



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mwangaza v County Assembly of Meru (Petition E013 of 2023)
[2025] KEHC 2059 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2059 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PETITION E013 OF 2023
EM MURIITHI, J
FEBRUARY 13, 2025**

BETWEEN

KAWIRA MWANGAZA PETITIONER

AND

COUNTY ASSEMBLY OF MERU RESPONDENT

RULING

Background

1. The facts of case are that the Petitioner instituted the instant suit by way of a Petition and an application under certificate of urgency dated 18th July, 2024. The Honourable Court issued orders on 24th July, 2024 with respect to the Application filed, halting the impeachment process of the Petitioner by the County Assembly of Meru in whatever form pending the delivery of the court's ruling scheduled for 29th July, 2024. The order by the court was served upon the Respondent through its Advocates. The court's orders, as issued on 24th July, 2024 were clear, unambiguous and straightforward, halting in any way the impeachment process against the Petitioner pending the court's delivery of its substantive ruling.
2. On 29th July, 2024 the court deferred its main ruling to 20th August, 2024 directing that status quo be maintained by all parties pending the submission of a progress report from the supreme council of the Njuri Ncheke elders who had been joined as Amicus curiae or the delivery of the court's rulings whichever came first. The status quo prevailing as of 29th July 2024 was that the impeachment process had been halted. This is the position that all parties in this suit were required by court to maintain.
3. The Petitioner avers that, however, on 30th July, 2024 despite service, knowledge and understanding of the orders of the Court, the Respondents contemptuously held a debate touching the impeachment motion by seeking to mischievously withdraw the previous motion for impeachment in a session presided over by the speaker of the County Assembly, Ayub Bundi Solomon. The petitioner further



avers that on the 31st July, 2024 the Respondents re-introduced the impeachment motion again moved by Hon. Zipporah Kinya who was also the mover of the impugned motion, soon after tabling the said motion, various members of the County Assembly publicly recorded their support for the reintroduction of the impeachment motion.

Respondents' response

4. The respondents filed a Replying Affidavit sworn on 6th August, 2024 setting out their case primarily that the court Orders/Directions/Rulings given on 24th and 29th July, 2024 were given pursuant to the Petition and Notice of Motion Application dated 18th July 2024 which were before court then, and the said Orders/Directions/Rulings are therefore specific to the impeachment Motion dated 15th July 2024, as pleaded in the Petition and Notice of Motion Application dated 18th July 2024. Consequently, the said orders were given in respect of the impeachment Motion dated 15th July 2024 which was slated for debate on 25th July 2024 and they did not extend to the instant impeachment Motion dated 31st July 2024.
5. The respondent avers that contempt of court would only arise in the case of a clear and unambiguous conservatory order restraining a particular action, which there is not. That no conservatory orders had been given by the Court, and that pursuant to the Orders/Directions/Ruling of 29th July 2024, the ruling on the Petitioner's Application for conservatory orders dated 18th July 2024 and the Respondent's Preliminary Objection was deferred to 20th August 2024 and as such, no positive orders have been granted to the Petitioner. Further they stated that the orders/directions/rulings given on 24th and 29th July 2024 did not confer, and at any rate could not lawfully confer immunity to the Petitioner against the accountability mechanisms under Article 181 of the *Constitution* and section 33 of the *County Governments Act*. It was urged that it was not conceivable that the Court gave a blanket order effectively shielding the Petitioner from present and future impeachment processes. Finally, the respondent averred that issuance of the Petitioner's prayer for a blanket order stopping reintroduction of any impeachment Motion would be judicial emasculation of the Respondent's constitutionally ordained accountability mechanisms.

