



**Njuguna v Kenya Literature Bureau & another; Public Service Commission  
(Interested Party) (Employment and Labour Relations Petition  
E099 of 2024) [2025] KEELRC 2915 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2915 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E099 OF 2024  
HS WASILWA, J  
OCTOBER 22, 2025**

**BETWEEN**

**CATHERINE WANJIRU NJUGUNA ..... PETITIONER**

**AND**

**KENYA LITERATURE BUREAU ..... 1<sup>ST</sup> RESPONDENT**

**VICTOR LOMARIA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**PUBLIC SERVICE COMMISSION ..... INTERESTED PARTY**

**RULING**

1. The Petitioner/Applicant filed a Notice of Motion dated 22<sup>nd</sup> May 2025 seeking orders that: -
  - a. Spent
  - b. this Honourable Court be pleased to grant leave to the Applicant to institute contempt proceedings against the 1<sup>st</sup> Respondent's Ag. Managing Director; Human Resource Manager and Chairperson, Board of Directors hereof.
  - c. this Honourable Court be pleased to forthwith summon 1<sup>st</sup> Respondent's, 1<sup>st</sup> Respondent's Ag. Managing Director; Human Resource Manager and Chairperson, Board of Directors to show cause why he should not be cited and punished for contempt of Court for disobeying the orders/decrees granted by judgment and decree delivered by Hon. Lady Justice Wasilwa on 28<sup>th</sup> November, 2024 unless they purge contempt by complying with the said orders hereof.



- d. this Honourable Court be pleased to cite and punish the 1<sup>st</sup> Respondent's, 1<sup>st</sup> Respondent's Ag. Managing Director; Human Resource Manager and Chairperson, Board of Directors for contempt of Court hereof.
- e. this Honourable Court be pleased to give directions hereof and further orders that it may deem fit to grant hereof.
- f. the Costs of this Application be paid personally by the 1<sup>st</sup> Respondent in any event.

### **Petitioner/Applicant's Case**

2. The Applicant avers that vide a letter dated 29<sup>th</sup> April, 2025 from her advocates to the 1<sup>st</sup> Respondent's advocates, Munyao, Muthamia & Kashindi Advocates; she sought to know the progress made by the 1<sup>st</sup> Respondent in complying with this court's judgment delivered on 28<sup>th</sup> November, 2024 and the decree issued hereof, and in particular, in respect of Human Resource Management (HR) Instruments and carrying out competitive and seamless recruitment of its new Managing Director and other staff, strictly after compliance with the law and *the Constitution*.
3. The Applicant avers that the Respondents' development of the instruments was against the *Public Service Commission Act* and related circulars thus the courts impugned the instruments. Therefore, the 1<sup>st</sup> Respondent should have developed new HR instruments and their purported public participation on the impugned instruments is acting against the decision of the court. Additionally, the 1<sup>st</sup> Respondent has not carried out seamless recruitment of the Managing Director and other senior staff in blatant breach of the said court orders.
4. It is the Applicant's case that the 1<sup>st</sup> Respondent has not carried out public participation on the Human Resource Management Instruments as per the Public Service Commission (PSC) Guidelines for Public Participation in Policy Formulation dated 21<sup>st</sup> January 2015. Instead, it has circulated the quashed Human Resource Management Instruments, 2024 to its members of staff as the officially approved by Public Service Commission.
5. The Applicant further avers that the 1<sup>st</sup> Respondent has not tendered to the PSC any new HR Instruments for approval or necessary action in accordance with the law and *the Constitution* contrary to the court orders hereof.
6. Further, the 1<sup>st</sup> Respondent has not revoked the Memo issued on 28<sup>th</sup> June 2024 operationalizing the implementation of KLB Human Resource Management Instruments 2024, which appointed, deployed and transferred staff to various positions. Neither has it revoked the impugned letters which appointed, deployed and transferred staff to various positions in the month of July and August 2024 nor has it issued letters to the affected staff to revert to the initial deployments as per KLB Human Resource Management Instruments, 2018.
7. The Applicant avers that the 1<sup>st</sup> Respondent has not acted on the impugned Human Resource Management Instruments 2024, as ordered by the court in respect of the organization structure, grading structure and staff establishment established, human resource management policies and procedure manuals) as evidenced by the existence of directorates, divisions and downgraded departments christened sections. For instance, the Division of Planning, Risk and Quality Management still exists with two senior accountants (Assistant Finance Managers) reporting to the Quality Assurance Manager).
8. The Applicant avers that the 1<sup>st</sup> Respondent has not issued official letters revoking or invalidating the realignment of reporting relationships and acting appointments of staff members, at middle



