



Republic v Commissioner for Cooperative Development & 13 others; Ndwiga & 12 others (Exparte Applicants); Marete & 3 others (Contemnor) (Judicial Review E162 of 2024) [2025] KEHC 1204 (KLR) (Judicial Review) (3 March 2025) (Ruling)

Neutral citation: [2025] KEHC 1204 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E162 OF 2024
RE ABURILI, J
MARCH 3, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

- COMMISSIONER FOR COOPERATIVE DEVELOPMENT ... 1ST RESPONDENT**
- NENO SACCO 2ND RESPONDENT**
- QWETU SACCO 3RD RESPONDENT**
- SOLUTION SACCO 4TH RESPONDENT**
- BUTALI SACCO 5TH RESPONDENT**
- IMARISHA SACCO 6TH RESPONDENT**
- MAKTABA SACCO 7TH RESPONDENT**
- APSTAR DT SACCO LTD 8TH RESPONDENT**
- INVEST AND GROW SACCO 9TH RESPONDENT**
- NEWFORTS SACCO 10TH RESPONDENT**
- LOMPASAGO SACCO 11TH RESPONDENT**
- GUSII MWALIMU SACCO 12TH RESPONDENT**
- COSMOPOLITAN SACCO 13TH RESPONDENT**
- SHOPPERS SACCO 14TH RESPONDENT**

AND



PETER MANGA NDWIGA EXPARTE APPLICANT
ALFRED MWADIME MLOLWA EXPARTE APPLICANT
TARTISIO IRUKI ITUURU EXPARTE APPLICANT
MALOVA HESBON NYIKURI EXPARTE APPLICANT
LANGAT KIMUTAI DAVID EXPARTE APPLICANT
LANGAT KIMUTAI DAVID EXPARTE APPLICANT
ANDREW AYARAH OKWACH EXPARTE APPLICANT
DAVID KALACHI MOYIA EXPARTE APPLICANT
GEORGE MAGUTU MWANGI EXPARTE APPLICANT
BERNARD NGUNJIRI MAINA EXPARTE APPLICANT
DAVID OGEA NYANGAU EXPARTE APPLICANT
JOHN M. NJUGUNAH EXPARTE APPLICANT
WILFRED KEMBERO AIMA EXPARTE APPLICANT

AND

DANIEL KINYUA MARETE CONTEMNOR
FRANCIS MURIITHI CONTEMNOR
ELIZABETH WAMBUI NJOROGE CONTEMNOR
JOHN RUKWARO CONTEMNOR

RULING

1. This ruling determines the contempt application dated 13th January 2025 by the exparte applicants. The application is grounded on Articles 10 and 159 of the *Constitution* of Kenya, 2010, Section 5(1) of the *judicature Act*, Sections 1A, 1B, 3A, of the *Civil Procedure Act*, Rule 19 of *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* and Part 81.1, Rule 81.1,2, 3, 4, 5, 6 & 7 of the *English Civil Procedure Rules (Amendment No. Rules, 2020)*.
2. The exparte applicants' application seek the following orders:
 - i. Spent.
 - ii. In the first instance, Summons do issue to the 4th Respondent's Chief Executive Officer Daniel Kinyua Marete, 4th Respondent's Chairperson Francis Muriithi, 13th Respondent's Chief Executive Officer Elizabeth Wambui Njoroge and 13th Respondent's Chairperson John Rukwaro to appear before court in Person to Show Cause why they should not be found Guilty of contempt of the Order of Court, and punished accordingly for failing to obey the orders of this court made on 21st December 2024.
 - iii. The said Daniel Kinyua Marete, Francis Muriithi, Elizabeth Wambui Njoroge and John Rukwaro for their acts of Contempt of the Order of Court, be declared to be unfit to hold



any office in the 4th and 13th Respondents respectively and / or exercise public authority as an officer, agent and / or contractor whatsoever.

