



**Republic v Attorney General & 2 others; Risen Comp Any Limited (Exparte);  
Mwamba Sacco & 4 others (Interested Parties); Nyamu, Chief Officer  
Mobility, Nairobi City County (Contemnor) (Judicial Review 549 of 2016)  
[2023] KEHC 20246 (KLR) (Judicial Review) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20246 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW 549 OF 2016**

**JM CHIGITI, J  
JULY 17, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE HONOURABLE ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**THE NATIONAL TRANSPORT & SAFETY AUTHORITY ... 2<sup>ND</sup> RESPONDENT**

**TRANSPORT LICENSING APPEALS BOARD ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**RISEN COMP ANY LIMITED ..... EXPARTE**

**AND**

**MWAMBA SACCO ..... INTERESTED PARTY**

**UMMOINNER SACCO ..... INTERESTED PARTY**

**UTIMO SACCO ..... INTERESTED PARTY**

**CITY TRAM LTD ..... INTERESTED PARTY**

**MARVELOUS SHUTTLE LTD ..... INTERESTED PARTY**

**AND**

**BONIFACE NYAMU, CHIEF OFFICER MOBILITY, NAIROBI CITY  
COUNTY ..... CONTEMNOR**



## RULING

### Brief Background

1. There are two Applications - both by the Applicant - before this court for determination. The two Applications as enumerated herein below form the subject of this Ruling.
2. In the first Application, the Applicant, by a Contempt of Court Application Notice dated 13<sup>th</sup> March, 2023 - Under Section 5(1) of the *Judicature Act*, & Part 81.1, Rule 81.1 of the English Civil Procedure Rules (Amendment No. 3) Rules, 2020 & Part 81.1, 2, 3, 4, 5, 6, & 7 thereof & Rule 39 of the High Court (Organization and Administration) (General) Rules – sought for Orders that:
  1. This application be certified as urgent and heard ex parte in the first instance, owing to the demonstrated urgency arising.
  2. Boniface Nyamu (Chief Officer Mobility, Nairobi City County), be forthwith enjoined in these proceedings as the Cited Person/ Contemnor.
  3. Pending the hearing and determination of this Notice of Motion, the said Boniface Nyamu immediately and forthwith ceases and desists to interfere with the status quo ante of the Ex Parte Applicant's PSV business along Ronald Ngala Street, which is hereby understood to mean that the Ex Parte Applicant's PSVs do forthwith continue to operate at the point and PSV slot along Ronald Ngala Street hitherto used by the Ex Parte Applicant, in line with the Ex Parte Applicant's valid Road Service Licenses as explicated in paragraph 2 of the Judgement and Order of this Honourable Court dated 6<sup>th</sup> October 2017 by the Hon. Odunga J. (as he then was).
  4. Leave be granted to the Applicant (in saving Judicial Time) and in view of Article 165(6) of *the Constitution* of Kenya to seek Contempt of Court Orders against the Cited Person Boniface Ny Amu (Chief Officer Mobility, Nairobi City County) for having acted in a manner that interferes with the due administration of Justice in the pending Nairobi Cmcc Civil Case No.E008 OF 2023 (William Wan Gui Versus Risen Company Limited & Nairobi City Count, a suit involving the same subject matter as the original Judicial Review proceedings herein.
  5. Upon the grant of prayer 2 and 4 herein, Boniface Nyamu (Chief Officer Mobility, Nairobi City County), the Cited Person/Contemnor herein, do show cause why:
    - a. he should not be held in Contempt of Court for having expressly breached, and acted in violation of paragraph 2 of the Judgement and Order of this Honourable Court dated 6<sup>th</sup> October 2017 by the Hon. Odunga J. (as he then was), by:-
      - i. ordering the unlawful removal of Ex Parte Applicant's PSVs from Ronald Ngala Street yet their valid Road Service License authorize the said PSVs to operate along Ronald Ngala Street;
      - ii. unlawfully overseeing the cessation of the Ex Parte Applicant's operating PSVs from Ronald Ngala Street;
      - iii. and unlawfully removing the Parte Applicant from operating its PSVs along Ronald Ngala Street, all contrary to this Honourable Court's prohibition



herein issued on 6<sup>th</sup> October 2017 against the said removal (direct, or constructive) absent due process.

