



**Wanjigi v Inspector General of Police & 2 others (Petition E396 of 2024)  
[2025] KEHC 2755 (KLR) (Constitutional and Human Rights) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2755 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS**

**PETITION E396 OF 2024**

**AB MWAMUYE, J**

**FEBRUARY 20, 2025**

**IN THE MATTER OF: ARTICLE 1, 2, 3, 10, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 36, 38, 39, 40, 47, 48, 49, 57, 165(3) AND 258 OF THE CONSTITUTION OF KENYA, 2010 AND RULE 4 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013)**

**BETWEEN**

**JIMI WANJIGI ..... APPLICANT**

**AND**

**INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**Introduction**

1. The Applicant/Petitioner, filed an Application dated 19<sup>th</sup> August 2024, seeking to have the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents cited for contempt of court. He alleges that the Respondents wilfully and deliberately disobeyed a court order issued on 9<sup>th</sup> August 2024, restraining them from instituting, preferring, or continuing any criminal charges against him.
2. The Respondents opposed the application, arguing that they were not properly served with the order, that the order was unclear, and that there was no wilful disobedience. The 1<sup>st</sup> Respondent further stated that he ceased to hold office in September 2024, and thus, the proceedings against him were moot.



## Background

3. On 8<sup>th</sup> August 2024 the Petitioner filed a petition together with an application for conservatory orders. The petition was subsequently amended on 18<sup>th</sup> August 2024.
4. On 9<sup>th</sup> August 2024, this court issued interim orders in the following terms:
  - i. Spent
  - ii. Pending the inter-partes hearing and determination of the application dated 08/08/2024, a conservatory order be and is hereby issued restraining the Respondents jointly and severally, their servants, agents, or third parties acting under the direction or authority of the Respondents from detaining, arresting, or restraining the liberty and freedom of movement of the Petitioner/Applicant, Jimi Wanjigi.
  - iii. In the event that the Respondents jointly and severally, their servants, agents, or third parties acting under the direction or authority of the Respondents have as at the date and time of the issuance of this court order detained, arrested, or restrained the liberty and free movement of the Petitioner/Applicant; a further conservatory order be and is hereby issued directing the Respondents jointly and severally, their servants, agents, or third parties acting under the direction or authority of the Respondents to immediately free the Petitioner/Applicant and to take all necessary measures to ensure the same; pending the inter-partes hearing and determination of the Application dated 08/08/2024.
5. That despite the orders being served upon the Respondents, the 1<sup>st</sup> and 3<sup>rd</sup> Respondent's officers continued to camp at his residence and offices. He was later arrested and detained at Kamukunji Police Station, in direct defiance of the Court order.
6. The Respondent's officers proceeded and arrested the Applicant and was held at the Kamukunji Police Station acting in disobedience of the existing court orders.
7. The Respondents had no legitimate grounds for arresting and detaining the Applicant when there existed court orders that had not been set aside or appealed against and charging him against any criminal charges. The Respondents were represented before this court on 16<sup>th</sup> August 2024 as they were taking directions on the prosecution of the petition.
8. Aggrieved by the decision of the Respondents, the Applicant filed another Notice of Motion application dated 19<sup>th</sup> August 2024, praying for orders that: -
  - i. That leave be granted to the Applicant to institute contempt of court proceedings and Summons be issued for personal attendances of Mr. Gilbert Masengeli, Mr. Mohamed Amin and Mr. Michael K. Sang, CP No. 231039 being the acting Inspector General of Police and Director of 1<sup>st</sup> and 3<sup>rd</sup> Respondent respectively, before the Honourable Court to Show Cause why they should not be cited for contempt of court for disobeying the orders of the Court issued on 9<sup>th</sup> August, 2024.
  - ii. That Mr. Gilbert Masengeli, Mr. Mohamed Amin and Mr. Michael K. Sang, CP No. 231039 being officers of the 1<sup>st</sup> and 3<sup>rd</sup> Respondent, do stand committed to jail for a period as this Honourable Court shall determine for contempt of Court orders issued on 9<sup>th</sup> August, 2024.
  - iii. That in the interim, this Honourable Court be pleased to issue a conservatory order restraining the Respondents from instituting, preferring, continuing and or registering any criminal charge or continuing any intended criminal prosecution of the Applicant. If any criminal



charges have been registered and preferred against the Applicant, the same be stayed pending the hearing and determination of this instant application.

