



REPUBLIC OF KENYA



**Ndung'u v Wamutitu & 7 others; Council of Legal Education (Interested Party) (Miscellaneous Civil Application E1020 of 2025) [2025] KEHC 15372 (KLR) (Civ) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15372 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION E1020 OF 2025  
NW SIFUNA, J  
OCTOBER 30, 2025**

**BETWEEN**

**SAMUEL MBUGUA NDUNG'U ..... APPLICANT**

**AND**

**JOSEPH MWORIA WAMUTITU ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPH WARUIRU ..... 2<sup>ND</sup> RESPONDENT**

**CATHERINE OCHANDA ..... 3<sup>RD</sup> RESPONDENT**

**JACQUELINE MANANI ..... 4<sup>TH</sup> RESPONDENT**

**EMILY CHWEYA ..... 5<sup>TH</sup> RESPONDENT**

**PAULINE NYAMWEYA ..... 6<sup>TH</sup> RESPONDENT**

**CEO KENYA SCHOOL OF LAW ..... 7<sup>TH</sup> RESPONDENT**

**KENYA SCHOOL OF LAW ..... 8<sup>TH</sup> RESPONDENT**

**AND**

**COUNCIL OF LEGAL EDUCATION ..... INTERESTED PARTY**

**RULING**

1. This ruling is on the Motion dated 4<sup>th</sup> June 2025. Which Application is supported by the Supporting Affidavit of Samuel Mbugua Ndung'u the Applicant sworn on even date. The Application which is principally invoking Article 165 (6) of *the Constitution* and Section 5 of the *Judicature Act* (Cap 8 Laws of Kenya), is urging this Court to find that the Respondents who are eight in number, have disobeyed orders that the Legal Education & Appeals Tribunal issued by on 28<sup>th</sup> March 2025.



2. The same were issued in an Appeal that the Applicant filed in the Tribunal. The Appeal arose from refusal by the Kenya School of Law, to admit the Applicant to the Advocates Training Programme (ATP) that is run by it. The Applicant who considers himself qualified for admission, successfully appealed the said refusal. In its ruling, the Tribunal held that the Applicant is eligible for admission to the programme, and ordered the School to admit the Applicant. The ruling was followed by a decree in those terms. The same was issued on 28<sup>th</sup> March 2025.
3. The 1<sup>st</sup> to the 7<sup>th</sup> Respondents are members of the Board of the School, while the 8<sup>th</sup> Respondent is the School's Director; who is also its Chief Executive Officer (CEO).
4. The Applicant expected that upon the Tribunal issuing the said orders in the month of March this year, the School would admit him immediately into the then on-going programme in the Academic Year 2024/2025 class; which was already on-going and whose admissions had already been concluded in the fourth quarter of last year 2024.
5. While this was his expectation, the School did not admit him into the programme. For this the Applicant holds that the School's Board and Director/CEO have disobeyed the said orders of the Tribunal. For which he is by this Application urging this Court to make a finding that the Respondents have disobeyed the said orders and consequently commit them to prison for a period of six months or impose a fine, and/or until they purge the contempt by admitting him to the said Programme.
6. The Respondents, in the Response they filed, opposed the Application. After which the Application was canvassed by way of written submissions. With each side urging its position. Both sides filed their respective submissions. For the Applicant, he in his submissions reiterated the grounds in his Application and urged this Court to grant his prayers.
7. He in his submissions reiterated the grounds in his Application and urged this Court to grant the following prayers:
  - a. (Spent)
  - b. That the Respondents be cited for contempt of the Tribunal's orders issued on the 28<sup>th</sup> March 2025.
  - c. That the Respondents be sentenced to six months imprisonment or in the alternative to a fine, and/or until they purge their contempt by admitting the Applicant, Samuel Mbugua Ndung'u, to the Advocates Training Programme.
  - d. That the Respondents to bear the costs of this and Application in person, jointly and/or severally.
  - e. Any other orders as may be fair and just in these circumstances.
8. According to him, he expected that upon receiving the said orders (in the month of March this year), the School would proceed to admit him immediately into the Academic Year 2024/2025, in which classes were already on-going and whose admissions had already been concluded in the fourth quarter of last year 2024.
9. While this was his expectation, the School did not admit him at that time, and he has remained out to date. For this he holds that the School's Board and Director/CEO (the 1<sup>st</sup> to the 8<sup>th</sup> Respondents) have disobeyed the said orders; and he is by this Application urging this Court to make a finding that the Respondents have disobeyed the Tribunal's said orders, and consequently punish them for contempt.



