Ogutu v Cabinet Secretary, Ministry Of Lands & Physical Planning & 9 others; Natembeya & 2 others (Third party) (Environment & Land Petition 7 of 2021) [2022] KEELC 3761 (KLR) (7 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3761 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ENVIRONMENT & LAND PETITION 7 OF 2021

FO NYAGAKA, J

JULY 7, 2022

BETWEEN

WILFRED OGUTU .... PETITIONER

AND

CABINET SECRETARY, MINISTRY OF LANDS & PHYSICAL PLANNING .... 1ST RESPONDENT

CABINET SECRETARY, MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL GOVERNMENT .... 2ND RESPONDENT

HON. ATTORNEY GENERAL .... 3RD RESPONDENT

INSPECTOR GENERAL OF POLICE .... 4TH RESPONDENT

DIRECTOR OF LANDS SETTLEMENT & ADJUDICATION 5TH RESPONDENT

REGIONAL COMMISSIONER, RIFT VALLEY REGION .... 6TH RESPONDENT

COUNTY COMMISSIONER, TRANS-NZOIA .... 7TH RESPONDENT

LANDS, SETTLEMENT & ADJUDICATION OFFICER, TRANS-NZOIA COUNTY .... 8TH RESPONDENT

COUNTY POLICE COMMANDER .... 9TH RESPONDENT

DEPUTY COUNTY COMMISSIONER ENDEBESS SUB-COUNTY .... 10TH RESPONDENT

AND

GEORGE NATEMBEYA .... THIRD PARTY

SAMSON OJUANG .... THIRD PARTY

CRECENSIA ATIENO NYANGA .... THIRD PARTY

RULING

1. The Application before me is an *Ex-Parte* Chamber Summons dated April 07, 2022. It was brought by the Petitioner on April 20, 2022. It was anchored on a number of provisions, namely, Rule 3 (2) of the High Court Vacation Rules, 2010, the *Judicature Act*, 2010, Sections 3, 3A of the *Civil Procedure Act* and Order 1 Rule 15, Order 40 Rules 1, 2 and 3, and Order 51 Rules 1, 2 and 3 of the *Civil Procedure Rules, 2010* and what was referred to as "all other enabling provisions of law." In it, the Applicant sought the following reliefs:

   (a) ...spent

   (b) An order of Third Party notices to be granted for the 2nd and 3rd Third Parties herein

   (c) An order maintaining the *status quo ante* of the evictees be granted pending the hearing and determination of the main suit herein.

   (d) The OCS Endebess Police Station to ensure the order(s) in (c) above (sic).

   (e) Costs of this Application be in the cause.

   (f) Any other relief deemed fit, just and expedient to grant.

2. Before analyzing the Application, I observe one thing. The Application having been brought during the Vacation period, the provisions in regard to the Vacation were relevant then. But as of now they are not because the Application is being determined at the time the Court is in session.

3. As I determine this Application, it is important to summarize events prior to and leading to the instant ruling. The Application came before me under certificate of urgency on April 24, 2022. It was based on six grounds which were basically reproduced in the Supporting Affidavit sworn by one Wilfred Ogutu, on April 07, 2022.

4. In the first instance, the Application sought to introduce two individuals, as can be seen from prayer (b) of the Application, as Third Parties in the Petition. It is not clear why and under what law or procedure a Petitioner (or Plaintiff or Claimant for that matter) can apply to enjoin third parties in a matter. This is a procedure specifically applicable to Defendants or Respondents. But, again, from the face of the Application it is shown that the two proposed Third Parties are already joined as Third Parties. This is contrary to the law and practice. From the form of the Application it shows that the first individual named as a Third Party had been joined as one yet the Application dated February 11, 2022 which sought to introduce him was dismissed on March 24, 2022.

5. Besides the fact that the Application was drawn with such a glaring anomaly, it was presented with further errors which in this Court's view are incurable. The heading of the Certificate of Urgency dated April 07, 2022 contained names of three other individuals who were named as the 4th to 6th Third Parties. As to when they were joined as such, it was not known. This, though is an issue the Court would have to consider if and at the point of dealing with the merits of the Application.