management, unionizable employees and temporary/short term contract level, as a result of the implementation of the quashed HR Instruments 2024.

9. It is the Applicant's case that this court is clothed with jurisdiction to punish for contempt of court and to protect the substratum of this matter, public, staff and stakeholders' interest, the rule of law and *the Constitution*.
10. The Applicant avers that doctrine of the rule of law, statutory provisions and *the constitution* obligates the 1<sup>st</sup> Respondent to comply with the court orders/decrees and implement the said orders hereof. The courts should ensure the safeguard the rule of law and to do so, its orders must be complied with by all the parties in matters before Courts.

### **1<sup>st</sup> Respondents' Case**

11. In response to the Application, the 1<sup>st</sup> Respondent filed a replying affidavit dated 5<sup>th</sup> June 2025 sworn by the 1<sup>st</sup> Respondent's Acting Managing Director, Paul Kibet.
12. It is the 1<sup>st</sup> Respondent's case that the contempt application is an abuse of the process of this Honourable Court as it was filed prematurely and in bad faith with the sole aim of unduly and unfairly vexing and intimidating the Respondent through the judicial process which should not be countenanced.
13. The 1<sup>st</sup> Respondent avers that the Petitioner is not competent to swear the Supporting Affidavit which contains averments on its internal operations as the Petitioner is not its employee. Therefore, she has no first-hand knowledge of its operations and/or activities and cannot accurately make sworn statements on this. Consequently, the factual matters contained in the Supporting Affidavit on the operations and/or activities of the 1<sup>st</sup> Respondent are hearsay evidence and should be disregarded by this court.
14. The 1<sup>st</sup> Respondent avers that the nature of this court's orders given in the Judgement delivered on 28<sup>th</sup> November 2024 are such that they require certain processes to take place before the orders can be given effect, therefore, compliance is progressive and cannot be achieved instantaneously as misguidedly and misleadingly suggested in the Contempt Application. The 1<sup>st</sup> Respondent has already initiated these processes and is in the final stages of the progressive compliance with the orders in the Judgment.
15. The 1<sup>st</sup> Respondent admits to have received the Petitioner's advocate's letter dated 29<sup>th</sup> April 2025 and avers that it responded vide a letter dated 7<sup>th</sup> May 2025 explaining that it had not disobeyed and/or defied the orders of the court as set out in the Judgment and that it had initiated the progressive process required for full compliance with the Judgment. The Petitioner unfortunately chose to completely ignore this response and did not annex it in her application.
16. The 1<sup>st</sup> Respondent avers that the Petitioner has misunderstood and misinterpreted the orders contained in the Judgment as there is no order that requires the 1<sup>st</sup> Respondent to develop fresh instruments. Order No.2 of the Judgment states that: "An injunction to prevent the Respondents from implementing new Human Resources instruments until the same are subjected to public participation, consultation and views of staff, prior to implementation and approval by the Interested Party hereof."
17. It is the 1<sup>st</sup> Respondent's case that Order No.2 of the Judgment does not require the it to develop new HR Instruments but rather to subject the instruments that were the subject of the Petition to public participation before they are implemented. In accordance with the Judgment, the 1<sup>st</sup> Respondent has conducted widespread public participation on the said HR Instruments. There is therefore no basis



for the allegation that the 1<sup>st</sup> Respondent was required to develop new instruments as set out in the Contempt Application.

