

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
KITALE**

PETITION NO. E003 OF 2025

(Before Hon. Lady Justice Maureen Onyango)

REGINA CHANGOROK.....APPLICANT/PETITIONER

VERSUS

**COUNTY ASSEMBLY OF WEST POKOT.....1ST RESPONDENT
SPEAKER OF THE COUNTY ASSEMBLY**

OF WEST POKOT.....2ND RESPONDENT

AND

COUNTY GOVERNMENT OF

WEST POKOT.....INTERESTED PARTY

RULING

1. By an application dated 20th June 2025, the Applicant/Petition sought orders that the 2nd Respondent be cited for Contempt of Court and be committed to civil jail for six months for allegedly disobeying the orders of this Court issued on 19th May 2025. The Applicant further sought an order that the 2nd Respondent be denied audience in this

matter unless and until the contempt complained of is purged.

2. The Notice of Motion is brought pursuant to section 5 of the Judicature Act and is founded on the grounds set out on its face and in the supporting affidavit sworn by the Applicant, Regina Changorok on 20th June 2025.
3. The grounds in support of the application are that following the filing of the petition and the application dated 16th May 2025, this Court on 19th May 2025 certified the application as urgent and fixed it for inter partes hearing on 22nd May 2025; that the second limb of the order issued on the same date provided: *“That in the meantime there shall be a suspension of proceedings in respect of impeachment of the Applicant, including suspension of any action already taken against her in respect of the impeachment proceedings.”*; that the petition challenges the legality and constitutionality of the Petitioner’s impeachment which was undertaken with undue haste between 12th and 15th May 2025 without furnishing her with the Ad Hoc Committee report or affording her an opportunity to appear and defend herself as required

by law; that despite the suspension order and notwithstanding the gazettelement of the impeachment on 16th May 2025, the 2nd Respondent allegedly directed the removal of the Applicant's name from the payroll resulting in non-payment of her salary for May 2025; that the 2nd Respondent also directed the removal from the payroll of the Applicant's assigned security officer and driver, Veronica Sikuku and Evans Chetum; that the suspension order was clear and unambiguous and was duly served upon both Respondents together with the pleadings; that counsel for the Respondents appeared in Court on 22nd May 2025 and sought an adjournment whereupon the interim orders were extended to 1st July 2025; that when counsel for the Applicant later complained via a letter dated 30th May 2025 about disobedience of the order, the Respondents' counsel responded on 12th June 2025 indicating that he had instructions that the Applicant would not be restored.

4. In opposing the application, the 2nd Respondent, Hon. Fredrick Plimo Kaptui swore the Replying Affidavit sworn on 30th June 2025. In the Affidavit, he deposes that the

impeachment process was duly undertaken by members of the County Assembly after constitution of an Ad Hoc Committee.

5. The 2nd Respondent avers that by the time the matter came to Court, the gazettelement process had been completed and once gazettelement is done, the process becomes final. It is asserted that the Court directed that service of the application be effected not later than close of business on 19th May 2025 and that he was never personally served.
6. It is the 2nd Respondent's case that the person allegedly served was served on 20th May 2025 in contravention of the Court's directions. The 2nd Respondent further avers that he does not exercise control over decisions belonging to the Assembly or those implemented by the Clerk, and therefore cannot be held responsible for the administrative actions complained of.
7. The application was disposed of by way of written submissions pursuant to directions issued on 1st July 2025. The Applicant's submissions are dated 22nd September 2025

while those of the 2nd Respondent are dated 2nd October 2025.

The Applicant's Submissions

8. The Applicant submits that the application, the supporting documents and the court orders were all served upon the Interested Party on 19th May 2025, but the process server was unable to serve the 1st and 2nd Respondents on the same day.
9. The Applicant contends that on 20th May 2025, the process server served one *HOLS Jacinta Tulel*, an officer said to be working in the office of the Speaker, who acknowledged receipt by endorsing her name.
10. It is further submitted that on 22nd May 2025, two advocates instructed by the 1st and 2nd Respondents appeared in Court and sought time to respond to the petition, without raising any complaint about non-service of the court process.
11. The Applicant asserts that when her salary for May 2025 was not paid and the salaries of the officers assigned to her were also withheld, her counsel wrote to the Respondents'

advocates on 30th May 2025 seeking restoration to the payroll and payment of salary. That in response, the Respondents' counsel vide a letter dated 12th June 2025 stated that they had received instructions from their clients to the effect that although the Court order of 19th May 2025 had been extended, the Applicant's impeachment had already been gazetted and she had thereby lost her rights and privileges and could not be restored.