10. As already stated in this ruling, the Respondents opposed the Application on two grounds. Firstly, that they should not be liable for a contempt committed by the School, which is a legal entity created by an Act of Parliament. Namely, the *Kenya School of Law Act* (Act NO. 12 of 2012). Under which the School was established as a body corporate. With a Board of Directors; and with its CEO being in-charge of its day-to-day activities.
11. Secondly, they have in their filed Response and Written Submissions, explained to this Court, that they have not disobeyed the said orders. As that by the time the School received those orders, it had a few months before, already completed admissions, and that the programme was already running. Hence that it could not admit him into the programme months after it had already commenced, and classes were on-going.

### **Analysis and Determination**

12. In determining this Application, I have considered the Application (together with its Supporting Affidavit), the Respondents' filed Response, the parties filed rival submissions, as well as the law and applicable legal principles. The two issues for determination in this Application are: (a) Whether the Respondents have disobeyed the Legal Education & Appeals Tribunal's said orders, and (b) If yes, what sanction or penalty is appropriate to impose?
13. A court order and indeed any other judicial order, is a legally binding command that must be obeyed and complied with unconditionally and without any excuse; and no matter the opinion of the person to whom or of entity to which it is directed.
14. For judicial orders disobedience is not an option. Taking a similar position, Nyamu J (as he then was) in Nairobi Application No. 1445 OF 2003 citing the Court of Appeal decision of Thuo v. Njuru, Nairobi Court Of Appeal No. CA 278 of 1998 (CA), stated that court orders unless and until reviewed or successfully appealed, must be obeyed.
15. It matters not that such a person or entity to which the order is directed, is of the opinion that the order is unreasonable or illegal, or is of the opinion that the order is one that is oppressive, or incapable of compliance. In such a case, the only avenue out is for that person or entity to appeal or apply for the order's review; and have it set aside or varied. Where such a subject is of the reasonable opinion that the time the order has prescribed for compliance is utterly inadequate, he can go back to the issuing Tribunal or court as the case may be, and seek an extension or enlargement of the time within which to comply.
16. Otherwise given that a judicial order is a command and not a request, suggestion or opinion, and is couched in mandatory and sometimes directory terms, it must be complied with to the letter; and without any excuse, scapegoat, or avoidance. Any disobedience or non-compliance with its terms is punishable by sanctions and penalties that are of a criminal nature. Namely, imprisonment and fines. Notwithstanding that courts may on contempt applications sometimes order the contemnor to purge the contempt.
17. Government entities and government officials such as the Respondents, for their part, ought to be at the forefront of obeying judicial orders. For three major reasons. The first one is that they ought to lead by example. The second is that under the Kenya Constitution, all are equal before the law, and no one is above the law. The third one is that respect for the rule of law, is one of the national values stated in Article 10 of *the Constitution*. Government should not again be the one disobeying or disregarding judicial processes and judicial orders.



