



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

PETITION NO. E002 OF 2021

HON. JAMES WAHOME NDEGWA.....PETITIONER/APPLICANT

VERSUS

HON. ZACHARY MWANGI NJERU.....1ST RESPONDENT

HON. EDINALD WAMBUGU KINGORI.....2ND RESPONDENT

THE COUNTY ASSEMBLY OF NYANDARUA.....3RD RESPONDENT

THE GOVERNMENT PRINTER...GOVERNMENT PRESS.....4TH RESPONDENT

THE INSPECTOR GENERAL OF POLICE5TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL6TH RESPONDENT

CONSOLIDATED WITH CONSTITUTIONAL PETITION NO. E01 OF 2021

HON. ZACHARY MWANGI NJERUPETITIONER

VERSUS

HON. JAMES NDEGWA WAHOME.....1ST RESPONDENT

HON. MR MUKIRI MUCHIRI.....2ND RESPONDENT

AND

THE COUNTY ASSEMBLY OF NYANDARUA.....1ST INTERESTED PARTY

THE COUNTY GOVERNMENT OF NYANDARUA....2ND INTERESTED PARTY

RULING

1. The Notice of Motion application by the petitioner /applicant dated **13th October 2021** prays for the following reliefs;

a) That this honourable court be pleased to issue an order authorizing the county assembly of Nyandarua to use necessary force to break into and or remove and change locks to the door of the county assembly precincts and or any part of it thereof and or carry out any other necessary action to ensure that Nyandarua county assembly precincts are fully reopened and operational pending the hearing and determination of the petition.

b) That warrants of arrest do issue as against the 1st, 2nd, and 3rd contemnors ZACHARY MWANGI NJERU, EDINALD WAMBUGU KINGORI and ELIZABETH WANJIKU MUTHUI and they be committed to civil jail for a period of two months for failure to comply with the orders and conditions issued by this court on 4th October 2021 and the said warrants be executed by the Inspector General of Police.

c) That the Inspector General of Police be ordered to recover and unconditionally hand over the Mace for the Nyandarua

county assembly and the speakers official motor vehicle registration number 18CG 093 A Toyota Prado VXL to the petitioner herein Hon. James Wahome Ndegwa and or the acting clerk of the assembly Mr. Gideon Mukiri Muchiri pending the hearing and determination of the petition.

d) This honourable court be pleased to issue summons to the 1st, 2nd and third contemnors ZACHARY MWANGI NJERU, EDINALD WAMBUGU KINGORI and ELIZABETH WANJIKU MUTHUI respectively directing them to appear in court in person and to show cause why they should not be held in contempt for failure to comply with the orders of this court issued on the 4th October 2021 and dated 6th October 2021.

e) That the 1st, 2nd and 3rd contemnors being ZACHARY MWANGI NJERU, EDINALD WAMBUGU KINGORI and ELIZABETH WANJIKU MUTHUI be cited by this court for being in contempt of the orders issued on 4th October 2021 and they be punished by imprisonment for six months and or any other such period that the court may deem fit.

2. The application is supported by the sworn affidavit of James Wahome Ndegwa sworn on the 13th October 2021 together with the annexures thereto.

3. The averments therein are easy to be appreciated by this court. The court on 4th October 2021 in its ruling found the 1st, 2nd and 3rd contemnors in contempt of the court orders dated 22nd July 2021 and it directed them to hand over the assembly Mace as well as the speaker's car within 48 hours.

4. They were additionally ordered to pay a sum of Kshs. 200,000 as a fine within seven days or in default to serve two months' imprisonment. The 4th and 5th contemnors were directed to ensure compliance.

5. The applicant averred that despite the said directives the contemnors have failed to comply with the orders by ensuring that he does not access the assembly by hiring goons who locked themselves in the assembly. That the rest of the assembly members were equally prevented from accessing the assembly. This incident according to the applicant took place on the 5th October 2021 as well as on the 12th October 2021.

6. The applicant further states that the county assembly Service Board passed a resolution to change the assembly locks but the 4th and 5th contemnors have ensured that they are not implemented.

7. In the premises, the applicant finds that the contemnors blatant violation of the courts orders including those of 29th April 2021 and 22nd July 2021 is a clear indication that they have ridiculed the due process of the law and they ought to be sanctioned through adequate punishment.