6. Moreover, whereas the drafting of the heading to include names of persons not already joined by leave of the Court as parties as required by law was a matter of form, it is important that care is taken by the Petitioner to follow the right procedure of drafting pleadings. He cannot hide under the guise of a layman to draw documents strange to the legal requirements as to form. Ignorance of the law is not a defence and has never been the basis of escape from legal obligations. Article 159(2)(d)

of the *Constitution* of Kenya, 2010 does not cure such an error. When persons are wrongly joined into proceedings, that is not a technicality which the Sub-Article of the *Constitution* cited above can override.

7. Be that as it may, upon perusal of the instant Application and a comparison with the pervious one which this Court dismissed on March 24, 2022, and upon finding similarity in some of the prayers and facts alluded to in it, and considering the fact that the Court process was being abused by the Applicant's acts of filing applications with similar prayers, on April 22, 2022 this Court exercised discretion and directed, among others, that the Applicant deposits in Court within Seven (7) days a sum of Kshs. 100,000/= (One Hundred Thousand) only, as security for costs, before service of the Application, failure of which the Application would stand dismissed. This Court then fixed the Application for inter-partes hearing in open Court on May 23, 2022 at 9.30 am.

8. It is important to note here that if taken literary by weighting the total sum of the required security for costs against the number of the purported people, being 2,000 whom the Petitioner claims to represent and whom he has been marshalling to attend Court each time this Application came up for hearing (since the Court is usually overflowing with people and the Petitioner often remarks that they are part of the ones purportedly evicted), then each of them was required to contribute to the Petitioner a paltry Kenya Shillings Fifty Only (Kshs 50/=) for the security for costs. But the Petitioner wished to make a mountain out of a mole hill by misleading the persons he purports to act for that the sum required for security for costs is so huge that it should not be paid as ordered.

9. Be that as it may, whenever the Application came up for hearing on the date fixed, the Applicant appeared in Court, with a large number of unidentified people whom he stated that he was representing. That aside, on May 23, 2022 he stated that he had served the Application and was ready to proceed. Learned counsel appearing for the Attorney-General for the State, for the 1st to 10th Respondents and the 1st Third Party indicated that the Applicant had served his office via email, documents that had not been filed as they bore no Court stamp and were not accompanied by a receipt for their payment. He doubted if they were genuine. He stated that the Applicant was acting in bad faith and had not complied with the order for depositing security: that he needed to do so.

10. Of importance to note was the argument by the Applicant that he had not complied with the condition of depositing security as directed because, to him, he had not been served with the Directions of the Court given on issuing the initial orders referred to in paragraph 2 above. His contention was that he was only given by a member of staff in the Court Registry a verbal summary of directions, and the summary omitted the aspect of the requirement of depositing security. He stated that he had always checked his email and had never ever seen communication of the Directions of the Court on the Application when it was handled at the urgency stage.

11. The assertion sounded strange and contrary to the procedure this Court adopted of ensuring that written directions or orders of the Court upon a certificate of urgency being filed and dealt with by the Judge are scanned and emailed to parties immediately upon being given. It prompted the Court to confirm with the Registry about the online communications to and therefrom and to the Applicant over the instant Application which he had filed online. The Registry confirmed, by way of an email print out, that indeed the Directions were dispatched to the Applicant on May 24, 2022 at 2.04 pm through the email address he used for filing the Application. He too confirmed in Court that that was the email he used all along and which he stated earlier he had been checking for any communication. At the same time, the staff at the Registry stated that it was not true that the Applicant had received verbal communication about the Directions of the Court.

12. This clear truth made the Applicant promptly apologize to the Court for misleading it about the receipt of the Directions. The Court forgave and granted him another chance to comply with the order for depositing security. It extended the time for depositing the security to 4.00 pm of the following day, being the May 24, 2022. The Court then directed that the Applicant serves in person all the individuals likely to be affected by his Application, but after fulfilling the condition of depositing security for costs. The Court reminded him and extended the condition it gave earlier that failure to observe that condition of depositing security the Application stood dismissed with costs. The Application was fixed for hearing on June 02, 2022, but on the said date the Court was engaged in official business and consequently adjourned the Application to June 06, 2022.