18. The 1<sup>st</sup> Respondent avers that the Judgment did not give a timeline for the competitive recruitment of the new Managing Director and senior management staff. Such recruitment is subject to various factors including availability of funds. It reiterated that it has not recruited any senior management staff since the Judgment was delivered. The Acting Managing Director was appointed effective 21<sup>st</sup> March 2025 by the Cabinet Secretary for the Ministry of Education in exercise of the powers conferred by Section 8 of the Kenya Literature Act and is allowed by Section 34 (1) of the Public Service Act.
19. The 1<sup>st</sup> Respondent avers that it has conducted rigorous public participation in a deliberate attempt to comply with Order No.2 of the Judgment. Firstly, it lodged an application dated 4<sup>th</sup> December 2024 in the Court of Appeal seeking inter alia, stay of execution and stay of the proceedings herein and a ruling was delivered on 11<sup>th</sup> April 2025 dismissing the said application. Consequently, on 14<sup>th</sup> April 2025, it held a staff meeting and informed them it would take the necessary steps to comply with the Judgment including by carrying out public participation in accordance with Order No.2.
20. Subsequently, on 30<sup>th</sup> April 2025, the 1<sup>st</sup> Respondent's Board met and approved the Road Map for Public Participation and Validation of New HR Instruments. It contains detailed steps for public participation of concerned staff and stakeholders including collection of views and feedback, consolidation of views, review of feedback by the Board and submission of the feedback to PSC for approval. Thereafter, the Acting Managing Director instructed the HR Manager to initiate the implementation of the Road Map.
21. The 1<sup>st</sup> Respondent avers that it held follow-up meetings with all employees on 5<sup>th</sup> May 2025 first with senior management staff and with all other staff which was attended by 194 staff members both in-person and virtually. There were also 2 representatives from KUPRIPUPA which represents its unionisable employees as shown in the attendance sheet. At the meeting, the employees were informed of the 1<sup>st</sup> Respondent's intention to comply with the orders of the court as set out in the Judgment by carrying out proper public participation before implementing the new HR Instruments.
22. Vide a Memo dated 6<sup>th</sup> May 2025 to all staff, the 1<sup>st</sup> Respondent indicated that all staff would be required to familiarize themselves with the new HR Instruments and give their views. The Memo also attached the Road Map for ease of reference and indicated that staff would receive forms from the HR Department for purposes of submitting their views. The same was circulated through emails, and text messages providing online links to the documents so that they could be easily accessed even remotely. The HR Instruments and public participation feedback inquiry forms were also made available in hard copy from the 1<sup>st</sup> Respondent's library and HR Department which are accessible by all staff.
23. Vide a Memo dated 11<sup>th</sup> May 2025, the 1<sup>st</sup> Respondent scheduled consultative meetings with employees to enable them to seek any clarification on the public participation process that was ongoing. A link to enable employees to virtually attend consultative meetings was also provided to the employees by text message sent on 12<sup>th</sup> May 2025. This was done to ensure that the consultative meetings were easily accessible by all employees.
24. Subsequently, the 1<sup>st</sup> Respondent clarified and emphasized that views and feedback on the HR Instruments must be given by each employee individually using the specified format vide a memo dated 20<sup>th</sup> May 2025. This was to ensure that each employee is given an opportunity to properly participate and give views. This Memo was also sent to the employees by a text message link sent on 21<sup>st</sup> May 2025