8. In his undated replying affidavit, the 1st contemnor on his own behalf and on behalf of the 2nd to 5th contemnors has opposed the application arguing that the county assembly was reopened and the applicant has been able to access his premises. That the issue has taken a political dimension since the petitioner has been unable to muster a quorum in the house.

9. That the court granted them 30 days stay and there was no need to have warrants of arrest issued against them. As regards the Mace he said that the same was kept by the Sergeant at Arms whenever the assembly was not sitting as provided under **Standing Orders no. 3(2) (c) of the Nyandarua County assembly standing orders.**

10. The speaker's motor vehicle is kept at the assembly and thus the contemnors are not in possession of it. In any case he was free to collect it.

11. He further averred that the speaker has been pushing to pay himself a sum of **Kshs. 8,000,000** which was a subject of impeachment and that he has shown interest in running for the governorship of Nyandarua County in the 2022 general elections.

12. In essence he swore that the applicant was co conflicted that the assembly members were boycotting sessions and that he could not in any way raise any majority or the necessary quorum.

13. For the above position, the county assembly has thus filed an application seeking that the same be subjected to Intergovernmental Relations Technical Committee. He prayed that the application be dismissed.

14. In a rejoinder, the applicant swore a supplementary affidavit dated 20th October 2021 in which he attacked the averments contained in the 1st contemnor replying affidavit by stating that he should no longer call himself acting speaker as the court through various orders has pronounced itself and declared who was the main speaker.

15. He denied that the contemnors have complied with the court orders of 4th October 2021 since on 5th October 2021 despite the presence of senior police officers the contemnors refused to allow access to the assembly. He has attached copies of photographs to that effect.

16. That the issue was not political as he was in a position to preside over the assembly as guided by the rules regarding quorums and in any case the members of the county assembly do not come to the assembly to serve the speaker but the people they represent.

17. That the issue of mediation raised by the 1st contemnor was a side show and mischievous and a way of delaying and obstructing justice.

He went on to state that the 48 hours granted to the contemnors has since lapsed and they have not complied hence they should be arrested and committed to civil jail.

18. He said that he only needed the mace which has been in custody of the contemnors despite being ordered by the court through various orders to release to the applicant.

19. As regards the motor vehicle the applicant replied that the contemnors ensured that the same was released to unknown person by Toyota Kenya Thika branch on 1st October 2021 so as to defeat the orders of this court dated 4th October 2021. He attached various exhibits to that effect.

20. In respect to allegations of impropriety he deponed that he has never been investigated by the anti-corruption agencies for any misappropriation of funds. He went on to state that the issue of gurning for gubernatorial seat in 2022 was his constitutional right.

21. He urged the court to allow the application and order that the mace and the car be surrendered by the contemnors and that they should open the assembly or allow him to have it forcefully opened.

22. The 2nd respondent Gideon Mukiri Muchiri through his replying affidavit dated 2nd November 2021 sided with the applicant and argued that the contemnors' history speaks for itself. That the contemnors have failed to abide by the orders of this court dated 4th October 2021 by refusing to pay the sum ordered of **Kshs. 200,000** each, deliver the mace and the motor vehicle.

23. That they should not be granted any audience till they comply with the orders and or purge their contempt. It is not true, he averred, that the mace and the vehicle are not in their custody and such earlier allegations were dismissed by the court.

24. To uphold the dignity of the court he prayed that the contemnors ought to be punished by allowing the applicants application. In any case the orders not complied with have never been set aside and or stayed and or reviewed and they are therefore active and they ought to comply.

25. When the matter came up for hearing the court directed the parties to file their written submissions and the attendant authorities if any.

APPLICANTS WRITTEN SUBMISSIONS.

26. The applicant submitted that there was no evidence exhibited that the 2-5th contemnors authorized the 1st contemnor to swear the replying affidavit on their behalf hence it should be concluded that they were not opposed to the application.

27. He further submitted that to date the contemnors are yet to pay the sum of **Kshs200,000** or in any way comply with the orders of 4th October 2021. He submitted that all that the contemnors have done is to disobey all the orders issued by this court and therefore there was every reason for this court to allow the application as prayed.