13. When the Application came for hearing on July 04, 2022 the Applicant submitted that the Petition was a public interest litigation. At no point in time did the Applicant indicate to Court earlier or purport to do so that the Petition was a public interest litigation. On the contrary he stated clearly and succinctly on May 23, 2022 that the person to benefit from the Petition was him and the persons he represented.

14. Rather than the Applicant complying with the orders of the Court, on May 24, 2022, he instead filed a Notice of Appeal which was not clear as to whether it was against the orders issued on April 22, 2022 or on May 23, 2022. What is clear from the Court Record is that the Applicant filed the Notice of Appeal on the May 24, 2022 and applied for the proceedings on the same date. He paid a sum of Kshs 1450/= vide receipt No FSCU-0017045 following issuance of Invoice No EZFCWJ3A of May 24, 2022 at 11:56 am.

15. Earlier, on May 23, 2022 the Applicant filed an Application dated May 20, 2022 for which he paid Kshs 1500/= vide receipt number FSCU-0016987 upon being invoiced vide Invoice No EZFYDWUC.

16. Instead of seeking stay of the orders of this Court immediately, either on May 23, 2022 or May 24, 2022, the Applicant purported to filed Notice of Motion dated May 23, 2022 which was neither prosecuted under urgency nor served on the parties until June 06, 2022 when the matter came up for inter parties hearing of the Application dated April 07, 2022. The Applicant then unleashed the latter Application on the learned Counsel for the Respondents in the Petition and that for the 2nd proposed Third Party at the time of hearing the earlier Application. This was clearly an ambush on the other parties. I will deal with the analysis and determination of the purported Application, and why I am of the view that it was a purported application in a separate ruling thereof. Suffice it to say that the said Application was actually emailed to Court on May 28, 2022 for filing yet it bore the Court stamp of May 24, 2022 but it was not paid for in order to make it an Application properly filed and before the Court.

17. As to the service of the Application on the other proposed Third Parties, on July 04, 2022 the Applicant filed an Affidavit of Service purportedly sworn by one Raphael Nyongesa Simiyu on June 28, 2022. It state that it was purported to be sworn by the said process server because, as it will turn out below, on July 05, 2022, the Process Server testified on the same and was cross-examined on the service and he disowned the same. The Petitioner too was called upon thereafter, on the same date, to state on oath as to how he got to author the purported Affidavit of Service. He stated that he edited a previous Affidavit of Service of the said Process server, hence it was absolutely a false document.

18. The Affidavit of Service filed on July 04, 2022 but purported to be sworn on June 28, 2022 did not annexed a copy of the current process server's licence. Additionally, any copies of the receipts were not attached to evidence the fact that the Application was actually sent to the parties via the G4S Courier Services on June 23, 2022 at paragraph 3 of the Affidavit stated but art Paragraph 2 of the Affidavit it was deponed clearly that the Applications were received by the Process Server on June 24, 2022 although they were already served though the G4S on the previous day.

19. Due to the absence of the documents evidencing the dispatch of the documents, the Court placed the file aside in order for the Petitioner to either avail the said Raphael Nyongesa Simiyu to elaborate on the issue or furnish the receipts to demonstrate service. The Petitioner sated that the receipts together with the one for payment for the Application dated May 23, 2022 which he purported to file were at home in his house. The Court adjourned the Petition for two (2) hours to enable him to obtain the receipts. When he returned to Court, he reported that the G4S receipts were seized and taken away from him by a General Service Police officer, one Tom Anyange at the General Service Unit centre, when he went to serve the Application. This sounded untrue in comparison with his earlier assertion because there was no need to serve the Applications again if he had done so earlier. Thus, the Court directed him to produce Raphael Nyongesa Simiyu on July 05, 2022 in Court to testify on oath about the service and the truthfulness of the allegations, before the Court could make a ruling thereon.