25. It is the 1<sup>st</sup> Respondent's case that on 28<sup>th</sup> May 2025, it held a full staff meeting to report on the status of the public participation process. The 1<sup>st</sup> Respondent informed staff that there had been extensive engagement with employees with views and consultations being held with them and recorded by the 1<sup>st</sup> Respondent.
26. Upon conclusion of the exhaustive public participation process, the 1<sup>st</sup> Respondent's HR Department collated the feedback received from the staff on the various HR Instruments and prepared a report dated 1<sup>st</sup> June 2025 on the public participation process. The report showed that the vast majority of employees (about 60%) had positive feedback regarding the HR Instruments.
27. It is the 1<sup>st</sup> Respondent's case that the next step in the process as detailed in the Road Map is for the Board to review and ratify the Report on the public participation process before it can be submitted to PSC once again for further approval. The Petitioner, not being an employee of the 1<sup>st</sup> Respondent, is unaware of the process detailed above and has thus misguidedly and maliciously filed the contempt application.
28. The 1<sup>st</sup> Respondent avers that the Memo dated 28<sup>th</sup> June 2024 was quashed by Order No.5 of this court's Judgment and there is no need for the 1<sup>st</sup> Respondent to revoke it. Consequently, non-revocation is not disobedience of the orders of this court as alleged or at all.
29. The 1<sup>st</sup> Respondent avers that there have been re-designation of some employees, however this was done within the normal course of employment within the existing framework and not in contempt of the Judgment. The Quality Assurance Department was renamed as the Planning and Risk Management Department in the HR Instruments 2024. However, following the delivery of the Judgment which halted implementation of the said instruments, the department reverted to its original name - Quality Assurance Department. This change followed the Judgment and the 1<sup>st</sup> Respondent did not establish a new department as erroneously alleged by the Petitioner.
30. The 1<sup>st</sup> Respondent avers that Mr. Ken Adongo Oduor was deployed as Assistant Quality Assurance Manager while Mr. Willam Gombe reverted to his title of Assistant Risk Management Manager. These employees are undertaking the same roles as they did under the 2018 structure, both retained their job grades and did not suffer financial loss as their remuneration was not affected. Further, the said employees possess the requisite qualifications and skills necessary to support the department's functions. Furthermore, the 1<sup>st</sup> Respondent has invested in their professional development by providing targeted training in November 2024 and January 2025, respectively.
31. The 1<sup>st</sup> Respondent avers that the Judgment did not make any specific order for realignment of reporting lines, thus, it reverted to the old HR Structure that was in place pending finalization of the public participation process.
32. It is the 1<sup>st</sup> Respondent's case that the Judgment does not include a timeline for such recruitment. In the interim and to facilitate continued operations, the Acting Managing Director was appointed.
33. The 1<sup>st</sup> Respondent avers that appointment of the Acting Managing Director is the subject of litigation before this Court in ELRC Cause E063 of 2025 in which the petitioner therein is seeking orders to prevent the Acting Managing Director from taking any action in respect of the 1<sup>st</sup> Respondent including taking steps to comply with the Judgment. On the other hand, the Acting Managing Director is one of the subjects of the Contempt Application for taking steps to comply with the very same Judgment. There seems to be an elaborate scheme to use the court system to frustrate and cripple the operations of the 1<sup>st</sup> Respondent, which should not be aided by this Court.



34. It is the 1<sup>st</sup> Respondent's case that the the Petitioner has misconstrued the Judgment and it is therefore necessary for this Court to provide clarity on the terms of the Judgment to avoid any further needless litigation between the parties. It therefore prayed that its Interpretation Application be allowed.