- b. he should not be held in Contempt of Court for having overseen the removal of, overseeing the cessation of the Ex Parte Applicant's PSVs from Ronald Ngala Street, and removing the Ex Parte Applicant from operating its PSVs along Ronald Ngala Street in a manner that interferes with the due administration of Justice and the principle of sub judice in the pending Nairobi Cmcc Civil Case No.E008 OF 2023 (William Wan Gui Versus Risen Company Limited & Nairobi City Count) touching on the same issues.
6. Boniface Nyamu (Chief Officer Mobility, Nairobi City County be held in Contempt of Court for:
    - a. having acted, and in acting in breach of paragraph 2 of the Judgement and Order of this Honourable Court dated 6<sup>th</sup> October 2017 by the Hon. Odunga J. (as he then was), duly served upon him and whose terms were known to him at all material times.
    - b. having acted in a manner that interferes with the due administration of Justice in Nairobi Cmcc Civil Case No. E008 Of 2023 (william Wangui Versus Risen Company Limited & Nairobi City County).
  7. Boniface Ny Amu (Chief Officer Mobility, Nairobi City County, the Cited Person/Contemnor do show cause why in consequence of his Contempt of Court acting in breach of paragraph 2 of the Judgement and Order of this Honourable Court dated 6<sup>th</sup> October 2017 by the Hon. Odunga J. (as he then was), and for having acted in a manner that interferes with the due administration of Justice in Nairobi Cmcc Civil Case No.E008 OF 2023 (William Wangui versus Risen Company Limited & Nairobi City Count, he should not be committed to civil jail for such period not exceeding six month or such period as shall be determined by this Honourable Court, and/ or fined in lieu thereof such sums of money as this Honourable Court shall determine, and/ or in lieu thereof his be sequestered under such terms as this Honourable Court shall determine, and/ or such expedient sentence be imposed on the Cited Person/Contemnor as this Honourable Court shall deem fit.
  8. In purging his Contempt, and only in lieu of sequestering the Cited Person/Contemnor's/Interested Party's assets, and monies held in his bank accounts, and/ or otherwise held, this Honourable Court be pleased to direct:
    - a. The said Boniface Nyamu immediately and forthwith ceases to interfere with the status quo ante of the Ex Parte Applicant, which is hereby understood to mean that the Ex Parte Applicant's PSVs do forthwith continue to operate at the point and PSV slot along Ronald Ngala Street hitherto used by the Ex Parte Applicant, in line with the Ex Parte Applicant's valid Road Service Licenses as explicated in paragraph 2 of the Judgement and Order of this Honourable Court dated 6<sup>th</sup> October 2017 by the Hon. Odunga J. (as he then was);
    - b. The said Boniface Nyamu (chief Officer Mobility, Nairobi City County, the Cited Person/Contemnor to forthwith, and not later than 7 days of the making of this Order issue a public apology to the Ex Parte Applicant herein, and the Judiciary of Kenya (or in such manner as the Court may direct).