20. When Mr Raphael Nyongesa Simiyu attended Court on July 05, 2022, he stated on oath that he had, in the company of the Petitioner, served the documents on June 23, 2022 through the G4S Service and since he had not been paid for his services, he handed over the payment receipts to the Petitioner. He then stated that he had never met him until the evening of July 04, 2022 when the Petitioner sought his services of filing a Return of Service. He then went to the Courier Service office where he obtained copies of the duplicate receipts to annex to the Affidavit of Service as he did, because the Plaintiff informed him that he had lost the originals. He stated that the Petitioner informed him that someone had snatched them from him.

21. Upon cross-examination, he stated that he did not know the intended Third Parties personally. Further, he did not attempt personally serve or even come to Court to ask for substituted service. He only was informed by the Applicant that they serve through the G4S Courier Services. However, from the purported Affidavit filed on July 04, 2022 by the Petitioner, it was clear at Paragraph 2 that the dispatch or service was done by the Petitioner himself on June 23, 2022 and not on June 24, 2022 when the purported service was effected by the Process Server.

22. The Process Server attached to his Affidavit which he swore that he drew and filed on July 05, 2022, copies of the receipts evidencing dispatch of the documents and copies of documents showing tracking of the consignments. Again, the process server admitted that from the documents he served them all through the address, P O Box 11, Kitale. He admitted too that none of the intended Third Parties were addressed personally on the consignments. He stated that it was the Petitioner who gave him the address of service that he used for the dispatch of the documents.

23. In regard to the purported Affidavit of Service purported to be sworn by the process server, one Raphael Nyongesa Simiyu, on June 28, 2022, denounced it. He stated that he did not author it and that the signature thereon was not his as it did not resemble his usual one. He stated that he had not met the Petitioner since the time of service of the Applications on June 23, 2022 up to the evening of July 04, 2022. He then stated that he drew only one Affidavit on which he had testified to.

24. The issue of the purported Affidavit turned dramatic and sort of a scene from a movie when the Petitioner was called upon to state on oath as to the source and authorship of the Affidavit since he was the one who filed it the previous day. After giving the usual introductory details, he gave a graphic account of how he edited a previous Affidavit of Service made by the said Raphael Nyongesa Simiyu to come up with the said Affidavit. He stated on oath that he made up or authored the Affidavit to show that it was Mr. Raphael Nyongesa Simiyu who made it. He stated that he did so because he did not find Mr Simiyu to prepare an Affidavit of Service to show that he served the documents. His testimony was that he did not forge Mr. Simiyu's signature rather he only decided to look for a previous Affidavit of Service, edit and copy the edited part and pasted it on the contents that he intended to file

in Court. Asked how he got the said document to be commissioned by one Mr. Bororio Advocate, he stated that it was not. He stated that he lifted the Commissioner's previous stamping and signature on a previous Affidavit and pasted it on the document he filed in Court. He stated that it was necessitated by the exigencies of time constraints. Thus, he stated that he edited the whole document to suit what he wanted.

25. The Petitioner then beseeched the Court to appreciate that he was a layman, and that the matter he filed was of great public importance and a "high profile case." He stated that sometimes they (he) find it difficult to comply with the Court's directions on timelines hence he could resort to self-help as "methods of bridging the shortcomings" that arise. He then admitted that he committed perjury the previous day regarding the truthfulness and authorship of the purported Affidavit of Service.

26. Upon cross-examination by the learned State Counsel, the Petitioner stated that the process server neither prepared nor instructed the process server to draw the Affidavit. Furthermore, he was not aware that the Petitioner had prepared it. He agreed that an Affidavit of Service was the preserve of persons duly authorized by law to effect service and draw Affidavits.

27. The State counsel then submitted, in addition to the submissions of the previous day, that since the Third Parties had not been served, any adverse orders made against them in their absence would adversely affect them, be prejudicial and contrary to their constitutional right to be heard. He summed it that the Petitioner had admitted that he authored a document without authority and also that he lied to the Court the previous day. He submitted that these were criminal matters or actions that should attract the strongest penal consequences so as to send a strong warning to other persons of such line mind. He urged the court to exercise its inherent powers under Section 3 as read with Sections 1A, 1B and 1C of the *Civil Procedure Act* alongside the provisions of the *Environment and Land Act* to recommend the Inspector General of Police to launch investigations against the Petitioner with a view to charging him for the criminal activities.