### **Petitioner/Applicant's Submissions**

35. The Applicant submitted that the delay in compliance with the judgment and decree granted on 28<sup>th</sup> November 2024 is inordinate, unreasonable and blatant contempt of the court. It is seven months since the judgment yet the 1<sup>st</sup> Respondent has failed, refused and/or neglected to comply with the court orders.
36. It is the Applicant's submission that since delivery of the judgment, the 1<sup>st</sup> Respondent has failed, refused and/or neglected to carry out competitive and seamless recruitment of its new managing director and other staff strictly after compliance with the law and the Constitution. This is in violation of Article 41 of the Constitution and Section 37 of the PSC Act and the PSC Regulations 2020 which stipulates that acting appointments are subject to a maximum period of six months. It is now ten months since the former managing director, Mr. Victor Lomaria separated with the 1<sup>st</sup> Respondent, yet the position is yet to be filled with a substantive holder as orders by this court.
37. The Applicant submitted that 1<sup>st</sup> Respondent has failed, refused and/or neglected to comply with the Guidelines on the Development and Review of HR Instruments in Public Universities and State Corporations issued by the Interested Party on 8<sup>th</sup> August 2023. Additionally, it is only the Interested Party that has powers to approve, review and make recommendations regarding HR Instruments. The 1<sup>st</sup> Respondent has not submitted the new KLB HRM Instruments to the PSC for approval in blatant disobedience to the said orders.
38. It is the Applicant's submission that public participation is anchored on Article 232 of the Constitution and the 1<sup>st</sup> Respondent has not involved all of its stakeholders in the review and formulation of the new HR Instruments. The purported public participation did not involve all the stakeholders as prescribed by the Guideline on Public Participation issued by the Public Service Commission issued on 21<sup>st</sup> January 2015.
39. The Applicant submitted that the 1<sup>st</sup> Respondent has failed to comply with court order no. 4 and 7 as it has not revoked the letters issued to staff members who were affected by the implementation of the KLB HRM Instruments 2024 as communicated by the 1<sup>st</sup> Respondent's internal memo dated 28<sup>th</sup> May 2024.
40. The Applicant submitted that in exercise of its jurisdiction, this court has powers to make any order and grant any relief as it deems fit and just. Besides disobedience of the court orders, the Respondents have also gravely violated the constitution as held by this court.
41. The Applicant submitted that under Article 234 (2) of the Constitution, the Interested Party is mandated subject to the Constitution and legislation: to establish and abolish offices in the public service; and appoint persons to hold or act in those offices, and to confirm appointments. Additionally, pursuant to Article 234 (d) to (h), the PSC is directed investigate, monitor and evaluate the organisation, administration and personnel practices of the public service; ensure that the public service is efficient and effective; develop human resources in the public service; review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the public service; and evaluate and report to the President and Parliament on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the public service.



42. On locus standi, it is the Applicant's submission that under Article 258 of *the Constitution*, a person acting on his own behalf, on behalf of others or in public interest may institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.
43. The Applicant placed reliance in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] KESC 53 (KLR) where the Supreme Court held: "Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in *Anarita Karimi Njeru v. Republic*, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement."
44. The Applicant submitted that under Section 5 of the *Judicature Act* both this court and the Court of Appeal have powers to punish for contempt of court to uphold the dignity and authority of the court.

### **1<sup>st</sup> Respondent's Submissions**

45. The 1<sup>st</sup> Respondent submitted that during the cross examination of the Petitioner on 3<sup>rd</sup> July 2025, the Petitioner testified and confirmed that the Contempt Application and the Supporting Affidavit contain certain allegations that are not in the Petitioner's personal knowledge and that she has not disclosed their source contrary to Order 19 Rule 3 (1) of the Civil Procedure Rules which provides: "Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove: provided that in interlocutory proceedings, or by leave of the court, an affidavit may contain statements of information and belief showing the sources and grounds thereof."
46. The 1<sup>st</sup> Respondent submitted that the Supreme Court in *Kenya Railways Corporation & 2 others v Okoiti & 3 others* (Petition 13 & 18 (E019) of 2020 (Consolidated)) [2023] KESC 38 (KLR) held that information held by public entities although accessible to the public must be obtained through proper channels otherwise it would be illegally obtained evidence that cannot be admitted or considered by the court. The Supreme Court held: "To admit the illegally obtained information is detrimental to the administration of justice and the provisions of article 50(4) of *the Constitution*. Allowing such documents is akin to sanitising illicit actions of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents of irregularly obtaining evidence, in violation of article 31 of *the Constitution* on the right to privacy including privacy of communication. Further, we agree that such documents adduced by the 1<sup>st</sup> to 3<sup>rd</sup> respondents are of utmost confidentiality and relate to communication within government circles, between civil servants, relating to government engagement and operations. Even if the authenticity or contents of the documents was not questioned by the appellants, the production of such documents as evidence must be in accordance with the law. Not having obtained and adduced the documents in the manner set out under sections 80 and 81 of the *Evidence Act* or requested for information under article 35 of *the Constitution*, the documents are inadmissible, we so declare."
47. It is the 1<sup>st</sup> Respondent's submission that the Supporting Affidavit is incompetent and cannot be admitted by this Honourable Court and consequently the entire Contempt Application must fail and be dismissed with costs.
48. The 1<sup>st</sup> Respondent submitted that there is no order in the Judgment for development of new HR Instruments or for the 1<sup>st</sup> Respondent to revoke the temporary acting appointments which can be



ascertained from a plain reading of the Judgment. In any event the temporary acting appointments automatically lapsed, and all staff reverted to their old positions. The 1<sup>st</sup> Respondent cited Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR) wherein the court held: “It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order.”