3RD RESPONDENT'S WRITTEN SUBMISSIONS

28. The 3rd respondent submitted that the substantive issue to be considered is whether the contemnors ought to be committed to civil jail for disobedience of the valid orders of this court. He gave chronology of events and how they have violated the orders by the court including failing to deliver the mace and the speakers official motor vehicle. That they have done all that is necessary to ensure that the assembly premises are not accessed by the applicant and other employees of the assembly.

29. Their action has crippled the activities of the assembly and thus service delivery has completely failed. The respondent cited several authorities in support of the submissions and his line of argument for instance the case of **FRED MATIANGI & ANOTHER V. MIGUNA MIGUNA & 4 OTHERS (2018) eKLR.**

30. The sum total of the respondent's submissions is that the court orders must be diligently obeyed and any failure should attract sanctions by the court so as to deter any would be contemnor like the case herein.

1ST TO 5TH CONTEMNORS SUBMISSIONS.

31. The above contemnors have argued that they have not breached the orders of 4th October 2021 as the applicant has already accessed the county assembly and that the only problem was purely political as he has been unable to master majority of the members of the county assembly. In other words, the issue bedeviling him was purely political in nature.

32. For the above political reason, the contemnors have filed an application seeking that this matter be referred to Intergovernmental Relations Technical Committee for resolution amicably.

33. They also submitted that for the fact that they have filed an appeal against the said orders, the contemnors cannot face civil jail for in doing so the appeal shall be rendered nugatory. In essence they would have been denied a chance to be heard. They relied on the case of **LSK V.A G & ANOTHER (2019) eKLR.**

ANALYSIS AND DETERMINATION.

34. The court has perused the application, the supporting affidavits, the submissions as well as the authorities cited by the parties herein. The only issue for determination is whether the 1st to 3rd contemnors have breached the orders of this court dated 4th October 2021 and if so whether the application herein ought to be allowed.
35. What is uncommon herein is that the 1st to 3rd contemnors are well acquainted with all the orders of this court which culminated into the last orders of 4th October 2021. There was no evidence at all that they were not understood and or they were not served.
36. The applicant contented that all the efforts to have entry into the assembly were thwarted by the said contemnors through hired goons who locked themselves in the assembly and as a result they were not able to gain entry. He even attached sets of photographs to demonstrate the same.
37. The contemnors on the other hand have denied this and have submitted that the assembly precincts were opened and that the applicant was basically interested in gaining a political mileage by bringing this application and engaging them in circuitous litigation. They stated in regard to the mace and the motor vehicle that it was not in their custody. In fact, he said that the mace was in the hands of the Sergeant at Arms as per the standing orders of the county assembly.
38. In regard to the vehicle, they did not deny that the same was released at Toyota Kenya Nyeri branch to some unknown persons. The evidence exhibited by the applicant was uncontroverted.
39. The line taken by the contemnors was that this issue had taken a political stand and that was the reason that they had sought to have it be dealt by the Intergovernmental Relations Technical Committee through their mediation process.
40. The court is well versed with this matter. The orders issued on 4th October 2021 were very clear, straight forward and easy to understand. The court found the contemnors in contempt and directed that they should purge their contempt by paying a sum of **Kshs, 200,000** each within 7 days and in default to serve 2 months' imprisonment.
41. Further that within 48 hours they were to hand over the mace and the vehicle and that the 4th and 5th contemnors should provide security.
42. From the evidence on record, it appears that none of the above have been complied with. The reasons the court directed the orders against the 1st, 2nd and third contemnors was because all along they had the authority over the assembly as opposed to the applicant.
43. The court prior to the orders of 4th October 2021 had made it clear that in the even that they don't comply precipitate sanctions would follow. There is no evidence that the county assembly was opened as submitted by the contemnors. The photos exhibited by the applicant were not controverted.
44. More importantly the mace and the speaker's official vehicle were not surrendered as directed by the court. The issue of the Sergeant at Arms being in control of the mace is in my view a lame one. Although he may be as per the standing orders, the same is and always under the directions of the speaker or for this matter the acting speaker. At any rate the said Sergeant at Arms has not been invited by the contemnors to support this proposition.
45. At the same time the vehicle must be again under the control of the three contemnors. There is nothing to suggest that it was handed over to the applicant in whatever state. The record of this court shows that earlier there was an allegation that the same was in a garage. The said garage from the applicant's evidence released the vehicle. Surely they did not release to any other person except the contemnors or their representative.
46. The issue of referring this matter to the Intergovernmental Relations Committee is neither here nor there. Nothing stops them from referring it even in the face of the orders of this court for there is no injunctive orders in that respect. All that this court expects is for its orders to be obeyed.
47. The issue of this matter taking a political turn is not for this court to determine as it has not been invited to do so. Of course parties have their political inclinations but the valid orders of the court must be obeyed by all and sundry unless they are stayed, set aside or quashed. In this case there is no such evidence of obedience.
48. The matter pending before the Court of Appeal respectfully does not preclude the contemnors from obeying the existing live orders. For whatever they are worth they ought to comply until such a time that they are set aside or contrary orders are issued.
49. In any case the stay granted to the contemnors for 30 days was conditional and clearly they have not complied.
50. As to whether the applicant has numbers in the assembly or not is not for this court to determine but for the parties themselves. There are rules governing such and other political maneuvering which this court is not interested in. The same goes for the issues relating to the applicant's culpability before other bodies and his political future.
51. Unless parties obey the orders issued by the court, anarchy will be allowed to reign in as it appears to be in this matter. The orders whether it be deemed illegal or not ought to be respected and obeyed until the contrary is done.
52. In this case the court finds solace in the Court of Appeal case of **FRED MATIANGI V. MIGUNA MIGUNA & 4 OTHERS (2018) eKLR** where it stated inter alia that;