9. The cited Boniface Nyamu (Chief Officer Mobility, Nairobi City County, the Cited Person/Contemnor, be personally present in Court on all the dates appointed for the hearing of this Application.
  10. This Honourable Court issues such further directions on the determination of this Application as may be expedient.
  11. The Interested Party and Boniface Nyamu (chief Officer Mobility, Nairobi City County, the Cited Person/Contemnor pay the Ex Parte Applicant's full costs of these proceedings in any event.
3. The Application was supported by a Supporting Affidavit dated 13<sup>th</sup> March, 2023, and a Supplementary Affidavit dated 18<sup>th</sup> April, 2023; both sworn by Isaac Richu Karanja, Director of the Ex-parte Applicant. To buttress their case, the Applicant also filed their written submissions dated 18<sup>th</sup> April, 2023 and Supplementary submissions.
  4. The Applicant contended that this court has jurisdiction to punish contemnor for contempt of court; that personal service of condemned judgement & order was effected on citer person; that the terms of paragraph 3 of the judgement & order of 6<sup>th</sup> October, 2017 issued in those proceedings were clear, unambiguous, and were binding on the Interested Parties and their directors including the cited person; that the actions/conduct of the contemnor are contumacious actions/conduct; that the contumacious conduct of cited person was, and remains deliberate; that committal proceedings against the contemnor Interested Party's cited Director are warranted; and that the Contempt Application is urgent.
  5. In particular, that the conduct of the cited person herein below demonstrates the contumacious actions of the contemnor:
    - a. his directing the Nairobi City Inspectorate Askaris to tow, illegally remove from Ronald Ngala Street, to block, invade, occupy, and use the Ex-Parte Applicant's PSV slot on Ronald Ngala Street to the exclusion of the Ex-Parte Applicant on all dates from February 21<sup>st</sup> 2023 to date; and
    - b. in his similarly unlawfully directing the 2<sup>nd</sup> Interested Party's PSV buses take up the ex Parte Applicant's vacated PSV pick up and drop off layby space allocated to the Ex Parte Applicant as part of the Ex Parte Applicant's licensed Road Service License route, from February 21<sup>st</sup> ,2023 to date.
    - c. The Contemnor in so deliberately acting, and breaching the economic rights of, and concerning the Ex Parte Applicant is thumbing his nose at this Honourable Court, in spite of his being fully alive to, and aware of the terms of paragraph 2 of the Judgement and Order of 6<sup>th</sup> October, 2017 herein issued.
    - d. In so acting, the Contemnor is carrying on in a manner wholly injurious to the good and just administration of Justice in the pending subject proceedings Nairobi Cmcc Civil Case No. E008 Of 2023 (William Wangui Versus Risen Company Limited & Nairobi City County) which in itself constitutes stand-alone Contempt of Court under Part 81.1 of The Civil Procedure (Amendment No. 3) Rules 2020.
    - e. The Court was emphatic to the Interested Parties' Counsels on record on 6<sup>th</sup> October 2017 that once parties submit themselves to the jurisdiction of the Court, they should permit the Court to decide the matter on the merits thereof and desist from resorting to actions or acts



of self-help that are clearly calculated and designed to interfere with the due Administration of Justice in these proceedings.

- f. The Contemnor was equally notified by the Ex Parte Applicant's counsel of the Contemnor's contumacious conduct on March 1st, 2023, and in particular, the Contemnor was notified of the grave consequences that the Contemnor faces of being incarcerated upon his being found guilty of Contempt of Court vide a Personal message to his WhatsApp Number 0720-xxxxxx.
  - g. Notice of the loss of liberty by the Contemnor Boniface Nyamu (Chief Officer Mobility, Nairobi City County has thus been unequivocally communicated to him.
6. In response to and opposing the Application, the Contemnor/Cited Person filed his Replying Affidavit dated 15<sup>th</sup> April, 2023 wherein he averred that as a preliminary objection, that he is being cited for contempt whereas there were no orders that were directed either to him personally, or his employer - the County Government of Nairobi - for enforcement or compliance since they were not parties to the main suit.
  7. Also, that the Applicant is litigating in two different court over the same subject matter, in Milimani CMCC EOO8/2023 which is active in court over the same subject matter and coming up on 26<sup>th</sup> April, 2023. Thus, that the applicant should make up its mind on where it wants to litigate before proceeding.
  8. Additionally, that the Applicant has intentionally refused to make all the other Respondents in the main suit, part of this Application or serve them because, it knows they have an appreciation of the facts of this motion and what he(Applicant) is seeking to enforce is practically impossible since it will have a direct negative bearing on them (other Respondents).
  9. And that the Applicant is misguided for citing him (Boniface Nyamu) for contempt of court because, in the judgment dated 6<sup>th</sup> October, 2017, it is the National Safety and Transport Authority that was prohibited from blocking the Ex-Parte Applicants access to its portal of the Applicant's vehicles operating from CBD, and had got nothing to do with the County Government or picking and dropping point in the Central Business District (CBD).
  10. The Cited Person conceded that was indeed true that the Applicant's Public Service Vehicles KCA 547T, and KCA 626U were towed; however, that were not towed at its designated picking and dropping point, but at the junction of Ronald Ngala and Tom Mboya streets to St. Peter Cleavers storage yard.
  11. That the Applicant's vehicles are supposed to operate from a bus stop along Ronald Ngala street, but not at a dangerous junction that joins Tom Mboya and Ronald Ngala streets; therefore, that it is not possible to deny the Applicant usage because, in the first place, the county can never permit a dangerous road junction to be used as a picking and dropping point for any SACCO operating public service vehicles.
  12. To the Cited Person the allegation that the Applicant is permitted by the National Transport & Safety Authority to operate along Ronald Ngala Street, is not only absurd but misleading as it is the responsibility of the County Government to allocate operators' pick and drop points and permit; while the responsibility of the National Transport and Safety Authority (NTSA) is to issue route licences.
  13. Further, that the Applicants Public Service Vehicles are supposed to operate from a bus stop along Ronald Ngala Street and not at the location where its vehicles were towed for causing obstructions to other road users which resulted in serious traffic snarl up in the Central Business District (CBD); thus that the Applicant's motor vehicles were towed as a result of huge public outcry from members



of public, other PSV operators, and members of the surrounding business community who could not move due to obstruction.