Applicant's submissions

6. Contempt of court has been defined by the Black's Law Dictionary 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.’”
7. The contempt of court consists of conduct which interferes with the administration of justice or impedes or perverts the course of justice. Civil contempt consists of a failure to comply with a judgment or order of a court or breach of an undertaking of court.
8. On civil contempt, Cromwell J, writing for the Supreme Court of Canada in *Carey v Laiken* 2015 SCC 17 16 April 2015 expounded on the three elements of civil contempt of court which must be established to the satisfaction of the court, thus:

“The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the wilful blindness doctrine. The party alleged to be in breach must



have intentional done the act that the order prohibits or intentional aided to do the act that the order compels.”

9. The contemnors’ actions of disobedience and disregard of the Court’s orders strike at the very root of the rule of law on which the Judicial system rests, which actions if condoned will result to a collapse of the judicial system.
10. The Supreme Court of India, similarly emphasized on the dangers of disobeying court orders in *T. N. Gadavarman Thiru Mulpad v Ashok Khot and Anor* [2006] 5 SCC, where it stated that:

“Disobedience of this Court’s order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court’s orders are to be followed and com lied with.”
11. Further, this Honourable Court has the requisite powers to punish the contemnors for willful disobedience of the court orders, to restore its dignity.

Respondents’ submissions

12. The respondents submits that contempt of court would only arise in the case of a clear and unambiguous conservatory order restraining a particular action, which there is not. The orders/ directions/rulings given on 24th and 29th July 2024 did not confer, and at any rate could not lawfully confer immunity to the Petitioner against the accountability mechanisms under Article 181 of the *Constitution* and section 33 of the *County Governments Act*.
13. It is the respondents’ submission that this Honourable Court did not and indeed could not issue a blanket futuristic order barring the Respondent from commencing future impeachment processes.
14. Further, they submit that the court is being asked to punish the Respondent for contempt of court over an impeachment Motion that had not been pleaded in the Respondents pleadings at the time the orders/directions/rulings were given on 24th and 29th July 2024.
15. Mativo J stated the test for contempt in his decision in *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR:

“It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has fo 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. [46] 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.”

16. The prayer for contempt, fails the first test. There is no order with respect to the impeachment Motion dated 31st July 2024 meaning there is no possibility that the Respondent could have known the terms of the order or could have breached the said order. Accordingly, the prayer for contempt fails the second and third test as well.
17. The respondent submits that no conservatory orders were granted and therefore punishment for contempt of court does not arise. The Supreme Court stated as follows with regard to the disobedience of an express conservatory order by the County Assembly of Embu in proceedings of a similar nature in *Justus Kariuki Mate & Another v Martin Nyaga Wambora & another* (2017) eKLR -
(94) The effect is that, a methodical and conscientious inquiry would show the County Assembly to have been operating quite properly, within the constitutional scheme of devolution, and running its legislative processes within the ordinary safeguards of the separation of powers — and consequently, quite legitimately outside the path of the ordinary motions of the judicial arm of State. On that basis, there would have been hardly any scope for the deployment of the Court's conservatory Orders - more particularly without first hearing the petitioners. [95] It is our understanding that the exceptional circumstance of this case with a complex scenario of justiciabilities from contrasted standpoints would lend ‘justification to the non-effectuation of contempt Orders at the beginning; and consequently, we would accommodate the reality of there not having been immediate compliance as would otherwise be required.

Issues

18. The issue for determination is whether the respondents are in contempt of court, and if so, what punishment is to be imposed on the contemnors.

Analysis

19. I respectfully agree with the Court (Aburili, J.) in the case of *Sam Nyamweya & 3 Others v Kenya Premier League Ltd & 2 Others* 2015 eKLR held that: -
“Contempt of court is constituted by conduct that denotes wilful defiance of or disrespect towards the court or that wilfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.”
20. The applicant argue that she has satisfied the grounds for impeachment in that the order by the Honourable Court dated 24th July, 2024 stated clearly and unequivocally that “The upshot of the above is that the impeachment process is halted pending my ruling and since this is a matter of public interest, the rulings (PO, interested parties and main petition) will be delivered on Monday the 29th day of July 2024 via email to all parties.”
21. The order by the Honourable Court dated 29th July, 2024 stated clearly and unequivocally that the court had deferred its main ruling to 20th August, 2024 directing that status quo be maintained by all parties pending the submission of a progress report from the supreme council of the Njuri Ncheke elders who had been joined as Amicus curiae or the delivery of the court's rulings whichever came first.