## Final Determination

18. For the Respondents' arguments that they are not liable for the School's actions, omissions and decisions, I refuse to be persuaded. The School is not a human person. It is a body corporate run by a Board comprising its Chief Executive Officer (CEO) and Board members. By one accepting to be appointed to the Board, he or she is binding oneself to shoulder the responsibilities and liability that comes with that office. Including liability for the School's disobedience of judicial orders as in this case. Provided the Board has knowledge of such orders.
19. After all, privilege comes with responsibility; and by accepting the privileges and perks that come with being a member of the School's Board, the appointee thereby binds oneself (as Board member) to be collectively responsible for the Board's actions, omissions and decisions. Anyone unwilling to bear that responsibility, has the option of declining the appointment to the Board. You cannot enjoy the privileges and perks of an office, and avoid the responsibility, liability and the consequences attendant to that office. That will be an ironical and naive.
20. With regard to its processes and matters before it, this Court is a court of justice; and justice like a sword, cuts both ways. This Court has therefore to be just to all the parties and to both sides of a dispute. Besides, the law and the court process are practical and not abstract or hypothetical. Further, the law abhors absurdity.
21. In a contempt Application such as this, the court has to consider the bigger picture. Hence will not confine itself in the Applicant's otherwise circumscribed prism. The disobedience has to be one that is blatant and willful; and for which there are no exculpatory or exonerating factors. After all the reason why a court will punish a contempt, is for the purpose of upholding the rule of law and protecting judicial authority; rather than promoting the court's ego or that of the offended litigant.
22. The consequences of being found to be in contempt of a judicial order, as already stated, are dire and of a criminal nature. Hence the court in dealing with a contempt Application has to be objective and realistic, and consider all the circumstances. From the facts on record, the Respondents shall be given the benefit of doubt on the explanation offered for the non-compliance. Which explanation I have patiently and critically weighed.
23. What would for instance, have been the benefit of admitting the Applicant into a class that already began and is mid-way? Especially in an intensive programme such as the School's Advocates Training Programme (ATP) that is a practical one; and one that is skill-oriented and that entails group work and progressive assessments?
24. In exercise of judicial discretion that this court is vested with, considering all the circumstances of this case, noting that the Tribunal's said orders are valid and have neither been set aside nor otherwise varied, I very reluctantly accept the explanation the Respondents have offered as the reason why the said orders have to date, not been complied with. While I have accepted that explanation, I firmly require them to comply with the said orders, and in the terms I am about to direct in this ruling.
25. I further remind them that this Court will not hesitate to punish them, should that non-compliance persist; or in the event it becomes evident that they are willfully disobeying the said orders. In which case, the Applicant shall remain at liberty to return to this Court for appropriate sanction on the Respondents- and which shall be so stern.
26. In the end, while this Court has not found the Respondents to be in willful contempt of the said orders, it has found that they have not complied with the said orders; and is hereby directing them to comply in the terms I am about to state in this ruling; and thereby purge the non-compliance. They



are only lucky that this Court could on the foregoing analysis, not reasonably find that they were in willful and blatant contempt or disobedience of the Tribunal's said orders.

27. Consequently, I decline to find that the Respondents have disobeyed the said orders; and order the Respondents, to within sixty (60) days from the date of this ruling comply with the Tribunal's said orders. Failing which this Court will met out appropriate sanction. The School should admit the Applicant in the upcoming admissions/intake for the academic year 2025/2026. For which it has invited applications. It shall thereafter file in this Court in this file, a Report on compliance with the said orders.
28. This matter shall be mentioned before this Court on 14<sup>th</sup> January 2026 to confirm compliance, and for further orders. I further direct that a copy of this ruling be served on the Honourable Attorney General of the Republic of Kenya, and on the Chief Executive Officer (CEO) of the Council of Legal Education, for noting.
29. As to the costs of this Application, costs are also within the discretion of the court. Hence, they do not have to always follow the event. The event being the success or failure of a suit or an Application, as the case may be. In this particular case, since the School has not complied with the Tribunal's said orders, the Applicant is hereby awarded the costs of this Application. To be paid by the School.

**DATED AND DELIVERED AT NAIROBI ON THIS 30<sup>TH</sup> DAY OF OCTOBER 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