“Before we go into a determination of the twin principles for grant of stay, we need to make it clear that as a Court we do not take lightly allegations of contempt of court.

No court should.

When courts issue orders, they do so not as suggestions or pleas to the persons at whom they are directed. Court orders issue ex cathedra, are compulsive, peremptory and expressly binding. It is not for any party; be he high or low, weak or mighty and quite regardless of his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance. This Court, as must all courts, will deal firmly and decisively with any party who deigns to disobey court orders and will do so not only to preserve its own authority and dignity but the more to ensure and demonstrate that the constitutional edicts of equality under the law, and the upholding of the rule of law are not mere platitudes but present realities.”

53. The contemnors in my view have not demonstrated any iota of mitigation or at all. There is nothing in their averments to show that they have at least bothered to comply save to casually argue that the matter was taking a **political turn** and it be referred to arbitration. Of course everything in this matter is political in nature. But the politics should not blur the law.

54. In essence the politics of the day should not cause disobedience of the courts directives. The offices all the parties herein are holding are merely acting as trustees of the electorates of Nyandarua County and the country as a whole. For decorum to prevail in and out of the assembly, there ought to be rule of law whether the protagonist agree with each other or not.

55. This court in the premises find that the three contemnors have breached the orders and directives of this court dated **4th October 2021** and this court cannot countenance. Earlier the court gave clear warnings through its pronouncements that any serious disobedience shall be met with sufficient sanctions.

56. For the above reasons I think the court has no other options but to allow the application as hereunder.

a) An order is hereby issued to the county assembly of Nyandarua to use all the necessary force to break into and or remove and change locks to the doors of the county assembly and its precincts or any other part so as to ensure that the assembly and its precincts are fully opened and operational pending determination of the petition herein.

b) The Inspector General of Police and or his nominee to ensure order (a) above is effected successfully.

c) The eventual costs of the above (a) exercise shall be met by the 1st, 2nd and 3rd contemnors namely ZACHARY MWANGI NJERU, EDINALD WAMBUGU KINGORI and ELIZABETH WANJIKU MUTHUI personally.

d) The Inspector General of Police and or his appointee should immediately recover and hand over the Mace of Nyandarua county assembly and the speakers official motor vehicle registration number 18CG 093C Toyota Prado –VXL and hand over to the acting clerk Gideon Mukiri Muchiri unconditionally.

e) The 1st, 2nd and 3rd contemnors, namely ZACHARY MWANGI NJERU, EDINALD WAMBUGU KINGORI AND ELIZABETH WANJIKU MUTHUI are hereby found in contempt of the orders delivered on 4th October 2021 and are hereby committed to civil jail for a period of 60 days from the date of their arrest and imprisonment.

f) The Inspector General of Police and or his nominee should effect the above order (e) immediately.

g) The applicant shall have the costs of this application to be met by the 1st, 2nd and 3rd contemnors personally.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 6TH DAY OF DECEMBER 2021.

H K CHEMITEI.

JUDGE