49. The 1<sup>st</sup> Respondent submitted that the contempt application must fail as there are no terms in the Judgment that the Petitioner seeks to enforce through the application as far as development of new HR Instruments is concerned.
50. On public participation, the 1<sup>st</sup> Respondent submitted that the applicable policy in development of HR Instruments is the PSC Guidelines for Development and Review of Human Resource Instruments for State Corporations and Public Universities issued in August 2023 (the PSC Guidelines 2023) issued by PSC pursuant to Article 234 of *the Constitution* as shown in the circular dated 8<sup>th</sup> August 2023 issued by PSC to all State Corporations
51. It is the 1<sup>st</sup> Respondent’s case that the PSC Guidelines 2023 sets out the steps applicable in the development of HR Instruments and the extent of public participation applicable as follows: “The State Corporation develops Draft Human Resource Management Instruments. The instruments will be developed in a consultative manner including the participation of all players who may be affected by implementation of the Instruments, such as employees, the trade unions and other employee representatives and Boards/Councils.”
52. The 1<sup>st</sup> Respondent further submitted that the two sets of guidelines from PSC have been issued to guide public bodies in development of external policies that will affect the wider public and in development of internal policies that only affect their internal operations. If public entities were to subject internal policies such as the HR Instruments to participation involving the general public, then it would be too expensive and bureaucratic to come up with any HR instruments. The Judgment does not require the 1<sup>st</sup> Respondent to conduct such public participation because there is no policy or law that has such a requirement.
53. It is the 1<sup>st</sup> Respondent’s submission that the allegation that public participation should include the wider public is an afterthought and was not raised by the Petitioner in the main petition which only referred to involvement of the 1<sup>st</sup> Respondent’s staff in the development of the HR Instruments which has now been done. To now raise the issue of involvement of the wider public that will not be affected by the HR Instruments is not only an absurdity, it is also an abuse of the process of this court by the Petitioner.
54. The 1<sup>st</sup> Respondent submitted that the Judgment did not give a timeline for the competitive recruitment of the new Managing Director and senior management staff by the 1<sup>st</sup> Respondent. Such recruitment is subject to various factors including availability of funds. The 1<sup>st</sup> Respondent clarified that it has not recruited any senior management staff since the Judgment was delivered. The Cabinet Secretary for the Ministry of Education in exercise of the powers conferred by Section 8 of the Kenya Literature Act and as allowed by Section 34 (1) of the Public Service Act has appointed an Acting MD to ensure continuity.
55. It is the 1<sup>st</sup> Respondent’s case that substantive appointments of the MD and other staff cannot be carried out until the HR Instruments previously approved by PSC are given a further nod by PSC and implemented and the process has been interrupted by the contempt application. The Petitioner has



