



Kuya & 27 others v Uzima University & 2 others (Constitutional Petition E014 of 2023) [2025] KEHC 10830 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10830 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CONSTITUTIONAL PETITION E014 OF 2023**

JM OMIDO, J

JULY 3, 2025

BETWEEN

PATRICK KUYA & 27 OTHERS PETITIONER

AND

UZIMA UNIVERSITY 1ST RESPONDENT

CABINET SECRETARY MINISTRY OF EDUCATION 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

RULING

A. Background

1. On 23rd January, 2024, this court (Shariff J) issued the following orders on a Notice of Motion dated 3rd December, 2023, brought by the Petitioners herein:
 - a. A conservatory order is hereby given staying the implementation of adjusted fees payable by the Petitioner’s children/students until the petition herein is heard and determined.
 - b. An order of mandatory injunction is hereby issued compelling the 1st Respondent to readmit the Petitioner’s children/students to its institution and to allow the said students to access education and be further allowed to sit their respective examinations until this petition is heard and determined.
 - c. The Petitioners are directed to file their submissions to the petition within 21 days from the date hereof.
 - d. Mention on 22nd February, 2024 to confirm compliance.



2. The record bears it that orders above were issued in the presence of Mr. Ondego Advocate who appeared for the Petitioners and Mr. Okoth Advocate, who held brief for Mr. Odhiambo Advocate, for the 1st Respondent. There was no appearance for the 2nd and 3rd Respondents.

B. The Notice Of Motion Dated 3rd April, 2024.

3. The Petitioners claim that the 1st Respondent disobeyed the orders issued on 23rd January, 2024 and thus filed the motion dated 3rd April, 2024, expressed to be brought under Articles 19, 20, 21, 22, 23, 159 and 258 of the Constitution of Kenya, Rule 19 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, Sections 1A, 3, 3A and 68 of the Civil Procedure Act, Cap 21 Laws of Kenya, the Judicature Act and all other enabling provisions of the law, seeking for the following orders:
 1. [Spent].
 2. [Spent].
 3. [Spent].
 4. That summons be issued to the Deputy Vice Chancellor to the 1st Respondent to attend court and show cause why he should not be committed to civil jail for blatantly disobeying the orders issued by this court on the 23rd January, 2024; the summons also to be served upon the respective Counsel for all the parties.
 5. That failure to comply with the Summons issued by this court, warrants of arrest be issued against the Contemnors herein which warrants be executed by the Court Bailiff with the assistance of the Officer Commanding Central Police Station.
 6. That the court be pleased to find the Contemnors guilty of contempt and move to commit the Contemnors to a term of 6 months in jail for disobeying the orders of the court and/or be admitted to a fine.
 7. That the costs of this application be borne by all the Contemnors.
4. The grounds upon which the application is premised are in precis that 1st Respondent disobeyed the orders of the court issued on 23rd January, 2024 by issuing to the Petitioners' children who are/were students in the institution conditions that are contrary to the orders; that they pay 100% fees failure to which they would not be allowed to sit for their examinations.
5. The 1st Respondent resisted the application and to that end filed a replying affidavit sworn on 12th April, 2024 by Fr. Dr. Cosmas Rhagot K'Otienoh together with grounds of opposition. In precis, the contents of the 1st Respondent's replying affidavit are that the 1st Respondent and the said deponent categorically deny that they disobeyed the above orders. The 1st Respondent and the deponent further proffer the position that the contempt application is incompetent as the supporting affidavit thereto is sworn by the 2nd Petitioner, yet she has not demonstrated that she obtained the authority of the other respective Petitioners to pursue the application on their behalf. The 1st Respondent further contends that the order that is alleged to have been disobeyed was never served upon the Deputy Vice Chancellor of the 1st Respondent – the deponent of the replying affidavit.
6. The 2nd and 3rd Respondents did not file any responses to the application.