14. The Cited Person's position is that even when a Public Service Vehicles operator is issued with a permit by the County Government, they are required to operate subject to existing laws and regulations; and that on the material day, the Applicant's Public Service Vehicles buses were operating from a road junction completely blocking other road users and therefore prompting actions by Nairobi City County.
15. It was the Cited Person's assertions that the Applicant is insisting on operating on a dangerous location which has the potential danger of causing a lot of accidents, and if the county was to allow that to happen, then it would be clearly abrogating its duties. And that other permitted businesses operating at the location the Applicant want to occupy have raised objections due to noise pollution, smoke pollution, and insecure environment likely to be caused by the Applicant's uncontrolled operations around their shops.
16. That on 17<sup>th</sup> February, 2023 the County Government directed all PSVs to apply for new operating permit, in which the Applicant blatantly refused to apply in total disregard of the laws; therefore, as from last month, they are operating without a valid permit and has no permitted pick and drop permit.
17. The Cited Person maintained that the County is not interfering with the Applicant's business and operations, but is only playing its role of regulating and enforcing existing laws; and that the Applicant has interpreted authority to operate as equal to absolute freedom to do whatever they want which is not the case. Also, that the Applicant vehicles have once in a while operated defiantly on the junction in issue with a lot of impunity boasting of high political connections; that the Applicant's buses were impounded not because of picking and dropping passengers, but because of causing obstruction at the junction of Ronald Ngala and Tom Mboya which is not their designated operating area.
18. The Cited Person averred that the Chief Officer Mobility is supposed to give directions on the policies that are supposed to guide Public Service Vehicles; while the Chief Officer Security and Compliance is supposed to ensure compliance, and whereas the Chief Revenue Officer is supposed to release the motor vehicle upon payment of the requisite fees. Therefore, that the orders sought against the Chief Officer Mobility are not justified because the actions complained of are not within his work jurisdiction.
19. As per the Cited Person, in the present circumstances, the Honourable Court ought to safeguard the integrity of the judicial process from abuse by a non compliant Public Service Vehicles' operator, by dismissing this motion with costs.
20. In the second Application, the Applicant, by a Notice of Motion Application dated 10<sup>th</sup> May, 2023 - Under Section 1, 3, 3A, 3B & 34 of the *Civil Procedure Act* & Rule 39 of the High Court (Organization and Administration) (General) Rules – sought for Orders that:
  1. This application be certified as urgent and heard ex parte in the first instance, owing to the demonstrated urgency arising.
  2. Pending the hearing and determination of this Motion, the Cited Person Boniface Nyamu (Chief Officer Mobility, Nairobi City County), forthwith and effective immediately removes the "Loading Zone" markings and demarcations at the space utilized by the Applicant for its PSV business along Ronald Ngala Street, and restores the status quo ante as ordered in paragraph 2 of the Order of this Honourable Court (Chigiti J. (SC)) in these proceedings on 14<sup>th</sup> March 2023, to wit:



Pending the hearing and determination of this Notice of Motion, the said Boniface Nyamu immediately and forthwith ceases and desists to interfere with the status quo ante of the Ex Parte Applicant's PSV business along Ronald Ngala Street, which is hereby understood to mean that the Ex Parte Applicant's PSVs do forthwith continue to operate at the point and PSV slot along Ronald Ngala Street hitherto used by the Ex Parte Applicant, in line with the Ex Parte Applicant's valid Road Service Licenses as explicated in paragraph 2 of the Judgement and Order of this Honourable Court dated 6<sup>th</sup> October 2017 by the Hon. Odunga J. (as he then was).