- failed to demonstrate the terms of the Judgment that the 1<sup>st</sup> Respondent has allegedly violated thus it cannot succeed by any means.
56. The 1<sup>st</sup> Respondent submitted that given the consequences of the finding of contempt of court, the Applicant must demonstrate beyond reasonable doubt that the 1<sup>st</sup> Respondent has disobeyed and/or failed to comply with the terms of the Judgment. Having failed to do so, the application must inevitably fail as held by Mativo J (as he then was) held in *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] KEHC 9233 (KLR).
57. It is the 1<sup>st</sup> Respondent's submission that the Petitioner/Applicant has no locus as she confirmed that she has no past or present employment or other relationship with the 1<sup>st</sup> Respondent. She has also not demonstrated the exact interest that she is allegedly seeking to protect through the contempt application.
58. The 1<sup>st</sup> Respondent submitted that instead of the public interest alleged by the Applicant, the application has the opposite effect of delaying the conclusion of the implementation of the new HR Instruments that the 1<sup>st</sup> Respondent's employees have already given their positive views on and are largely in support. No employee of the 1<sup>st</sup> Respondent has filed an affidavit to support the contempt application or other proceedings by the Petitioner.
59. I have examined all the averments and submissions of the parties herein. The applicant contends that the respondent is guilty of disobeying this court's orders as per its judgment of 28/11/2024. In the judgment of 28/11/2024, this court gave various orders as follows:
1. An injunction to prevent the Respondents from implementing new Human Resources instruments until the same are subjected to public participation, consultation and views of staff, prior to implementation and approval by the Interested Party hereof.
  2. A declaration that various appointments to positions of acting General Managers made on 28/6/2024 were invalid null and void ab initio.
  3. An order quashing the respondents appointments to various positions of acting General Manager made on 28/6/2024.
  4. An order directing the 1<sup>st</sup> respondent to carry out competitive and seamless recruitment of its new managing director and other staff, strictly after compliance with the law and constitution.
  5. Other declaratory orders.
60. It is the applicant's contention that the respondents have acted in contempt of the orders aforementioned in various ways. The applicants aver that the respondents have not developed the HR instruments as directed by court after public participation and approval by the Public Service Commission. They also aver that the 1<sup>st</sup> respondent has not revoked the memo issued on 4/6/2024 nor revoked appointments, deployments and transferred staff to various positions in the month of July and August 2024 nor even issued letters to the affected staff to revert to the initial deployments as per KLB HRM instruments 2018.
61. The respondents denied non compliance with the judgment of the court and averred that they are not in contempt of the court's orders. They contend that the orders given by court in the judgment of 28/11/2024 require certain processes to take place before the orders can be achieved. They aver that they have initiated these processes and are in the final stages of the progressive compliance with the orders in the judgment.



62. The respondents also aver that the applicants are misinterpreting the orders of the court since they are not expected to develop new HR instruments but to subject them to public participation before implementation. As to recruitment of the new MD and senior management, the respondents aver that no timelines were given by court and that such recruitment is subject to various factors including availability of funds.
63. The 1<sup>st</sup> respondents aver that they have already conducted rigorous public participation in a deliberate attempt to comply with order No 2 of the judgment. They aver that the next step is for the board to review and ratify the report before submission to the Public Service Commission. The respondents further aver that they complied with the order of court and deployed the staff to the position they held prior to the order of the court. The respondents further indicate that the appointment of the MD is also a subject matter of another case in ELRC Cause No E063 of 2025 and another acting MD has been appointed in the meantime.
64. It is indeed the correct position that orders of this court set out what need to be done including quashing certain appointments and insisting on development of proper HR instruments in compliance with the law.
65. The respondents aver that they have complied with these directions and are in the process of implementing the others. The respondents aver that they have already carried out stakeholder engagement in the development of the HR instruments. Noteworthy is that they engaged their staff on this and there is evidence to that effect. There is however no evidence that there has been engagement with other stake holders in the same process.
66. As concerns revocation of previously made acting appointments the respondents have not submitted any evident indicating that this has been communicated to staff and they reverted to their former positions before the impugned appointment.
67. The respondents aver that they are in the process of implementing the orders of the court and are not in contempt thereof. In respect to this contention the court notes the orders herein. The court also notes that it indeed made orders injuncting the respondent from implementing HR instruments without proper enactment following public participation. The respondents cannot run away from this responsibility. On issue of appointment of substantive positions, the respondents must also demonstrate progress towards this.
68. In view of the orders made by court I would hesitate to find the respondents in contempt of court but would require them to demonstrate progress made towards compliance of the orders thereof which I hereby direct. These are the orders of the court.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22<sup>ND</sup> DAY OF OCTOBER 2025.**

**HELLEN WASILWA**

**JUDGE**