C. Issues for Determination.

7. This court directed that the application be canvassed by way of written submissions. The Petitioners and the 1st Respondent filed their respective submissions. The 2nd and 3rd Respondents did not file any submissions on the motion.
8. I have considered the application, the affidavit in support thereof, the 1st Respondent's replying affidavit, the submissions by the two parties and the record in its entirety. The following issues emerge for this court to determine:
 - a. Whether the affidavit in support of the application (and therefore the application itself) is incompetent for failure by the 2nd Petitioner to obtain the authority of the other Petitioners to pursue the application on their behalf.
 - b. Whether the essential elements of contempt have been proved by the Petitioners.
 - c. A determination as to the costs of the application.
9. I will determine the above issues in the order that I have set them out.

D. Arguments, Analysis and Findings.

10. The first issue for me to address is whether the affidavit in support of the application is incompetent for failure by the 2nd Petitioner to obtain the authority of the other Petitioners to pursue the application on their behalf and if so, what orders should I make on the application for contempt?
11. The main petition herein was filed on 7th December, 2023 by the 28 Petitioners. Patrick Kuya, Alice Simiyu and Bonface Otieno, who are 3 of the 28 Petitioners herein filed a Consent and Authority to Plead and to execute all documents pertaining to the petition for and on behalf of all the other 25 Petitioners. A perusal of the Consent and Authority to Plead informs this court that the same was signed/executed by each of the 28 Petitioners.
12. In its submissions, the 1st Respondent takes the position that the supporting affidavit is "sworn by a stranger to the pleadings" and that the application is for that reason incompetent. The 1st Respondent states that the deponent to the supporting affidavit has not been authorized to swear affidavits on behalf of the other Petitioners and that the person who was authorized to execute the documents is deceased and no substitution has been made as is required by law.
13. I note that the affidavit in support of the motion was sworn by Alice Simiyu, who is one of the Petitioners to whom authority was given by the other 27 Petitioners. The contention that she was not authorized or competent to swear the affidavit or bring the application for and on behalf of the other 27 Petitioners does not, therefore, hold water.
14. Moving on to the second issue, which is whether the essential elements of contempt have been proved by the Petitioners, I will first want to say that the essence of the law on contempt is to safeguard the honour and dignity of the court and uphold the principles of the rule of law. Contempt proceedings are quasi-criminal in nature for the reason that if successful, the liberty of a person is at stake.
15. The standard of proof in contempt proceedings is therefore higher than in ordinary civil proceedings in which the standard is on a balance of probabilities, but just below proof beyond reasonable doubt. It is just below that standard applicable in criminal cases (see *In Re Estate of Peter Kibicha Gathogo (Deceased)* (Succession Cause E006 of 2021) [2023] KEHC 22782 (KLR) (22 September 2023) (Ruling)).



16. I take guidance from the Court of Appeal case of *Mutikika v Baharini Farm Limited* [1985] KLR 227 which was cited in the case *Katsuri Limited v Kapurchand Depar Shali* [2016] eKLR in which the court stated as follows:

“The courts take the view that where the liberty of the subject is, or might be involved, the breach for which the alleged contemnor is cited must be precisely defined.

A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily..... it must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be heard to process contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject..... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

17. The court discussed the essential elements of contempt in the case of *Koilel & 2 others v Koilel & another* (Civil Appeal E002 of 2021) [2022] KEHC 10288 (KLR) (30 June 2022) (Judgment) and observed as follows:

“Judicial borrowing from contemporary jurisdiction: 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; and
- (iii) Failure by the Respondent to comply with the terms of the order (*Kristen Carla Burchell v Barry Grant Burchell*, Eastern Cape Division Case No. 364 of 2005).”

18. Thus then, there are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard on the standard of proof discussed above that:

1. The terms of the order were clear and unambiguous and were binding upon the alleged Contemnor.
2. The alleged Contemnor had knowledge of or proper notice of the order;
3. The alleged Contemnor breached or disobeyed the terms of the order; and,
4. The alleged Contemnor’s conduct amounting to breach or disobedience of the order was deliberate.



19. In the case of *Samuel M.N. Mweru v National Land Commission & 2 others* [2020] eKLR), the court, while addressing the above elements in contempt proceedings, underscored the need to establish the same, as follows:

“The first is liberty:- it is basic to our Constitution that a person should not be deprived of liberty, albeit only to constrain compliance with a court order, if reasonable doubt exists about the essentials. In this regard, I am not satisfied that willful disregard of the court order has been established.