28. On his part, the Petitioner submitted that two mistakes do not make a right. On this he stated that the persons he represented had been evicted from the parcels of land they used to occupy hence the filing of the Petition, and some of the acts leading to that would even amount to fraud which is punishable by law. Therefore, if he had made a mistake in the course of the proceedings of the Petition, he should not be punished for that. Rather the Court should look at the reasons why the Petition was filed. He urged the Court to apply the principles of natural justice and determine the real issues in the Applications rather than those raised by the learned State Counsel. He then stated that it was not criminal for him to do all that he did since he could have agreed with the Process Server later. He termed raising the issues of criminality as witch-hunt aimed at pinning him down. He pleaded for the protection from the Court. He emphasized that the Petition before Court was a high profile one and the time the applications were being urged was a season of politics which was volatile.

29. The above submissions were in the relation to the interlocutory stage of the applications. The stage called for ironing out touchy issues as can be noted from both the oral testimony of both the Process Server and the Petitioner, and the submissions thereto. That aside, the Application had more issues to be attended to by this Court.

30. The Respondents in the Petition and the 2nd proposed Third Party opposed the instant Application. The 2nd proposed Third Party filed grounds of opposition dated June 21, 2022. In them they stated that the Applications were non-starters, bad in law, poorly drafted and incurably defective and unsustainable. Also, she contended that the Petitioner had not complied with the directions of the Court hence had no audience. Again, she argued that the Application dated April 7, 2022 was *res judicata* as it related to an earlier one determined by the Court. Lastly, he argued that the 3rd Third

Party was not acting in her own capacity hence should have not been enjoined to the Petition. She urged the Court to dismiss the Applications.

31. The Respondents on the other hand chose to submit on points of law.

32. In his oral submissions made on May 23, 2022, the Petitioner first acknowledged that he had been duly served with the Directions of the Court made on April 22, 2022 via his correct email. He apologized for having lied to the Court about their service. He said that was due to human weakness. He urged the Court that it was the first time it had happened and requested that the Court permits the matter to proceed. He stated that the Petition was for his own benefit and that of the persons whose interests he represented. He stated that the Application was merited, that Petition was of public interest litigation and that the Court should exercise its discretion in a manner not to impede access to justice. He stated further that the majority of the Applicants were poor people whose rights had been violated by eviction. He termed the arguments by the Respondents as being pegged on technicalities of the law. He urged the Court to determine the Application on the substantive merits and not technicalities. He stated that his presence in Court was out of a clean mind and good faith.

33. On the other hand, learned State Counsel submitted that the Respondents were skeptical about the conduct of the Petitioner. They voiced that they were unsure about all the Applications having been duly filed in Court as required by law. Further, they submitted that the Applications did not bear the evidence of a receiving stamp and they were not accompanied with Court fee payment receipts. They then lamented on late service of another Application which had been served the day before. They argued that the Petitioner would not feign ignorance of the Directions given on April 22, 2022 which he had not complied with hence the main Application had collapsed. They read mischief in that. They also had issue with the conduct of the Petitioner which was untruthful coupled with the murky filing of a multiplicity of Applications. They submitted that the Petitioner was out to delay the hearing of the Petition on merits hence the Application was not made in good faith.

Analysis And Determination

34. I have carefully considered and analyzed the events and leading to and the circumstances surrounding the instant Application. I have also considered the oral submissions by both the Petitioner and learned Counsel for the Respondents. I have also given due regard to the law on the prayers in the Application herein and the orders made on depositing of security for costs. Without going into the merits or otherwise of the Application, the basic issue to determine in the first instance is whether or not the Application is subsisting hence whether it is properly before me for determination. If the circumstances issue is in favour of the Application subsisting, then the Court shall delve into the merits or otherwise of the Application.