- iv. That costs of this application to be borne by the contemnors.
9. The application was based on grounds that the officers insisted that there were no valid court orders barring them from occupying the Applicant's home and offices and that they intended to charge the Applicant with unknown criminal offences not disclosed to them.
  10. On the 20<sup>th</sup> August 2024 this court allowed for the contempt of court application and directed that the Applicant to serve the three named individuals and to file their responses.
  11. The Respondents filed a response dated 28<sup>th</sup> August 2024 to the Petitioner's Application dated 8<sup>th</sup> August 2024 opposing the same. They also filed a Notice of Motion Application dated 3<sup>rd</sup> September 2024 seeking that this court be pleased to set aside, vary or discharge the ex-parte orders issued on 9<sup>th</sup> August 2024 on grounds that, and I quote verbatim:
    - a. That the Honourable court has jurisdiction to set aside, vary or discharge the ex-parte orders.
    - b. That the Respondents are dissatisfied with the orders and as provided under Rule 25 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 have elected to apply for their setting aside, variation or discharge.
    - c. That the Honourable Court gave a mandatory injunction ex parte and has therefore rendered the hearing of the petition otiose.
    - d. That the Petitioners are now seeking to enforce and to find respondents in contempt of orders, which orders were issued even before the petition and orders themselves were served upon them.
    - e. That it therefore follows that the orders should therefore be set aside ex- debito justitiae.
    - f. That the Honourable Court neither gave any reasons for its decision nor gave any rationale as to how it arrived at the orders and the same were therefore issued arbitrarily.
    - g. That the orders which constitute a mandatory injunction against the Respondents were issued contrary to the principles of issuance of injunctions and the same were therefore issued injudiciously.
    - h. That the orders have occasioned the Respondents great prejudice and have literally denied the respondents right to a fair hearing and condemned the respondents without any hearing.
    - i. That the Honourable Court gave orders that are akin to a final judgement at an interlocutory stage ex-parte.
    - j. That, the orders issued were without jurisdiction as the structural interdicts can only be issued as final judgement.
  12. The 2<sup>nd</sup> Respondent filed Grounds of opposition dated 2<sup>nd</sup> September 2024 to the application and amended petition on grounds:
    - i. That the Petition herein is not only misconceived and bad in law but also incompetent as it does not disclose in any way or at all how the 2<sup>nd</sup> Respondent herein had/has threatened or violated and infringed the applicant's fundamental rights and freedoms under articles 24, 27, 28, 29, 47, 49 and 50 of *the Constitution*.