The second reason is coherence. It is practically difficult, and may be impossible, to disentangle the reasons why orders for committal for contempt are sought and why they are granted. In the end, whatever the applicant’s motive, the court commits a contempt respondent to jail for rule of law reasons; and this high public purpose should be pursued only in the absence of reasonable doubt. Accordingly, it is impermissible to find an alleged contemnor guilty of contempt in the absence of conclusive proof of the essential elements. The requisite elements must be established beyond reasonable doubt. In such a prosecution the alleged contemnor is plainly an “accused person”.

Third, accidental or unintentional disobedience is not sufficient to justify one for holding guilty of contempt. It is further relevant to bear in mind the settled law on the law of contempt that casual or accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy, would amount to a contempt in theory only and does not render the contemnor liable to punishment.”

20. As to whether the terms of the order issued on 23rd January, 2024 are clear, as there is no challenge either in the replying affidavit or the 1st Respondent’s submissions as to the clarity of the order, I hold that the same are clear.
21. As to whether the 1st Respondent and the Deputy Vice Chancellor had knowledge of or proper notice of the order, the 1st Respondent urges the court to reach the finding that the element of knowledge of or proper notice of the terms of the order has not been proved by the Petitioner.
22. The 1st Respondent submits that whereas the Petitioners are seeking an order to cite the Deputy Vice Chancellor of the 1st Respondent for contempt and commit him to civil jail, the Petitioners have not provided evidence to prove that the Deputy Vice Chancellor was personally served with the order issued on 23rd January, 2024 or that he was aware of the said court order.
23. In rejoinder, the Petitioners state that the 1st Respondent was served on 25th January, 2024 with the order of 23rd January, 2024 and the same was received by endorsement of the 1st Respondent’s official stamp.
24. To support their position, the Petitioners relied on the authority of *Basil Criticos v Attorney General & 8 others* [2012] eKLR in which Lenaola J (as he then was) rendered himself as follows:

“...the law has changed and as it stands today knowledge supersedes personal service....where a party clearly acts and shows that he had knowledge of a court order; the strict requirement that personal service must be proved is rendered unnecessary.”



25. The Petitioners further invited the court to consider the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR where the Court of Appeal stated thus:
- “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.”
26. There is also the authority of *Henry Musamate Murwa v Francis Owino, Principal Secretary, Ministry of Public Service, Youth and Gender Affairs & another* [2021] eKLR where the court cited the cases of *Basil Criticos* (*supra*) and *Shimmers Plaza* (*supra*) and held that:
- “The authorities cited by the Respondents in respect of personal service upon the Contemnor are no longer valid as it has been held subsequently that knowledge of the court orders are sufficient.”
27. The Petitioners annexed to the affidavit in support of the motion for contempt the extracted order which they say was served upon the 1st Respondent on 25th January, 2024. The said order has endorsed on it the 1st Respondent’s stamp and a receiving date of 25th January, 2025. There is no contest that the 1st Respondent was served with the order on the said date.
28. It is instructive from the replying affidavit and the submissions filed that the Deputy Vice Chancellor of the 1st Respondent states that he was not personally served with the order. As a matter of fact, the Petitioner’s do not allege that they personally served him with the order, with the result that I hold that he was not served.
29. But then, the 1st Respondent’s Deputy Vice Chancellor does not allege in his affidavit that he was not aware of the court order. It is in the submissions that the allegation of lack of knowledge are made.
30. It is to be noted from the record that the 1st Respondent filed an application by notice on motion dated 29th January, 2024 (which is pending) seeking, inter alia, that this court vacates and/or sets aside the order of 23rd January, 2024. The application is supported by the affidavit of Rev. Fr. Dr. Cosmas Rhagot K’Otienoh sworn on 29th January, 2024. It is clear to me that having sworn that affidavit, the deponent was aware of the order of 23rd January, 2024. He cannot now claim not to have been aware of the order or its terms.
31. My persuasion, while agreeing with the positions taken in the cases of *Henry Musamate Murwa* (*supra*), *Basil Criticos* (*supra*) and *Shimmers Plaza* (*supra*), is that personal service is not necessary where a party proves knowledge of the order and its terms.
32. With regard to the issues whether the 1st Respondent and the Deputy Vice Chancellor breached or disobeyed the terms of the order and whether the alleged Contemnor’s conduct amounting to breach or disobedience (if proved) of the order was deliberate, it has been argued by the Petitioner that, contrary to the terms of the order, which required the 1st Respondent to readmit the Petitioner’s children who were/are students in the institution and allow them access education and sit for their examinations, pending the hearing and determination of the petition, the 1st Respondent issued memos dated 14th March, 2024 and 25th March, 2024 directing all students, including the Petitioner’s



children, to pay 100% fees, failure to which they would not be allowed to sit for their examinations that were to commence on 8th April, 2024.

