judgment of the court, so as to appreciate that there were various dimensions, touching on different Ministries, Atate agencies and Constitutional bodies.
34. Given the diverse nature of the orders/directives, which were contained in the body of the Judgment complained of, it was incumbent upon the Applicants herein to implead with necessary clarity and precision, the aspect of the order/decree, which are alleged to have been breached or otherwise.
35. Furthermore, other than impleading such breach with necessary precision, (which is not the case), the Applicants herein also needed to specify which of the Respondents, if at all, is alleged to have breached and/or violated, what aspect of the Decree.
36. However, what is apparent from the body of the Supporting affidavit is to the effect that the Applicants herein have lumped together all the Respondents herein and thereafter contended that same (Respondents), have breached and/or violated the orders/decree of the Honourable court.



37. To be able to appreciate the foregoing analysis, it is imperative to reproduce certain pertinent Paragraphs of the supporting affidavit. Consequently and in this regard, Paragraphs 8 and 9 of the supporting affidavit are paramount.

38. Same are hereby reproduced as hereunder;

Paragraph 8

That I can state for a fact that the Respondent willfully, deliberately acted in breach/ disobedience of the terms of the orders issued by this court on the 22nd February 2023, which was under a duty to obey until discharged.

Paragraph 9

That I can authoritatively state that the Respondents have been in manifest breach of the decree aforstated by continuing with unlawful and illegal operation of Dandora dumpsite as well as failing to take the measures aimed at ensuring the Nairobi and Ardhi Rivers are free from various forms of pollution

39. From the contents of the Paragraphs, which have been reproduced herein before, three things becomes evident and apparent. Firstly, there is an allegation touching on and/or concerning court orders issued on the 22nd February 2023; which are at variance with the Decree, whose details have been highlighted at the foot of the reliefs sought by the Applicants.
40. Secondly, the Applicants herein alludes to (sic) an undisclosed Respondent being in breach and/or disobedience of the court orders. Suffice it to point out that there are three Respondents at the foot of the Decree; and hence it was necessary to specify which Respondent, if at all, is being referred to.
41. Thirdly, at the foot of paragraph 9 of the supporting affidavit, the Applicants herein now lump together all the Respondents and now contends that same have failed and/or neglected to de-commission Dandora dumpsite and to relocate same to another place, in disobedience of the Decree of the court.
42. Clearly, it was incumbent upon the Applicants herein to appreciate whose statutory mandate and obligation it is, to de-commission the dumpsite and to facilitate its relocation, if at all. Instructively, the appreciation of the Provisions of the Fourth Schedule of *the Constitution*, 2010; would have been helpful.
43. To my mind, the Judgment and decree of the court, which is contended to have been disobeyed by the Respondent herein, clearly directed Nairobi Metropolitan Services (NMS), (now defunct); to de-commission Dandora dumpsite.
44. However, instead of pursuing Nairobi Metropolitan Services (NMS), now defunct, or her Legal successor, if at all, the Applicants herein are contending that it is the Respondents who have failed to de-commission the dumpsite.
45. In my humble albeit considered view, if the Applicants application was to succeed, then it behooves the Applicants to show the court how and in what manner, the Respondents herein have failed to discharge their statutory duties or otherwise.
46. Without belaboring the point, what I am endeavoring to highlight is to the effect that any Applicant, the Applicants herein not excepted, who seeks to procure an order for contempt of court, must implead the particulars and/or issues, which underpin the plea of contempt of Court.



47. Additionally, it behooves the Applicant to ensure that the claims of contempt and/or disobedience of Lawful Court Orders are impleaded with the requisite precision, specificity and particularity, so as to enable the court to appreciate in what manner the contemnor is said to have disobeyed and/or disregarded lawful orders of the court.
48. To my mind, where an Applicant does not implead with particularity and precision the claims underpinning contempt, it would be difficult for both the court and the contemnor to suitably interrogate and adjudicate upon the complaints made as pertains to (sic) contempt of Court.
49. In the absence of such clarity and precision, the court may be tempted to grope in darkness, which does not bode well with contempt proceedings, given the gravity of punishment and consequences that may arise from a conviction and/or citation for contempt.
50. To buttress the exposition of the law that pleas pertaining to and underpinning contempt of Court need to be impleaded with specificity, clarity and particularity, it suffices to adopt and endorse the holding of the Court of Appeal in the case of *Mutitika v Baharini Farm Ltd* (1985) KLR 227, where the court held thus;

In England matters relating to contempt are now governed by the *Contempt of Court Act*, 1981. The courts, nevertheless take the view that where the liberty of the subject is, or might be, involved, the breach for which the alleged contemnor is cited must be precisely defined – see for instance *Chiltern Districts Council v Keane*, [1985] Law Society's Gazette, 29th May page 1567.