3. Boniface Nyamu (Chief Officer Mobility, Nairobi City County), removes the "Loading Zone" demarcations along Ronald Ngala Street at the specific space and slots utilized by the Applicant for its PSV business along the said Ronald Ngala Street.
  4. The cited Person Boniface Nyamu (Chief Officer Mobility, Nairobi City County, forthwith and unconditionally releases the Applicant's PSV registration Number KCA 619U unlawfully detained at his behest at St. Peter's Storage Yard.
  5. That the Officer in Charge of Kamukunji Police Station (OCS) shall assist in the enforcement of, and ensure compliance of the orders given herein.
  6. This Honourable Court issues such further directions on the determination of this Application as may be expedient.
  7. Boniface Nyamu (Chief Officer Mobility, Nairobi City County, the Cited Person/Contemnor pay the Ex Parte Applicant's full costs of these proceedings in any event.
21. This Application was supported by Supporting Affidavit dated 10<sup>th</sup> May, 2023; and a Supplementary Affidavit dated 16<sup>th</sup> May, 2023. To buttress their case, the Applicant filed their Submissions dated 16<sup>th</sup> May, 2023, and a Supplementary Submission dated 5<sup>th</sup> July, 2023.
  22. In the main, the Applicants case was that while this matter was sub judice, pending delivery of the Ruling and adjudication on the Applicant's application dated 13<sup>th</sup> March, 2023; the Cited Person/Contemnor Boniface Nyamu, despite being fully aware of these pending proceedings and orders therein, did on 9<sup>th</sup> May, 2023 engage in a contemptuous act aimed at vitiating these proceedings altogether by unilaterally, and without any lawful basis demarcating as a "Loading Zone" the specific space along Ronald Ngala Street utilized by the Ex Parte Applicant for its PSV business since 2016.
  23. That the purpose was to exclude the Ex Parte Applicant from the said space, and thereby drive the Applicant out of PSV business, thus vitiate these proceedings. That the result of the Cited Persons actions is that the Applicant effectively can no longer operate its licensed PSVs along Ronald Ngala Street, which in itself is a breach of the Judgement of this Court.
  24. Further, that in aggravating his contempt and demonstrative of his disrespect of this Court's honour and dignity, the Cited Person once again directed the immediate towing away to St. Peter's Storage Yard of the Nairobi City County - under his watch the Applicant's PSV Bus KCA 619U - which not only has a valid Road Service License issued by the NTSA for it to ply along Ronald Ngala Street, but also this Court's Order in terms of Order number 2 authorizing the said PSV to continue plying along Ronald Ngala Street.
  25. Notably, The Applicant maintained that the space in issue is not at the intersection of Tom Mboya street and Ronald Ngala Street, but near the intersections of Muindi Mbingu Street and Ronald Ngala Street.



26. The Applicant contended that even after the Cited Person (Boniface Nyamu) was served with the Order of this Honourable Court on 11<sup>th</sup> May, 2023, to date (16<sup>th</sup> May, 2023) there has been non-compliance with the said orders by the Respondent/Contemnor, to the detriment of the Applicant's PSV operations.
27. Further, that the Cited Person being the in charge of the Transport/Mobility docket in Nairobi City County, has aggravated his Contempt of Court because, in spite of his having been served with the 2 Orders of the court, he refused, failed and/or neglected to remove the "Loading Zone" markings from Ronald Ngala Street - being the exact same spot the Applicant's PSVs are designated to be at in the course of their picking and dropping off passengers, just like similarly licensed PSVs along Ronald Ngala Street.
28. According to the Applicant, the Contemnor/Cited Person instead of purging his said Contempt of Court, on the contrary he (Boniface Nyamu): (a) has aggravated the same by directing Nairobi City Government Inspectorate vehicles to park at, and occupy the specific spot along Ronald Ngala Street (to date); (b) on top of his unlawfully directing the said spot to be marked as a "Loading Zone" when no one applied for such "Loading Zone" merely to defeat this Court's Orders.
29. The Cited Person did not file their response nor submissions to the Notice of Motion Application dated 10<sup>th</sup> May, 2023.

### **Analysis & Determination**

30. I have carefully considered both Applications, response, annexures, and the submissions there to. I have also paid due regard to the cited authorities by counsel. I find the following issue for consideration arising: Whether the Cited Person is guilty of disobeying the orders of the court - emanating from the judgment made by Odunga J (as he then was) on 6<sup>th</sup> October, 2017 and the Order of Chigiti J made in a ruling on 14<sup>th</sup> March, 2023 - thus rendering him in contempt of court?
31. The obligation of every person to obey court orders was summed up in the case of Hadkinson –vs - Hadkinson (1952) 2 ALL ER 56 as follows;

“It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it unless and until it was discharged and disobedience of such an order would as a general rule result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt. ”