33. The memos are annexed to the supporting affidavit and have the following contents:

a. The memo dated 14th March, 2024:

To: All Students.

From: Deputy Vice Chancellor

Administration, Finance And Planning

Date: Thursday, March 14, 2024

Subject: Clearance For The End Of Trimester Examinations

We refer to the above matter and wish to remind each and every student to ensure that fee is paid in full, including any arrears that may have attracted exemptions to allow for the taking of any previous examinations, on or before 5th April, 2024 and clearance downloaded and accordingly presented to Finance Department for verification and authentication.

Kindly ensure strict compliance, and arrange to inform the person/persons responsible for the payment of your fee in time to avoid any inconvenience that may be caused by failure to comply, since no student shall be allowed to take examinations with Any Outstanding Fee Balances.

God Bless.

[Signed]

Joseph O. Okal

Deputy Vice Chancellor

Administration, Finance & Planning.

Cc. Vice Chancellor

DVC, Academics

Registrar

Deans

Directors

Heads of Department

UUSA

All Members of Staff

b. The memo dated 25th March, 2024:

To: All Students.

From: Deputy Vice Chancellor

Administration, Finance And Planning

Date: Monday, March 25, 2024.

Subject: Clearance For The End Of Trimester Examinations



Reference is made to our Inter/Memo dated Thursday 14th March, 2024 wherein the deadline for clearance of fee payment was given as on or before 5th April, 2024, and would like to remind all students who have met the 100% fee payment requirement to start downloading their Clearance Forms/Certificates from Wednesday, 27th March, 2024 so as to avoid the last-minute rush before the taking of Examinations.

Meanwhile, as earlier intimated by the earlier Inter/Memo under reference, it is instructive that there shall be no taking of Examinations without full payment of fee, including any authorized or unauthorized arrears, which may have been accumulated in prior end of Trimester/s or Academic year/s.

Kindly be guided accordingly.

[Signed]

Joseph O. Okal

Deputy Vice Chancellor

Administration, Finance & Planning.

Cc. Vice Chancellor

DVC, Academics & Students Affairs.

Registrar

Deans

Directors

Heads of Departments

UUSA

All Members of Staff

34. The position that the Petitioners took was that the two memos directing all students to pay 100% fees, failure to which they would not be allowed to sit for their examinations that were to commence on 8th April, 2024 contravened and/or were in disobedience of the orders issued on 23rd January, 2024.
35. On the part of the 1st Respondent, the Deputy Vice Chancellor, vide the replying affidavit and the filed submission stated that the two memos that the 1st Respondent issued were routine administrative notices meant for the entire student population for purposes of preparation for examinations and not the Petitioners' children.
36. The 1st Respondent stated further, through the replying affidavit and in its submissions, that the university issued examination cards to the Petitioners' children and that some of them actually sat for the examinations and that the ones who did not sit for examinations failed to do so out of their own choices.
37. In rejoinder, the Petitioners submitted that the examination cards that were annexed to the replying affidavit were a ploy applied by the 1st Respondent to mislead the court that the same were issued to the Petitioners' children. The Petitioners made whether of the cards, stating that the same were not signed by any of their children and some did not have the institution's stamp and authorized signature.