35. It is clear from paragraph 7 above, that the Court gave a condition which the Applicant ought to have fulfilled before he would serve and argue the instant Application, failure of which the Application stood dismissed. The Condition was that the Applicant ought to have deposited in Court security for costs in the sum of Kenya Shillings One Hundred Thousand (Kshs 100,000/=) only by 4.00 pm on May 24, 2022. As elucidated above in paragraph 8, that sum would have translated to each of the persons purportedly represented by the Petitioner contributing a meagre Kshs 50/= as a pool and the same being deposited in Court. As stated earlier, May 24, 2022 was arrived at after the Court graciously, despite the Applicant lying that he never received the Directions requiring him to make the deposit of the security for costs, extended the period of compliance from April 29, 2022 when the seven (7) day window given on April 22, 2022 ended.

36. In regard to the Petitioner's conduct in relation to the service of the Application herein on the part of the parties, it is clear that the service of the same was dependent on the Petitioner complying with the condition of depositing of security for costs first, as stated in paragraph 7 above. He did not fulfil the condition. Thus, the contention that the 1st – 6th Third Parties were not served and their right to be heard would have been violated in case the instant Application proceeded for hearing, the argument would find a basis if the Court finds that the issue of providing Security for Costs was fulfilled. However, two important points needs to be mentioned here. First, the Applicant listed six (6) persons as proposed Third Parties. However, in prayer (b) of the Application he applied for only two, namely the 2nd and 3rd to be made Third Parties. What is clear is that the prayer to join the 1st proposed Third Party was not granted. As for the proposed 4th, 5th and 6th Third Parties, no prayer has ever been made to enjoin them. Thus, the format and content of the Application before me is in itself void and incurably so.

37. Second, the Petitioner purported to convince the Court that he had served the Application for the hearing of July 04, 2022. On the same date, he filed an Affidavit of Service to evidence the action. The Affidavit was purportedly sworn by one Raphael Nyongesa Simiyu, a Process Server based in Kitale, in the law form of M/S Bororio & Company Advocates. When said Mr Simiyu testified in Court on July 05, 2022 as to the alleged Affidavit of Service and the content therefore, he stated on oath that he neither drew the Affidavit nor signed it. But the Petitioner admitted orally on oath, before the Court, that on the same day, he edited an earlier Affidavit to reproduce the phantom Affidavit he relied on. He also admitted to having lied to the Court the previous day about the Affidavit. As submitted by the learned State Counsel for the Respondents, the Petitioner's conduct over the said Affidavit was criminal in nature hence punishable by law. The Petition criminally authored a purported Affidavit of Service dated June 28, 2022. He also made false utterances and information to the Court over the same. This appalling conduct of the Petitioner is one which, as was submitted by the learned State Counsel, the Inspector General of Police, through the relevant criminal investigation office can pick up, if it so wishes, to lodge investigations into in order to ascertain if indeed crimes were committed by the Petitioner, one Wilfred Ogutu, in relation to the instant Application.

38. On depositing security for costs, Courts have stated that this serves the interest of justice by taking into account not only the part of the Applicants, Plaintiffs, Claimants or Petitioners but also those of the adverse party. This is vital particularly where the litigant moving the Court has a hopeless or vexatious Application: one meant to waste the Court's time and the adverse parties' time and resources. Such an order is designed to bring order and sanity to the proceedings where one or so of the parties had by his Application or Claim intended to bring chaos, vexation and confusion.

39. Thus, in *Patrick Ngetakimanzi v Marcus Mutuamuluvi & 2 others*- High Court Election Petition No 8 of 2013 it was held that:

> " Security of costs ensures that the respondent is not left without recompense for any costs or charges payable to him. The duty of the court is therefore to create a level ground for all the parties involved, in this case, the proportionality of the right of the petitioner to access to justice vis-a-vis the respondent's right to have security for any costs that may be owed to him and not to have vexatious proceedings brought against him."

40. Also, in *Evans Nyambaso Zedekiah & another v Independent Electoral and Boundaries Commission & 2 others* [2013] eKLR, Honourable Lady Justice R N Sitati observed that:

> " The requirement for deposit of security for costs keeps away from the court corridors some busy bodies who file cases in court while knowing that such cases have no chance of

succeeding and also while knowing that they have no intention of paying the costs once they lose their cases. There is no argument that a court which has no jurisdiction cannot move one single step in a matter that is before it. See Owners of the *Motor Vessel "Lillian S" -vs- Caltex Oil (Kenya) Ltd* [1989] KLR 1".