32. The rule of law would be in great danger if the courts failed to ensure compliance with court orders. Without enforcement through punishing for contempt of court, the orders of court would remain mere rhetoric not worth the paper they are written on. To my mind, a judge should enforce his orders through punitive measures to those who disobey the orders.
33. I am in agreement with the finding of the court in Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County Ex Parte Stanley Muturi where it was held as follows;

“Court orders are not meant for cosmetic purposes. They are serious decisions that are meant to be and ought to be complied with strictly. As was held in Teacher's Service Commission vs. Kenya National Union of Teachers & 2 Others Petition No. 23 of 2013:

“The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity



of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt of court proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law.

Defiance is not an option."

34. The ingredients to be proved in a contempt application are well settled. The court in *Felicity Mutete Mutula v. Nairobi County Government* [2021] eKLR laid down the requirements thus;

"From the foregoing Rules, I would say that some of the salient features in an application for contempt of court are as follows:

1. Disobedience of a court order or judgment is a foundation for contempt of court proceedings against the contemnor.
2. Where the contemnor is a company or other corporation, the committal order may be made against any director or other officer of that company.
3. The judgment or order in question must be served on the person required to do or not to do the act in question unless the court expressly dispense with personal service.
4. Where the person required to do or not to do an act is a company or other corporation, a copy of the judgment or order must also be served on the alleged contemnor.
5. Judgments and orders must be served personally.
6. The court may, however, dispense with personal service if it is satisfied that the contemnor had notice of the judgment or order;
  - 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.
7. The court may also dispense with personal service if it thinks it is just to do so or may make an order in respect of service by an alternative method or an alternative place.
8. There shall be permanently displayed on the front copy of the judgment or order served a warning to the person required to do or not to do the act in question that disobedience to the order would be contempt of court punishable by imprisonment, a fine or sequestration of assets. Without this display the judgment or order may not be enforced unless it is an undertaking contained in a judgment or order.



9. The contempt of court application shall be made by an application notice in the same proceedings in which the judgment or order was made.
  10. The application notice must set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and must also be supported by one or more affidavits containing all the evidence relied upon.
  11. The application notice and the evidence in support must be served personally on the respondent although the court may dispense with service under paragraph (10) if it considers it just to do so: or may make an order in respect of service by an alternative method or at an alternative place. "
35. These ingredients are summed up in the book *Contempt in Modern New Zealand* as follows;
- “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. Turning to the instant case before this court, the Applicant has demonstrated the existence of a judgment by Odunga J (as he then was) rendered on 6<sup>th</sup> October, 2017 and a ruling by Chigiti J delivered on 14<sup>th</sup> March, 2023. The ruling by Chigiti J delivered on 14<sup>th</sup> March, 2023 inter alia granted the prayer, that: “3. Pending the hearing and determination of this Notice of Motion, the said Boniface Nyamu immediately and forthwith ceases and desists to interfere with the status quo ante of the Ex Parte Applicant’s PSV business along Ronald Ngala Street, which is hereby understood to mean that the Ex Parte Applicant’s PSVs do forthwith continue to operate at the point and ply slot along Ronald Ngala Street hitherto used by the Ex Parte Applicant, in line with the Ex Parte Applicant’s valid Road Service Licenses as explicated in paragraph 2 of the Judgement and Order of this Honourable Court dated 6<sup>th</sup> October, 2017 by the Hon. Odunga j. (as he then was).”
37. The Cited Person, despite having full knowledge of the said judgment and ruling, unilaterally, and without any demonstrable lawful basis demarcated as a “Loading Zone” the specific space along Ronald Ngala Street utilized by the Ex Parte Applicant for its PSV business since 2016. Resultantly, the ex parte Applicant is denied operating its licensed PSVs along Ronald Ngala Street, which in itself is a further breach of the judgement and ruling of this Court.
38. To my mind, a purposeful interpretation of Article 159 of *the Constitution* would frown upon a situation like obtains in this matter - where a court of law having expressed itself on a matter is taken through a re-opening of the case over questions that can be summarily answered without convoluted arguments that only serve to delay the conclusion of the matter and like in this case, deny a successful litigant enjoyment of his fruits of judgment. What would be utility of the principle of access to justice



under Article 48 of *the Constitution*, where in the end a successful litigant ends up with a pyrrhic victory; one may inquire?