- iv. Warrants do issue to, and executed by the Officer Commanding Station-Meru Police Station and Nakuru Police Station respectively or such other officer seconded by them, for the arrest of Daniel Kinyua Marete, Francis Muriithi, Elizabeth Wambui Njoroge and John Rukwaro for the purpose of being committed to jail, for undermining and failing to obey the orders of this court made on 21st December 2024.
 - v. The 4th and 13th Respondents, Daniel Kinyua Marete, Francis Muriithi, Elizabeth Wambui Njoroge and John Rukwaro be forthwith denied any audience by way of filing pleadings, addressing this Honorable Court by themselves or Advocates appointed by them until such time as the Contempt of the Order of Court made by this Honorable Court on 21st December 2024 is purged by restoration of the 3rd and 12th Ex-Parte Applicants to their rightful positions with attendant privileges and benefits forthwith.
 - vi. The costs of this application be assessed by Court on a punitive indemnity basis, and borne personally by the said Daniel Kinyua Marete, Francis Muriithi, Elizabeth Wambui Njoroge and John Rukwaro and be paid forthwith or drawn directly from their salaries and / earnings until full payment.
3. The application is supported by the affidavits sworn by Tartisio Iruki Ituuru and John M. Njugunah on 14th January 2025.
 4. The ex parte applicants' case is that this court issued an order dated 21st December 2024, which order stayed the implementation of the decision of the Commissioner for Cooperative Development that sought to bar the immediate former board members of the Kenya Union of Savings and Credit Cooperative Limited (KUSCCO) from holding office in their primary Saccos, communicated by his letter dated 17th December 2024.
 5. The order is said to have been served on all the respondents on 23rd December 2024 and also on 27th December 2024 after it had been extracted and signed by the Deputy Registrar of this Court.
 6. According to the *ex parte* applicants, most of the respondents complied with this order but the 4th respondent's Chief Executive Officer (1st contemnor) and chairperson (2nd contemnor) went ahead to expel the 3rd ex parte applicant from being the vice chairperson.
 7. It is their case that on 23rd December 2024, the 2nd contemnor hurriedly convened a Board meeting of the 4th respondent with the sole purpose of removing the 3rd ex parte applicant despite having the Court Order sent to his email. Further, that on the same date, a letter dated 23rd December 2024 copied to the 1st contemnor by the Director of Cooperative Society, Meru County purported to schedule a vetting exercise on 7th January 2025 geared towards filling a purported vacancy for a Board member representing Thangatha, Kiguchwa, Mikinduri, Nkomo and Mbeu in the SACCO Board, essentially seeking to replace the 3rd ex parte applicant.
 8. The 1st and 2nd alleged contemnors according to the ex parte applicants despite receiving a letter dated 26th December 2024, have failed to restore the 3rd ex parte applicant as the vice chairperson.
 9. On the part of the 13th respondent's Chief Executive Officer (3rd contemnor) and the 13th respondent's chairperson (4th contemnor), the ex parte applicants allege that despite the advocate on record writing to them warning against their contemptuous acts, they have declined to comply with the court orders even with the consequences being highlighted to them.



10. The ex parte applicants urge that the alleged contemnors' actions constitute a blatant violation of Article 10(2)(6) of the Constitution. They also state that the gravity of contempt is so heavy that imposition of a custodial sentence and/or attachment of property is necessary for public prosecution.

The alleged Contemnors' defence

11. The 1st and 2nd alleged contemnors filed a replying affidavit sworn by Francis Murithi Rimberia.
12. In the said affidavit, Mr. Murithi depones that they received a letter from the Commissioner for Cooperative Societies dated 17th December 2024 and another one from the County Director for Cooperatives on 20th December 2024 directing that the 3rd ex parte applicant should cease being a member of the 4th Respondent's Board of Directors.
13. The directive is said to have communicated that the 3rd ex parte applicant had ceased from being a Board member of Kenya Union of Savings and Credit Cooperative Limited (KUSCCO) and should therefore not be a director of the 4th respondent's Board.
14. It is Mr. Murithi's further disposition that the Board members held a routine meeting on 23rd December 2024 upon which the Board in its normal operations conducted a reshuffle of its leadership which affected all Board members and Board Committees but did not expel the 3rd ex parte applicant from the Board. That the 1st alleged contemnor was away on official leave and as such, he did not participate in the reshuffle.
15. According to the 1st and 2nd alleged contemnors, the 3rd ex parte applicant attended the aforementioned meeting and did not raise any issue with the reshuffle of the Board members and Board Committee officials and further, that he did not inform the Board of any existing court case but that they later learnt of the court order dated 27th December 2024.
16. It is the 1st and 2nd alleged contemnors' case that the 3rd ex parte applicant still holds office of director on the Board and he still actively participates in the activities of the Sacco including attending Board meetings, the recent one having been held on 20th January 2025.
17. According to the 1st and 2nd alleged contemnors, the ex parte applicant has failed to demonstrate willful defiance and disrespect towards the court by them.
18. The 3rd and 4th alleged contemnors also filed replying affidavits to the application both of which are sworn on 20th January 2024. Their case is that upon receiving the letter from the Commissioner for Cooperatives, the 13th respondent wrote to the 12th ex parte applicant on 20th December 2024 and notified him of the directive from the Commissioner for Cooperatives and also informed him that he had ceased to be a director representing Naivasha/Longonot electoral zone in the 13th respondent with immediate effect.
19. That subsequently, they received an order of the court on 23rd December 2024 and as such, the said order had been overtaken by events. They urge that by the time that they were served with the court order, they had already implemented the letter and spirit of the Commissioner for Cooperatives' letter dated 17th January 2024.