38. The Petitioners further submitted that memos issued by the 1st Respondent were in violation of the order of 23rd January, 2024 in that the same, despite the said order, demanded that all students pay the full fees, failure to which they would not be allowed to sit for their examinations.
39. The Petitioners stated in their submissions that by a letter dated 5th May, 2024, the Petitioners' children complained against the contravention and/or disobedience of the court order by the 1st Respondent. That prior to the examinations, the 1st Respondent, in violation of the order forced the Petitioners' children to draw up commitment letters in order to ingress the examination room, to the effect that they would sit for examinations on condition that they would pay the whole fees upon demand.
40. The question that abounds is whether the Petitioners have proved that the 1st Respondent and the Deputy Vice Chancellor breached or disobeyed the terms of the order and whether the alleged Contemnor's conduct amounting to breach or disobedience (if any) of the order was deliberate.
41. I have above discussed the standard of proof that is applicable in contempt proceedings – a standard that is higher than in ordinary civil proceedings in which the standard is on a balance of probabilities, but just below proof beyond reasonable doubt.
42. This court, vide the order that is subject of the present contempt proceedings, issued a conservatory order staying the implementation of adjusted fees payable by the Petitioners' children/students until the petition herein is heard and determined. The order further commanded the 1st Respondent to readmit the Petitioners' children/students to its institution and to allow the said students to access education and be further allowed to sit their respective examinations until this petition is heard and determined.
43. The only aspect or part of the order that the Petitioners allege was breached or disobeyed by the 1st Respondent and the Deputy Vice Chancellor is that directing that the Petitioners' children be allowed to sit for examinations without requiring them to pay the adjusted fees, in respect of which a temporary conservatory relief was issued.
44. Whereas the Petitioners claim that the 1st Respondent, pursuant to the two memos that it issued, prevented their children from sitting for examinations, the 1st Respondent states that the Petitioners' children were not prevented from sitting for examinations and that as a matter of fact, some of them sat for the examinations and that those who did not do so failed to sit for the same out of their own choices. The 1st Respondent's position was that the two memos were meant for the general student populace and not for the Petitioners' children.
45. The Petitioners stated in their submissions that conditions for sitting for the examinations were issued to their children, which included a requirement by the university that they first write commitment letters that they would pay fees in full as a condition of being allowed into the examination rooms.
46. With respect, this allegation was first introduced in the submissions. The same was not made in the affidavit in support of the application. Evidence cannot be introduced through submissions, and I must disregard the allegation, which I hereby do.
47. In my view, the contents of the two memos cannot per se amount to disobedience and/or violation of the order of 23rd January, 2024. What would amount to disobedience, I opine, is the actual prevention of the students from sitting for their examinations.
48. From the material before me, there has not been provided any evidence that the Petitioners' children presented themselves for examination and were prevented by the 1st Respondent from sitting for examinations on account of not satisfying the terms of the two memos. Further, none of the students



swore affidavits to state that they were prevented from sitting for their examinations on that account. If anything, the 1st Respondent stated in the supporting affidavit that those who presented themselves were allowed to, and actually sat for their examinations. There is no deposition made by any of the Petitioners on oath to rebut or negate that position.

49. The two elements – that the Contemnor breached or disobeyed the terms of the order and that the alleged Contemnor’s conduct amounting to breach or disobedience of the order was deliberate, have not been established by the Petitioners.
50. It is then my persuasion that the Petitioners have not proved to the standard discussed in the cases of *Mutikika (supra)*, *Katsuri Limited (supra)* and *In Re Estate of Peter Kibicha Gathogo (supra)* that the 1st Respondent and the Deputy Vice Chancellor are/were in contempt of the order issued by Shariff J on 23rd January, 2025.

E. Disposition.

51. Being of the foregoing findings, I reach the result that the Petitioners’ notice of motion application dated 3rd April 2024 is devoid of merit. I proceed to dismiss it with costs to the 1st Respondent. I make no orders as to costs in respect of the 2nd and 3rd Respondents as they did not participate in the application.
52. Orders accordingly.

DELIVERED (VIRTUALLY), DATED AND SIGNED THIS 3RD DAY OF JULY 2025.

JOE M. OMIDO

JUDGE

For The Petitioners: Mr. Ondego.

For The 1st Respondent: Mr. Gwada.

For The 2nd & 3rd Respondents: No Appearance.

Court Assistants: Mr. Ngoge & Mr. Juma.

Court: The matter to be mentioned on 1st October, 2025 for directions on the disposal of the petition. A mention notice to be served upon the Attorney General’s Chambers, Kisumu.