51. In a nutshell, my answer to issue number one is to the effect that the Applicants herein have not impleaded with the requisite precision and/or clarity, the allegations underpinning contempt of court, to enable the court to appreciate same and thereafter act thereon in accordance with the law.
52. Furthermore, it is important to underscore that it is not enough for an Applicant propagating allegations of contempt to throw on to the face of the court omnibus allegations pertaining to and concerning contempt; and thereafter imagine that because the name contempt has been invoked, the court whose orders are said to have been disregarded, shall thereafter act irrespective of proof of the allegations.

Issue Number 2

Whether the Respondents herein and in particular the named officers, are in contempt of court.

53. Other than the first issue, which has been discussed in the preceding paragraphs and wherein the Honorable court has considered the question of omnibus allegations made against the Respondents; there is also the question that pertains to proof of allegations of contempt and disobedience.
54. To start with, it is not lost on this court that allegations touching on and/or concerning contempt must be strictly proved by the Applicants, before a court of law can proceed to cite and thereafter to punish the contemnor.
55. Suffice it to point out that the standard of proof where one alludes to and/or contends that court orders have been disobeyed is higher than a balance of probabilities, but not beyond reasonable doubt. For coherence, the standard of proof in contempt proceedings has been described to be the Intermediate standard.



56. To this extent, it is instructive to take cognizance of the dictum of the court in the case of Sheila Cassatt Issenberg & another versus Antony Machatha Kinyanjui [2021] eKLR, where the court stated thus;

“ 51. Contempt of Court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed.”

57. Additionally, the Standard of proof as pertains to contempt proceedings was also highlighted and underscored by the Court of Appeal in the case of Mutitika versus Baharini Farm Ltd (1985) KLR 227, where the court held thus;

“ A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a 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 criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.

In England matters relating to contempt are now governed by the [Contempt of Court Act, 1981](#). The courts, nevertheless take the view that where the liberty of the subject is, or might be, involved, the breach for which the alleged contemnor is cited must be precisely defined – see for instance *Chiltern Districts Council v Keane*, [1985] Law Society’s Gazette, 29th May page 1567.

In, *Re Breamblevale Ltd* [1969] 3 All ER 1062, Lord Denning MR. (as he then was), at page 1063, had this to say,

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

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



58. Whilst considering the same issue pertaining the standard of proof and the necessity to meet the requisite threshold in respect of contempt proceedings, the court in the case of *Katsuri Limited versus Kapurchand Devar Shah* [2016] eKLR, stated and held thus;
- “Although the proceedings are civil in nature, it is well established that an applicant must prove the elements beyond reasonable doubt, at least higher than the standard in civil cases, The fact that the liberty of the defendant could be affected means that the standard of prove is higher than the standard in civil cases. It is incumbent on the applicant to prove that the defendant's conduct was deliberate in the sense that he or she deliberately or willfully acted in a manner that breached the order.”
59. Having taken cognizance of the requisite standard attendant to contempt proceedings, it is now appropriate to revert to the subject matter and to consider whether the Applicants herein, have met and/or satisfied the established threshold, to warrant a finding of contempt against the Respondents or otherwise.
60. To start with, one of the complaints which anchor the application for contempt is to the effect that the Respondents herein have failed to de-commission Dandora dumpsite and to relocate same to another place within the six months, which was highlighted at the foot of the Judgment/decree of the court issued on the 15th July 2021.
61. Nevertheless and despite the contentions by the Applicants, it is apparent that the Judgment of the court did not direct any of the Respondents herein to de-commission and relocate Dandora dumpsite or at all.
62. To the contrary, the Judgment of the court directed Nairobi Metropolitan Services (NMS) (now defunct), to attend to the de-commissioning of Dandora dumpsite and to relocate same. However, it is worth noting that NMS, now defunct, is not one of the Respondents.
63. Further and in any event, it is not lost on this court that NMS, now defunct, which was the body obligated to de-commission Dandora dumpsite, ceased to exist and hence it behooves the Applicants herein to go back to the drawing board and discern how to deal with the vacuum arising from the cessation of the named body; and taking into account the Sanitation and Refuse Disposal is a devolved Function, in terms of the Provisions of the Fourth Schedule of *the Constitution*, 2010.
64. Secondly, the Applicants herein have also contended that the various officers of the County Government of Nairobi and whose names have been alluded to in the body of the Application, ought to be cited and punished for disobeying lawful orders of the court.
65. However, despite mentioning and/or supplying the names of various persons/officers in the body of the Application, the Applicants herein have neither tendered nor availed any evidence or at all, to show that the alleged persons, occupy the positions and/or portfolios, attributed unto same or at all.
66. Clearly, it is not enough to make an allegation touching on and concerning a particular person and thereafter invite the court to cite and punish same, on the basis and pretext that same is an officer of the named body. For clarity, there is need for proof that indeed the said person holds the position and/or portfolio alluded to.
67. Other than the foregoing, there is an aspect of the application that has impleaded the County Government of Nairobi and whose officers are said to have disobeyed the lawful orders of the court. However, it is worth recalling that no order was made against the County Government of Nairobi.