Submissions by Parties

20. The application was canvassed by way oral submissions on 3rd February 2025.



21. In their submissions, counsel for the ex parte applicants and counsel for the respondents reiterated word for word what had been stated in the application and affidavits in support on the one hand and in the replying affidavits filed by the 4 alleged contemnors on the other.
22. However, during rejoinder, counsel for the ex parte applicants submitted that contrary to the allegations that the order had been served on 27th December 2024, evidence tendered before the court clearly showed that the order was served on 23rd December 2024 just before the routine meeting.
23. It was also submitted that the action to reinstate the 3rd ex parte applicant to the whatsapp groups was taken in reaction to the letter dated 26th December 2024. Counsel also submitted that the positions and designations are time bound and that there were no by laws allowing changes.
24. According to counsel for the ex parte applicants, the continuing action by the respondents amounts to contempt of court and in support of this position, the case of [*Republic vs. County Government of Embu Ex parte Peterson Kamau Muto t/a Embu Medical and Dental Clinic & 6 others*](#) [2022] eKLR was relied on.

Determination

25. From the affidavit evidence, submissions by the respective parties' counsel on record and the applicable law and decided cases, the issues for determination are whether the 4th and 13th respondents are Guilty of contempt of court order issued on 21st December 2024 and if so, what orders should this court make in the circumstances.
26. It is not in contention that there is a valid order of this court that is clear and unambiguous. The alleged contemnors also do not deny service or knowledge of the said order. What they contend is that they cannot be held liable for contempt for actions that were done prior to the order being issued or served on them, or for undertaking the routine functions of their Sacco which culminated in members of the Board being reshuffled.
27. According to the [*Black's Law Dictionary*](#) (Ninth Edition) contempt is defined as follows:

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
28. Properly stated, contempt refers to behavior that obstructs the fair and effective functioning of the justice system. Contempt of court goes beyond just enforcing court orders. The superior courts have the authority to hold noncompliant litigants in contempt when they disobey court orders, which is essential for maintaining both the effectiveness and legitimacy of the judicial system. Consequently, when the court is asked to hold a litigant in contempt, it is not only addressing the individual concerns of the successful litigant who has been frustrated, but it is also, importantly, upholding the public interest. See the case of [*Samuel M. N. Mweru & Others v National Land Commission & 2 others*](#) [2020] eKLR.
29. In the Scottish case of [*Stewart Robertson vs Her Majesty's Advocate*](#), 2007 HCAC63, Lord Justice Clerk stated that:

“Contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings”



30. In the case of *Kenya Tea Growers Association Vs Francis Atwoli and 5 Others* [2012] eKLR Lenaola J (as he then was in the High Court) cited with approval the case of *Clarke and Others Vs Chadburn & Others* [1985] 1All E.R (PC), 211 in which the Court observed that:

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

31. However, the court in the case of *Econet Wireless LTD vs. Minister For Information & Communication of Kenya & Another* [2005] eKLR held that:

“Where an application for committal for contempt of court orders is made the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance, an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious- a contemnor would have no right of audience in any court of law unless he is punished or purges the contempt.”

32. On the basis of the above holding in the *Econet Wireless Ltd case*, this Court on 3rd February 2025 directed that the contempt of court proceedings herein as commenced must be determined before the substantive motion.

33. From the foregoing, it is trite that contempt of court proceedings and applications are subtle and criminal in nature and would impose criminal sanctions if a conviction followed.

34. In Kenya, the *Contempt of Court Act* was declared unconstitutional by the Court in *Kenya Human Rights Commission v Attorney General & Another* (2018) eKLR. This means that Section 5 of the *Judicature Act* was reinstated following the nullification of the *Contempt of Court Act*. This was the position taken by the Court in *Republic v Kajiado County & 2 others Ex parte Kilimanjaro Safari Club Limited* [2019] eKLR which I concur with and wherein the Court stated that:

“This section was repealed by section 38 of the Contempt of Act of 2016, and as the said Act has since been declared invalid, the consequential effect in law is that it had no legal effect on, and therefore did not repeal section 5 of the *Judicature Act*, which therefore continues to apply. In addition, the substance of the common law is still applicable under section 3 of the *Judicature Act*. This Court is in this regard guided by the applicable English Law which is Part 81 of the English Civil Procedure Rules of 1998 as variously amended, and the requirement for personal service of court orders in contempt of Court proceedings is found in Rule 81.8 of the English Civil Procedure Rules.”