22. The Substantive Notice of Motion by the Applicant dated 18th July, 2024 and the Court orders therein were duly served upon the Respondent via Email through its advocates, therefore being in full knowledge and understanding of the court's orders.
23. The contemnors on the 30th and 31st days of July, 2024 in full knowledge of the court's orders, willingly and intentionally disobeyed the Honourable Court's orders through holding of a debate touching the impeachment motion by seeking to mischievously withdraw the previous motion for impeachment and reintroducing anew motion of impeachment moved by the same mover as the previous motion Hon. Zipporah Kinya.
24. The applicant submits that the contemnors are through their actions as here above provided, guilty of contempt of court for being in the forefront in the reintroduction of impeachment proceedings that were halted by the Honourable Court.
25. Further, the contemnors have engaged in the contemptuous activities willingly and with the intent and purpose of defeating the intention and effect of the conservatory orders issued by the Honourable Court on the 24th and 29th July, 2024, which orders were issued to preserve the substratum of the main petition so as to give the court a chance to hear and determine the weighty constitutional issues as raised in the petition.
26. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828 Ibrahim, J. (as he then was), underscored the importance of obeying court orders, stating that:

“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 whom an order is made by court of competent jurisdiction to obey it unless and until the 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 the order believes it to be irregular or void.”
27. The applicant submits that the court must act by citing the contemnors for contempt and punishing them in accordance with the law for their contemptuous acts ensuring that the respondents abide by the rule of law and to restore and affirm the court's dignity.
28. The respondent submitted that the orders given on 24th and 29th July 2024 did not confer immunity to the Petitioner against the accountability mechanisms under Article 181 of the *Constitution* (removal of a county governor) and section 33 of the *County Governments Act*.
29. In *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR it was held:

“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.”



30. Further, the respondents submit that the orders/directions/ruling given on 24th July 2024 merely halted the impeachment process that was live and ongoing as at that date. It is that specific impeachment process arising from the impeachment Motion dated 15 July 2024 that was stopped and not any other impeachment process.
31. The respondent submits that there is more than reasonable doubt as to whether the orders/directions/ruling issued by this Honourable Court on 24th July 2024 applied to all future impeachment Motions or just the Motion dated 15th July 2024. For arguments sake, even if the Petitioner had sought to be shielded from all such future impeachment Motions, this Honourable Court, with all due respect, could not have granted such an order as it is manifestly unconstitutional.
32. In order to find a person guilty of contempt there must be proof of wilful and intentional disobedience of a court order. *MNN v JMM* [2022] eKLR Odera J explained the conduct that amounts to contempt of court by relying on the following decision. In *Mahinderjit Singh Bitta – vs Union of India & Others* 1A No 100 of 2010 the Supreme Court of India stated as follows: -

“In exercise of its contempt jurisdiction the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the order of the court, even to constitute a civil contempt. Every party to be before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution (own emphasis)

33. The court’s orders, as issued on 24th July, 2024 were clear halting in any way the impeachment process against the Petitioner pending the court’s delivery of its substantive ruling. However, the respondents on 30th July, 2024 proceeded to withdraw the previous impeachment motion or pave way for the introduction of a fresh impeachment motion.
34. However, the orders, as issued on 24th July, 2024 were still in existence and had not been vacated by the court on application by either party to the suit. The respondent acted in contempt of court by seeking to re-introduce a new motion of impeachment against the applicant. It is the old lesson in *Hadkinson’s* case [*Hadkinson v. Hadkinson* [1952] 2 All ER 567 (Somervell, Denning and Romer L.JJ.)] taught yet again, to obey all extant orders of the court:

“Held (per Somervell and Romer, L.JJ.), that it was the unqualified obligation of every person against, or in respect of whom, an order had been made by a court of competent jurisdiction, to obey it unless and until that order was discharged....”.