41. The orders of May 23, 2022 have neither been stayed, varied nor vacated. Thus, they took effect after 4.00 pm of May 24, 2022. One would ask: what was the effect of the orders? The simple answer lies in their plain or grammatical meaning. This was that in case there was no compliance in the sense that the security for costs not deposited in Court as directed, by the said date and hour, this instant Application stood dismissed with costs to the Respondents.

42. It is trite law that Court orders are not given in vain. They ought to be obeyed. They can only be a subject of non-compliance if they cease to exist or are varied or stayed. Absent of anything of the sort leaves no room for failure to heed to them. In case a party is aggrieved by orders, he ought to obey and then question them later.

43. Of obedience of Court orders, it cannot be gainsaid that parties and the public in general have been reminded many times over that it is not optional. Sad will be the day when courts will sit and watch their orders being trampled down upon whether openly or secretly by anyone, including the Court itself. All and sundry are bound by the law: we all operate in a legal system where the rule of law is paramount. Unless one is excused by the law itself from obeying it, he/she must do as required by the law. This can be seen from the string of authorities cited hereunder.

44. In *Republic v The Kenya School of Law & Another* Miscellaneous Application No. 58 of 2014, the Court stated:

> " Court orders, it must be appreciated are serious matters that ought not to be evaded by legal ingenuity or innovations. By deliberately interpreting Court orders with a view to evading or avoiding their implementation can only be deemed to be contemptuous of the Court. Where a party is for some reason unable to properly understand the Court order one ought to come back to Court for interpretation or clarification."

45. In *Econet Wireless Kenya Ltd v Minister For Information & Communication Of Kenya & Another*[2005] 1 KLR 828, Ibrahim, J (as he then was) stated:

> " It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void".

46. In *Kariuki & 2 Others v Minister for Gender, Sports, Culture & Social Services & 2 Others* [2004] 1 KLR 588, Lenaola, J (as he then was) stated:

> " Courts are guided and are beholden to law and to law only! Where ... therefore by their actions step outside the boundaries of law, courts have the constitutional mandate to bring them back to track and that is all that the courts do....Court orders must be obeyed whether one agrees with them or not. If one does not agree with an order, then he ought to, move

the court to discharge the same. To blatantly ignore it and expect that the court would turn its eye away, is to underestimate and belittle the purpose for which Courts are set up."

47. In [*Teacher's Service Commission v Kenya National Union of Teachers & 2 Others*] Petition No. 23 of 2013 that:

> "The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt of court proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion on a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option."

48. In *Wildlife Lodges Ltd v County Councilof Narok and Another* [2005] 2 EA 344 (HCK) the Court expressed itself thus:

> "It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it until that order was discharged, and disobedience of such an order would, as a general rule, result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt. 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. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed..."

49. In *B v Attorney General* [2004] 1 KLR 431 Ojwang, J (as he then was) stated that:

> "The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people."

50. In *Kenya Country Bus Owners Association & Ors vs Cabinet Secretary for Transport & Infrastructure & Ors* JR No 2 0f 2014 this Court sent a warning in the following terms:

> "...Court proceedings and orders ought to be taken seriously and that it is their constitutional obligation to ensure that they are regularly appraised of the state of such proceedings undertaken by or against them or on their behalf and orders given by the Court and the Court will not readily accept as excusable the fact that they have delegated those duties to their assistants. Where there are pending legal proceedings they ought to secure proper legal advice from the Government's Chief legal advisers before taking any steps which may be

construed as an affront to the Court process or which is calculated to demean the judicial process and bring it into disrepute."

51. Thus, as the position is, the security for costs was not given by 4.00 PM of May 24, 2022. The order of dismissal took effect at the expiry of the stated time. Therefore, the Application dated April 07, 2022 stood dismissed with costs to the Respondents on May 24, 2022 when the Applicant deliberately failed to fulfill the conditions the Court set. In essence, there is no application properly before me to determine. The orders of dismissal still stand.

Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT KITALE ORALLY AND VIA ELECTRONIC MAIL ON THIS 7TH DAY OF JULY, 2022.

DR.IUR FRED NYAGAKA