- ii. That the instant Application and Petition flies in the face of the celebrated case of Anarita Karimi -Versus-Republic (No.1) (1979 1 KLR 154 and Mumo Matemu -Versus-Trusted Society of Human Rights Alliance, Civil Appeal No.290 of 2012(2013) having failed to set out with reasonable degree of precision that of which the Petitioner complains, provisions said to have been infringed or violated (even where the provisions have been mentioned, it's not clearly demonstrated how they have been violated) and the manner in which they are alleged to have been infringed or violated by the 2<sup>nd</sup> Respondent, simply put, the Application and the Petition filed herein fails the specificity test.
- iii. That the Applicant/Petitioner seemed to have misapprehended the constitutional and statutory mandate of the 2<sup>nd</sup> Respondent herein as articulated under article 157 of *the Constitution* of Kenya 2010 and as provided under the Office of the Director of Public Prosecutions (ODPP) Act 2013 whose mandate does not include prevention and detection of crime, apprehension of offenders, maintain law and order or investigation of crime as provided under section 24 as read with section 35 of the *National Police Service Act* No.11A of 2011 as it appears that the Applicant is complaining about some matters that the police are seized of, which matters have nothing to do with the constitutional and statutory mandate of the 2<sup>nd</sup> Respondent.
- iv. That the instant Application and Petition is well orchestrated move by the Petitioner to invite the court to scuttle and derail the investigations initiated and being conducted by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents herein and possibly prosecution by the 2<sup>nd</sup> Respondent hence allowing the instant Application or the Petition shall amount to curtailing and interfering with the said Respondents' constitutional and statutory mandate to prevent and detect crime, apprehend offenders, maintain law and order or investigate crime and other roles as provided under section 24 as read with section 35 of the *National Police Service Act* No.11A of 2011 and possibly subsequent prosecution by the 2<sup>nd</sup> Respondent as provided under article 157 of *the Constitution* and the Office of the Director of Public Prosecutions (ODPP) Act, 2013 hence the court should decline this unlawful invitation by the Applicant/Petitioner.
- v. That Petition filed herein amounts to an abuse of the court process as the investigations are not yet complete for the decision as to whether to charge the Applicant/Petitioner or not to be made by the 2<sup>nd</sup> Respondent, the Director of Public Prosecutions and even if the same was to be made, there exists adequate safeguards in the criminal justice system and *the Constitution* to guard and cushion against any violations of the accused's rights and freedoms and the trial courts are ably equipped to address any issue(s) that can be raised by an accused person legitimately in the course of the trial, this was the holding in the Supreme Court of Kenya in the case of Hussein Khalid And 16 others v Attorney General & 2 others [2019] eKLR.

### **Respondent's response**

13. The 1<sup>st</sup> Respondent opposed this application through a replying affidavit dated 15<sup>th</sup> November 2024. The 1<sup>st</sup> Respondent contended that he was not aware of the existence of any conservatory order issued against him because he was not personally served with the alleged court orders of which he is being accused of being in contempt.
14. The 1<sup>st</sup> Respondent avers that the Applicant has not sufficiently demonstrated that he wilfully and deliberately disobeyed any court orders and for that reason the required standard for granting contempt orders has not been met.



15. The 1<sup>st</sup> Respondent stated that he acknowledges courts authority but further explained that contempt of court proceedings should not be instituted unless there is clear and wilful disobedience and for that reason, he never acted wilfully or intentionally to disregard the court's orders.
16. The 3<sup>rd</sup> Respondent also opposed this application through a replying affidavit dated 3<sup>rd</sup> September 2024. He contended that the Applicant has always been under investigations over funding of illegal assembly that occurred on 8<sup>th</sup> August 2024 dubbed as the NANENANE demonstrations.
17. The 3<sup>rd</sup> Respondent avers that the allegations by the Applicant that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents are in contempt of the orders of this court are untrue.
18. The 3<sup>rd</sup> Respondent argued that the orders with the Applicant wishes to hold against them in contempt of are in relation to the NANENANE demonstrations and therefore not related to the complaint by the Firearms Licencing Board.
19. The 3<sup>rd</sup> Respondent maintained that the Applicant cannot purport to obtain an order to stop his arrest in perpetuity as it would defeat the end of justice and will curtail the investigative and prosecutorial powers of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, which will in turn injure the trite doctrine of the separation of powers.
20. The 3<sup>rd</sup> Respondent affirms that the arrest of the Petitioner was in relation to a complaint by the Firearms Licencing Board and not the NANENANE protests of which the Applicant had obtained orders of arrest against for.
21. I have considered the application and the response and I find the following issues distilling for determination in respect of the contempt application:
  - a. Whether the application has met the threshold of contempt of court.
  - b. Who bears the costs?
22. Courts possessed the inherent power to enforce compliance with their lawful orders through sanctions imposed through contempt of court. The Contempt of Court Act having been declared unconstitutional in Kenya Human Rights Commission v Attorney General & Another [2018] eKLR; the instructive provision remained section 5 (1) of the Judicature Act which granted the High Court and the Court of Appeal the power to punish for contempt.
23. In enforcing compliance with lawful court orders, the procedures adopted by the court must be fair and reasonable and be such as that a full opportunity was given to an alleged contemnor to defend himself or herself. That was because contempt proceedings being quasi-criminal, required a higher standard of proof than in normal civil cases, and one could only be committed to civil jail or penalized on the basis of evidence that left no doubt as to the contemnor's culpability.
24. In enforcing compliance with lawful court orders, the procedures adopted by the court must be fair and reasonable and be such as that a full opportunity was given to an alleged contemnor to defend himself or herself. That was because contempt proceedings being quasi-criminal, required a higher standard of proof than in normal civil cases, and one could only be committed to civil jail or penalized on the basis of evidence that left no doubt as to the contemnor's culpability.
25. Under these common law principles, to establish a case for contempt of court, the following elements must be proven:
  - a. Existence of a Clear and Unambiguous Court Order - the order alleged to have been disobeyed must be precise and unequivocal.