Most unfortunately, the rule of law is still under threat close to a century later!

35. It is immaterial that the Clerk of the County Assembly the deponent of the Respondent’s replying Affidavit believed it to be inconceivable that the court granted the said orders without first determining whether it had jurisdiction or it granted “a blanket order effectively shielding the petitioner from present and future impeachment processes.” Judicial authority of the sovereign State of Kenya lies with the Court and the members of the County Assembly could not validly second-guess the orders of the Court. It behoves them to seek the review, setting aside or variation of the Order; not to act in a manner contrary to the Order merely because they believed it not conceivable that the Order could have been issued by the Court!



Conclusion

36. Clearly, the respondents were in contempt of court. To withdraw a notice of impeachment against which orders have been issued by a court and to introduce a fresh impeachment process outside the one subject of a court proceedings in which the court has made injunctive relief so as to defeat the effect of the Court order is similar to withdrawing a suit in which an order restraining certain conduct has been made so as to defeat the said order of court. It is a classical textbook case of disobedience of court orders albeit in crafty manner. It is gaming the system of the rule of law that binds the three arms of government in mutual respect separation of powers.
37. The deputy Leader of the majority withdrew notice of motion for the removal from office the Governor of Meru County on 30/7/2024 and issued a fresh notice of motion for removal of Governor on the 31/7/2024
38. With respect, the Court did not purport or pretend to grant, as submitted by the Respondents “immunity to the Petitioner against the accountability mechanisms under Article 181 of the Constitution and section 33 of the County Governments Act”. All the court did was to hold the status quo pending the inter partes hearing and determination of the serious dispute presented by the Petitioner in her petition. When the Respondents proceeded with the process of impeachment of the Petitioner despite and, indeed in spite of, those orders, the respondents were in clear unmitigated contempt of court.
39. If it were permissible to withdraw cases in which adverse orders have been made to avoid having to comply with the orders no case would ever be heard to conclusion as the suit would be withdrawn by the unsuccessful plaintiff, or the injurious act abandoned and fresh wrongful act commenced by the debarred defendant, whenever orders adverse to the party are made, and the Respondents who stood to benefit from the orders would lose confidence in the system of justice. It would be a clear case of subversion of the rule of law and sabotage of the justice system, which the court cannot countenance!

Orders

40. Accordingly, for reasons set out above, the Court makes the following orders on the application dated 1/8/2024:
 1. The Respondents were guilty of contempt of Court and the appropriate relief within the meaning of Article 23 (3) of the Constitution in this case against the named members of County Assembly of Meru is a declaration that the Respondent is in contempt of Court, which this Court hereby grants.
 2. In addition, the Court makes an Order for the payment of fine of Ksh.100,000/- each against the Speaker of the County Assembly of Meru, Ayub Bundi Solomon, the Clerk of Meru County Assembly Jacob Kirari and Zipporah Kinya, a Nominated member of the County Assembly and Deputy Leader of the Majority for Contempt of Court in disobeying the Order of the Court made on 24th July 2024 by Justice P. Kassin.
 3. In default of payment of the fines, each of the contemnors named above will serve imprisonment for a period of six (6) months to be executed by the official Bailiff of the Court.
 4. There shall be liberty to apply for either party.
41. The Respondents shall pay the costs of the application to the Petitioner/Applicant.
Order accordingly.



DATED AND DELIVERED THIS 13TH DAY OF FEBRUARY, 2025.

EDWARD M. MURIITHI

JUDGE

Appearance:

Mr. Ashaba for the Petitioner/Applicant.

Mr. Ndegwa Njiru, Mr. Mawira, Mr. Mwereru and Mr. Muriuki for the Respondents.