35. In *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR Mativo J. (as he then was in the High Court) restated the test for establishing contempt of court and stated that:

“40. It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove



- (i) the terms of the order,
- (ii) Knowledge of these terms by the Respondent,
- (iii) Failure by the Respondent to comply with the terms of the order.

Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated: -

“There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant’s conduct was deliberate.”

- 36. The question therefore is, have the ex parte applicants established a case for the citation of the alleged contemnors for contempt of court orders?
- 37. The 1st and 2nd alleged contemnors contend that they have not failed to comply with the court order as the same was brought to their attention on 27th December 2024 after a reshuffle of the 4th respondent’s board members had already taken place. According to them, the 3rd ex parte applicant failed to communicate of the court order and he did not raise any issue on the reshuffle during the Board meeting.
- 38. It is the 1st and 2nd alleged contemnors’ case that the 3rd ex parte applicant remains a part of the board to date and that he actively participates in Sacco activities and therefore they cannot be held to be in contempt of court. The 1st alleged contemnor also contends that on the day of the Board Committees reshuffle, he was on his official leave. Furthermore, the leave issue was discussed in the agenda of the earlier meeting held on 27th November, 2024
- 39. I have carefully examined the affidavit evidence adduced before the court. I have seen the letter from the Commissioner for Cooperative Development dated 17th December, 2024 directing the specific SACCOs that with immediate effect, the former elected officials of KUSCCO cease being officials in their primary Saccos and in any other cooperative society.
- 40. I have also seen a letter from the Director of Cooperative Development-Meru County dated 20th December 2024 directing the 4th Respondent to plan and supervise elections in the affected electoral area which was represented by the former board member of KUSCCO.



41. As evidenced by the minutes of 23rd December 2024, a meeting was held from 9.55 a.m., where one of the agenda items being MIN 130/BOD/2024 and being a substantive Agenda was to reshuffle the leadership of the Board including vice the chairman, honorary secretary, credit committee chairperson and education committee chairperson. The meeting ended at 3.10 pm. No issue of the order of this court which is alleged to have been disobeyed was raised in that meeting.
42. The 3rd ex parte applicant has adduced evidence of service of the court's order and chamber summons application to several persons through an email dated 23rd December 2024 and which was sent at 4.50 a.m.
43. There is no evidence of the 2nd alleged contemnor having been served with the court order. It must also be noted that in order for an applicant to succeed in an application for contempt, there need not only be an order of the court but it must be proven that the person accused of the contempt had knowledge of the order but chose to willfully disregard or disobey it.
44. In this case, the 1st and 2nd alleged contemnors have produced an annual/compassionate leave application form filled by Daniel Kinyua Marete. The leave form indicates that David would be proceeding on his leave with effect from 10th December 2024 to 24th February 2025. This is a clear indication that during this period, Daniel Kinyua Marete would not have been aware of the activities happening in the Sacco including the reshuffling of the Board members. Neither are the minutes of the Board stating that he was present or that he convened the said meeting.
45. There is no proof that the 1st contemnor despite being on leave was aware of the court order that was served through his email address when he was away on his annual leave. There is also no evidence that he was a voting member in the Board meeting where the reshuffle was undertaken and in the presence of the complaining ex parte applicant.
46. There is also no evidence that the ex parte applicants served the 2nd alleged contemnor and that he was aware of the court order before the reshuffle of the Board members happened. Having established the above, I find that the ex parte applicants have failed to prove that the 1st and 2nd alleged contemnors are in contempt of this court's orders.
47. Regarding the removal from the Board of the 12th ex parte applicant, I note that upon receiving the letter dated 17th December 2024, the 13th respondent wrote a letter dated 20th December 2024 to the 12th ex parte applicant communicating the directive from the Commissioner for Cooperative Development and notifying him that he had ceased being the director representing Naivasha/Longonot electoral zone.
48. How then, can the 13th respondent then be said to have been acting in contempt of a court order that was issued a day later on 21st December, 2024, after the communication to the 12th ex parte applicant had already been made on 17/12/2024? It is my finding that the 13th respondent together with the 3rd and 4th alleged contemnors could not have been in contempt because, as at that time, there was no order that had been issued by the court.
49. Having established as herein above, I find that the ex parte applicants have failed to prove that the 13th respondent and consequently the 3rd and 4th alleged contemnors are in contempt of the orders issued by this Court. Neither is there proof of any contempt of court by any of the alleged contemnors.
50. Taking all the above into consideration, I thus find and hold that the ex parte applicants' notice of motion application dated 13th January 2025 lacks merit. The same is dismissed with costs to the alleged contemnors and in the main cause. I so order.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF MARCH,
2025

R.E. ABURILI

JUDGE

