



**Law Society of Kenya & 3 others v Inspector General of Police & 4 others (Petition E436 of 2024)  
[2024] KEHC 10995 (KLR) (Constitutional and Human Rights) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10995 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
PETITION E436 OF 2024  
LN MUGAMBI, J  
SEPTEMBER 20, 2024**

**BETWEEN**

**LAW SOCIETY OF KENYA ..... 1<sup>ST</sup> PETITIONER  
BOB MICHENI NJAGI ..... 2<sup>ND</sup> PETITIONER  
JAMIL LONGTON ..... 3<sup>RD</sup> PETITIONER  
SALAM LONGTON ..... 4<sup>TH</sup> PETITIONER**

**AND**

**INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT  
DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT  
ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT  
DIRECTORATE OF CRIMINAL INVESTIGATIONS ..... 4<sup>TH</sup> RESPONDENT  
NATIONAL INTELLIGENCE SERVICE ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The contemnor, Gilbert Masengeli (the former Acting Inspector General of Police and now the Deputy Inspector General of Police in-charge of Administration Police) has appeared before this court today to purge the contempt of court following his conviction and sentence for contempt.
2. I will not set out the facts that led to his conviction and subsequent imposition of a suspended sentence as this is comprehensively covered in the proceedings and the rulings in which the conviction and sentence was entered. Suffice to say that the court convicted and sentenced Mr. Masengeli to a sentence



of six (6) months imprisonment which it suspended for seven (7) days to give him an opportunity to purge the contempt by complying as directed.

3. The conviction and the suspended sentence were entered following what the court considered to be a series of disobedience of court summons to appear before the court to explain why the order of habeas corpus for the production of three (3) Kenyans (2<sup>nd</sup> – 4<sup>th</sup> Petitioners) had not been complied with despite the deposition by the petitioners that the three were arrested by persons believed to be police officers.
4. In sentencing Mr. Masengeli, the court was emphatic that the suspended sentence imposed was a 'coercive order' as opposed to a 'punitive order' thereby leaving open a seven-day window that allowed him to redeem himself and avoid the sentence by purging the contempt, else, Mr. Masengeli was required to submit himself starting tomorrow to the Commissioner General of Prisons to commence serving his six-month sentence.
5. Before embarking on the determination of whether or not Mr. Masengeli has satisfactorily purged the contempt or not, it is necessary to have a clear understanding of what purging process for contempt of court entails. This procedure is not provided for in law but it has developed through precedents.
6. In Black's Law Dictionary, the word 'purge' is defined as:

“To exonerate (oneself or another) of guilt.”

The Dictionary then illustrates:

“The Judge purged the defendant of contempt”

7. The Supreme Court of India in [Pravin C. Shah vs K.A. Mohd ALT & ANR](#) Case Appeal Civil 3050 of 2000 extensively explained the meaning of the purging process while making useful references to its origin and implication as follows:

“...Purging is a process by which an undesirable element is expelled either from one's own self or from a society. It is a cleansing process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word purge, which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters....”

8. The court even went further to observe that merely serving a sentence for contempt of court is not enough to vindicate the authority of the court and that the best outcome is when the contemnor demonstrates a genuine remorse and seeks the court's pardon.
9. That was a major consideration that this court took into account when it opted for a 'coercive order' as opposed to a 'punitive order' as the intention of the court was not to punish Mr. Masengeli for the sake of it but to ensure that the sentence serves the objective of restoring the dignity and authority of this court. Had the court intended to punish Mr. Masengeli right away, it would not have included the 'purging/redeeming condition' as part of the sentence.



10. The Indian Supreme Court (supra) emphasizing the need to have sentence that meets Court’s objective stated:

“...Purging process would not be treated as completed merely by the contemnor undergoing the penalty imposed on him unless he has obeyed the order of the court or he has undone the wrong...

Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt...”

11. The question thus becomes, having listened to Mr. Masengeli, is the court satisfied that he is sincerely and genuinely apologetic about the circumstances that led to his conviction and imposition of suspended sentence for the contempt of court?
12. In his explanation to exonerate himself, Mr. Masengeli gave an account on oath explaining why he could not personally attend court on 26<sup>th</sup> August, 2024, 29<sup>th</sup> August, 2024, 3<sup>rd</sup> September, 2024, 5<sup>th</sup> September, 2024 and 9<sup>th</sup> September, 2024, including the date of his sentence on 13<sup>th</sup> September, 2024. He gave reasons, that he was torn in between demanding national security duties and his obligation to attend court. He did not, however, explain why he could not commit to attend court on the day he had actually indicated, his availability, that is, 9<sup>th</sup> September, 2024.
13. He was cross-examined by Advocates for the petitioners and my observation is that his answers appeared genuine. He was calm and polite.
14. To crown it all, he pleaded with the court stating that if he made any errors of judgment for prioritizing other exigencies of duty over the court attendance, this Court does forgive and have mercy on him. He stated:

“... I want to apologize to this court and the Judiciary for the events that transpired leading to orders of contempt of this court. I respect you and the good work you do to uphold the law. As a police officer, it is my duty to enforce court orders and ensure court orders are obeyed. I pray the court accepts my apology, vacates the conviction and sentence, I so pray...”

15. This court is convinced that Mr. Masengeli regrets and is genuinely remorseful for the situation that he finds himself in.
16. It is not the interest of this court to punish a genuinely repentant man who has acknowledged his mistakes and offered an apology. His conduct today has restored the dignity of the court and the due administration of justice by attending court and explaining the difficulties that caused him not to comply with the court orders and by offering an apology for any errors of judgment that might have led to this situation.
17. His undertaking that he will always obey and enforce the orders of the court came out strongly.
18. The court is fully satisfied that this purging process has infused into the mind of the contemnor, Mr. Masengeli the obligation to respect and uphold the rule of law and the due administration of justice. The supremacy of the law has equally been vindicated.



19. To this end, I must arrive to the determination that the contemnor, Mr. Gilbert Masengeli, through this purging process has ‘purged his guilt’ for the contempt of court for which the conviction and sentence is hereby set aside. (Under the Court’s inherent powers, the committing court retains residual the powers to pardon for contempt of court. See the India Supreme Court case- [\*Pravin A.K.C Shah case\*](#) (supra).
20. I cannot end this deliberation without speaking on the need of all to respect and uphold the independence of the Judiciary. It is the Judiciary that guarantees adherence to the rule of law. Every Kenyan who means well for this country must fight for the independence of the Judiciary so that Judges can make decisions based purely on law and the facts without any fear of reprisals, interference, pressure or threats, whether direct or indirect. The cornerstone of our democracy is the rule of law. It should be known to all that the independence of the Judiciary is not for the benefit of Judges perse but for the benefit of the public at large.
21. Independence gives the Judge the discretion to make fair and even-handed decisions that uphold the rule of law. Through their decisions, Judges hold other organs of government to account in accordance with the [\*Constitution\*](#) and the law yet the State has a primary duty of ensuring Judicial Independence is protected as that is a constitutional dictate.
22. I am happy to hear from the Law Society of Kenya that the three Kenyans who are the subject of this petition have been found.
23. Having said so, and considering everything else; I am announcing my decision that I shall be recusing myself from further proceedings in this case for personal reasons and direct that the file will be placed before the Presiding Judge.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

.....

**L N MUGAMBI**

**JUDGE**