68. Furthermore, even if the Applicants herein would want to contend that upon the cessation of Nairobi Metropolitan Services, the orders of the court ought to bind Nairobi City County Government, then it is incumbent upon the Applicants and their legal counsel, to move the court, in appropriate manner to make such directions. Instructively, for as long as Nairobi city county government is not alluded to in the body of the Judgment, there is no way that same can be enjoined to act either in the manner alluded to or otherwise.
69. Lastly, the Applicants herein have also contended that the 1st Respondent has disobeyed the lawful orders of the court by failing to put in place measures and action Plans aimed at ensuring that Nairobi and Ardhi Rivers; are free from various forms of pollution.
70. Be that as it may, it is important to state that the foregoing contention, has neither been substantiated nor proven vide any Expert Document or at all.
71. Suffice it to observe that where one, the Applicants herein not excepted, are alluding to pollution, then it behooves same to procure and obtain Expert analysis and/or documents, which will help the court to come to the conclusion that there is indeed pollution in the manner alluded to by the Applicants.
72. To my mind, in the absence of any Expert report, it is neither possible nor feasible for this Honourable court make a finding of pollution. Further and at any rate, it is not lost on this court that the question of pollution cannot be the basis of assumption and/or speculation. See the holding of the Court of Appeal in the case of Kibos Distillers Limited and Five Others versus Benson Ambuti Adegwa and 3 Others (2020) eklr.
73. Notwithstanding the foregoing, it is imperative to underscore that the Director General of the 1st Respondent herein filed a Replying affidavit sworn on the 18th September 2023; and in respect of which same adverted to various measures and action plans that have been put in place by the 1st Respondent towards addressing pollution in both Nairobi and Ardhi Rivers, respectively.
74. Despite being served with the Replying affidavit sworn on the 18th September 2023; the Applicants herein did not react and/or respond to the contents of the said Replying affidavit and in particular, to the Report attached thereto. Consequently and in this regard, the inference that ensues is to the effect that the contents of the affidavit in question are conceded, nay, admitted. See the dictum in the case of Mohammed and Another versus Haidara (1972) E.A, where the position was amplified by the Court>
75. Having taken cognizance of the various issues, which have been alluded to in the preceding paragraphs, I come to the conclusion that the Applicants herein have failed to establish and/or prove the claims/plea of contempt, either to the requisite standard or at all.
76. Furthermore, having failed to meet and/or satisfy the requisite threshold, it thus suffices and I do find that the Applicants herein have not discharged the burden of proof cast upon same by law or at all. See Section 107, 108 and 109 of the [Evidence Act](#), Chapter 80 Laws of Kenya.

Final Disposition:

77. From the discussion enumerated in the body of the Ruling herein, there is no gainsaying that the Applicants, who had impleaded contempt of court against the Respondents have failed to establish and/or prove the plea of contempt of Court.
78. Owing to the foregoing, I therefore come to the conclusion that the Application dated the 24th August 2023; is devoid and bereft of merits. Consequently, same be and is hereby Dismissed.



79. As pertains to costs, I beg to point out that the Petition herein was a Public Interests Litigation [PIL]; and thus it is appropriate to decree that Each Party does bear own costs of the Application herein.

80. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF NOVEMBER 2023.

OGUTTU MBOYA,

JUDGE.

In the Presence of:

Benson - Court Assistant.

Mr. Otieno h/b for Mr. Amondi for the Petitioner/ Applicants.

Ms Muyai h/b for Mr. E.K Gitonga for the 1st Respondent.

Ms. Amutavi h/b for Mr. Okach for the 4th Respondent.

N/A for the 2nd and 3rd Respondents