39. I am of the take that in the spirit of Article 159 of *the Constitution*, the court ought in appropriate circumstances to side step a purely adversarial system of dispute resolution, and adopt an inquisitorial one in matters akin to, and at the stage which this matter is. In the present suit, there is no dispute about the judgment and ruling.
40. The cited person instead of complying with the judgment and the ruling, (allowing the ex parte Applicant to operate without illegal interference) has attempted to misdirect this court by re-litigating and metamorphosing the issues from compliance to (zoning) regulation, in defiance of valid court orders.
41. The Contemnor is aware of the Contempt Application and orders of the court as he was in court severally after the orders and directions to file replying Affidavits and submissions were issued. He further admits personal service at Paragraph 3 of his Affidavit.
42. The Contemnor admits at Paragraph 11 and 27 of his Affidavit that he was involved with the towing of The Applicants vehicles but alleges that this was done for a different reason. The Contemnor returns some of the impounded vehicles during the pendency of the Applications by consent in court.
43. He does not deny that the Applicants counsel served him with the orders.
44. In Paragraph 1 and 28 of his replying Affidavit he describes as the chief mobility in Nairobi City County Government which means that the buck stops with him as a bare minimum. No other officer is better placed than the contemnor to deal with the matters forming the subject of the contempt proceedings before this court.
45. At 24 of his replying Affidavit the contemnor argues that he was simply regulating and enforcing existing laws when he acted the way he did. He did not make any reference to the provisions of the laws that he was referring to. Existing court orders are in force and the Contemnor cannot be relying on what he calls existing laws to set aside a court order. His business is simply to obey the orders and nothing less. His arguments are a red herring that is tailored and or intended to mislead the court.
46. The High Court (Organization and Administration) (General) Rules, 2016 under Part VIII – Procedure Relating to Contempt of Court, provides that:

“ 39. Object of Part

- (1) The object of this Part is to—
  - (a) uphold the dignity and authority of the Court;
  - (b) ensure compliance with the directions of the Court;
  - (c) ensure the observance and respect of due process of law;
  - (d) preserve an effective and impartial system of justice; and
  - (e) maintain public confidence in the administration of justice as administered by court.



- (2) The Court has power to—
  - (a) punish a person for contempt on the face of the Court; and
  - (b) uphold the dignity and authority of subordinate courts.
- (3) The Court has the same jurisdiction, power and authority in respect of contempt of subordinate courts as it has in contempt before it.
- (4) In any other case, other than contempt on the face of a subordinate court, the Court shall, in the exercise of its supervisory powers and on application by any person to the Court, punish contempt of court.”

47. Therefore, it is clear that the Respondent has breached the orders - in the judgment and ruling issued by court - in absence of any plausible explanation being given. The Cited Person has knowledge of the orders. The orders are clear, unambiguous, and binding on him as the accounting officer. He has breached the orders severally, with no plausible explanation.

48. The prayer that the Officer in Charge of Kamukunji Police Station (OCS) shall assist in the enforcement of, and ensure compliance of the orders given herein is premature. The Contemnor has not indicated that he shall not obey the order directing him to remove the "Loading Zone" markings and demarcations at the space utilized by the Applicant for its PSV business along Ronald Ngala Street. The court shall not issue orders pegged on conjecture or speculation.

49. In the premises, the Contempt of Court Application Notice dated 13<sup>th</sup> March, 2023 and Notice of Motion Application dated 10<sup>th</sup> May, 2023 are allowed in the following terms;

1. Boniface Nyamu is found to be in contempt of court for disobedience of the court orders emanating from judgment dated 6<sup>th</sup> October, 2017 and the ruling dated 14<sup>th</sup> March, 2023.
2. Boniface Nyamu hereby ordered to forthwith and effective immediately remove the "Loading Zone" markings and demarcations at the space utilized by the Applicant for its PSV business along Ronald Ngala Street, restoring the status quo ante as ordered in paragraph 2 of the Order of this Honourable Court (Chigiti J. (SC)) in these proceedings on 14<sup>th</sup> March 2023.
3. Boniface Nyamu forthwith and unconditionally releases the aforementioned motor vehicles unlawfully detained that might still be in his official custody.
4. Boniface Nyamu shall to appear in open court at 10 AM in person on 25.9.23 for mitigation and sentencing.
5. Costs to the Applicant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF JULY 2023**

.....

**J. CHIGITI (SC)**

**JUDGE**