- b. Service of the Order: The alleged contemnor must have been served with the order or have actual knowledge of it.
- c. Willful Disobedience: There must be intentional and deliberate non-compliance with the court order

### **Legal threshold for contempt of court**

26. The legal threshold in contempt of court proceedings is well established in Kenyan jurisprudence. The court in *Mberia & 3 others v County Secretary, County Government of Meru & 2 others* 2023] KEELRC 2310 (KLR) stated:

“The power to punish for contempt of court ought to be exercised carefully because of its potential to cost a person his/her liberty. Consequently, certain thresholds have been established by courts to give guidance while dealing with contempt of court proceeding. They include: -

- a. Proof of personal service or knowledge of the decision, decree or order of the court on the part of the contemnor;
- b. Proof of violation of the decision, decree or order of the court by the contemnor; and,
- c. Proof that the violation of the decision, decree or order was deliberate.”

27. In Kenya, contempt proceedings are governed by the law of procedure applicable in England at the time the proceedings are instituted. Rule 81.5 of the English Civil Procedure (Amendment No.2) Rules 2012 provides that a Judgment/Order of the Court must be served upon the person required to do the act in question. However, the Court can dispense with such personal service under Rule 81.8 of the Rules which provides:

- 1. (1) In the case of a judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 81.5 to 81.7 if it is satisfied that the person has had notice of it—
  - a. by being present when the judgment or order was given or made; or
  - b. by being notified of its terms by telephone, email or otherwise.”

28. In *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR, the Court of Appeal held:

“Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client’s case.”

29. Similarly, in *Teachers Service Commission v Kenya National Union of Teachers & 2 Others* [2013] eKLR, the court ruled that a party cannot be held in contempt unless the order was unequivocal, leaving no room for doubt as to what was required.



30. The Petitioner alleges that the order issued on 9<sup>th</sup> August 2024 prohibited the Respondents from instituting or continuing any criminal charges against him. However, the Respondents argue that the order was not specific in its application and did not clearly restrain the officers responsible for enforcement of criminal law.
31. The 1<sup>st</sup> Respondent denies any knowledge of the order, and the 3<sup>rd</sup> Respondent argues that the arrest was lawful under an existing warrant. The 2<sup>nd</sup> Respondent (DPP) asserts that he does not conduct arrests, making it impossible for him to have disobeyed the order.
32. In this case, the court order, while valid, may not have been sufficiently clear in its directives to hold the respondents in contempt
33. In *Basil Criticos v Attorney General & 8 Others* [2012] eKLR, the court stated that:

“... the law has changed and so as it stands today, knowledge supersedes personal service and for good reason... where a party clearly acts and shows that he has knowledge of a court order, the strict requirement that service must be proved is rendered unnecessary.”
34. Again in *Samuel M. N. Mweru & Others v National Land Commission & 2 Others* [2020] eKLR, the High Court emphasized that a person cannot be punished for contempt unless it is proven that they were aware of the court order and had the opportunity to comply.
35. The 1<sup>st</sup> Respondent denied knowledge of the order and argued that he was not personally served. While the 3<sup>rd</sup> Respondent claimed that he was acting under valid warrants and had no knowledge of any restraining order against him and the 2<sup>nd</sup> Respondent asserted that his office does not conduct arrests, and he had no direct involvement in the alleged violation.
36. In this case, there is no dispute that the orders of the court issued on 20<sup>th</sup> August 2024 and were served upon the Respondents through the Affidavit of Service dated 30<sup>th</sup> September 2024.
37. The Applicant/Petitioner failed to provide sufficient evidence of service or knowledge of the order, which is a critical failure in meeting the legal threshold for contempt.
38. I am guided by the decision in *Republic v Kenya School of Law & Another ex parte Kithinji Maseka Semo & Another* [2019] eKLR, where the court held that a Contempt must involve deliberate non-compliance. An accidental or unintentional act does not constitute contempt.
39. In the Supreme Court decision in *Republic v Ahmad Abolfathi Mohammed & another* [2018] eKLR the Court held that:

“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 wilfully acted in a manner that flouted the Court Order.”
40. The 1<sup>st</sup> Respondent argues that he was no longer in office, and thus, the application against him is moot. The 3<sup>rd</sup> Respondent states that the arrest was based on an existing valid warrant, which was not explicitly suspended by the court order. The 2<sup>nd</sup> Respondent maintained that his office is separate from law enforcement, making it impossible for him to have disobeyed the order.
41. The Applicant has not provided compelling and convincing evidence that the Respondents deliberately or intentionally defied the order. Without clear intent, contempt cannot be established.



42. The DCI stated that the arrest was based on lawful warrants and that the actual arresting officer was Michael Sang, not the DCI himself. Additionally, there is no evidence that the DCI was aware of the specific court order when the arrest occurred.
43. The arresting officer is the strongest link to the arrest, but unless clear evidence shows he knew of the court order and ignored it, he cannot be held in contempt. The Applicant must prove that the officer was served with the order and acted against it deliberately.
44. The DPP argues that he was not part of the arrest process and was not under any obligation to act on the court order.
45. While contempt of court is a serious offense, the burden of proof lies on the Applicant. In this case, the Respondents' legal defences raise substantial doubts about whether the Applicant's allegations meet the required legal standard.
46. In *Kenya Human Rights Commission v Attorney General & Another* [2018] eKLR, the court ruled that contempt applications must be grounded in common law principles, as the *Contempt of Court Act*, 2016 was declared unconstitutional.
47. The provisions of Order 52, Rule 2 of the Civil Procedure Rules, provides that contempt proceedings must be initiated within a reasonable time and must be supported by clear affidavits and evidence.
48. The Applicant's application relies on a repealed legal framework, making it legally problematic. The contempt application also lacks clear supporting affidavits proving that the Respondents were personally served or had knowledge of the order. Additionally, the procedural defects in the application further weaken its legal validity.
49. Therefore, the application does not fully comply with the procedural requirements, making it legally unsound.
50. Having considered the submissions, applicable law and the cited authorities, I proceed to make the following orders:
  - i. The Applicant has failed to prove to the required standard that the Respondents were properly served or had knowledge of the Order;
  - ii. The Applicant has not demonstrated wilful and deliberate disobedience by the Respondents to the required standard;
  - iii. The contempt Application has not met the requisite legal and evidentiary threshold; and
  - iv. Accordingly, the Application dated 19th August 2024 is hereby dismissed, each party to bear its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF FEBRUARY 2025.**

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**BAHATI MWAMUYE**

**JUDGE**

In the presence of:-

Counsel for the Applicant – Dr. Owiso Owiso and Mr. Willis Otieno

Counsel for the Respondents – No Appearance



Court Assistant – Mr. Guyo