12. The Applicant argues that this demonstrates intentional disobedience of the Court's order.
13. The Applicant submits that the "arrogance" reflected in the Respondents' correspondence also manifests in the Replying Affidavit sworn on 15th July 2025 which she says confirms their unwillingness to obey the Court's orders.
14. It is the Applicant's submission that the Court did not direct personal service and that neither the 2nd Respondent nor the County Assembly could insist on personal service yet they were represented by counsel on record.
15. The Applicant therefore maintained that the Respondents were well aware of the Court's orders of 19th May 2025, have

never sought to set them aside, and have intentionally chosen to defy them. In this regard, the Applicant submitted that the Respondents' conduct warrant punishment for contempt in order to uphold the dignity and authority of the court.

The 2nd Respondent's submissions

16. In his submissions, the 2nd Respondent while citing the Supreme Court of India decision in *Mahinderjit Singh Bitta v Union of India* (2011) outlined the elements requisite for finding a person in contempt to be: -
 - a) the terms of the order;
 - b) knowledge of the terms by the Respondent;
 - c) failure to comply; and
 - d) deliberate and willful disobedience.
17. On the first element, the 2nd Respondent submitted that although the order of 19th May 2025 existed, it expressly

required service “forthwith and in any event not later than close of day on 19th May 2025.”

18. On knowledge of the terms of the order, the 2nd Respondent argues that the Applicant failed to discharge the burden of proving that he was ever served or that he was aware of the contents of the order. The 2nd Respondent submitted that the affidavit of service sworn by Wycliffe B. Juma on 21st May 2025 shows that service was attempted on 19th May 2025 upon the Governor’s office but not upon the 2nd Respondent and that service upon the alleged officer HOLS Jacinta Tulele was effected on 20th May 2025 contrary to the express timelines set by the Court.
19. The 2nd Respondent disputed the identity of the person served, stating that the officer known to him is Jacinta Chepkemoi Tulel, Director of Legal Services of the County Assembly does not work in the Speaker’s office and is not his proxy.
20. The 2nd Respondent submitted that he only became aware of the matter after counsel mapped the case on the court

system and after he was contacted by the County Attorney, who had also not been aware of the proceedings.

21. On the issue of non-payment of the Applicant's salary, the 2nd Respondent submitted that he is not in charge of the County Assembly's human resource functions and that the Head of Human Resources acted on the gazette notice revoking the Applicant's appointment.
22. With regard to the issue of non-compliance with the court order, the 2nd Respondent submitted that he was not served with the order of 19th May 2025 and thus he cannot be held liable for failing to comply with an order which he had no knowledge of.
23. He maintained that he is a law-abiding citizen who acted promptly to ensure compliance once he became aware of the court proceedings.
24. The 2nd Respondent further submitted that the gazette of the revocation of the Applicant's appointment on 16th May 2025 marked the end of the impeachment process and the beginning of the separation process. He asserted that he had no power to reverse or alter the effect of the gazette notice.

25. The 2nd Respondent therefore urged the Court to find that the Applicant has not demonstrated deliberate disobedience and that the application ought to be dismissed with costs.

DETERMINATION

26. I have carefully considered the Notice of Motion dated 20th June 2025, the rival affidavits and the written submissions of the parties. The only issue for determination is whether the Applicant has satisfied the legal threshold for a finding of contempt of court against the 2nd Respondent.

27. On 19th May 2025, this court issued the following orders: -

- a. THAT the Application is certified urgent and fixed for inter partes hearing on 22nd May 2025*
- b. THAT in the meantime there shall be a suspension of proceedings in respect of impeachment of the Applicant including suspension of any action already taken against her in respect of the impeachment proceedings.*
- c. Applicant to serve the Respondents forthwith and in any event not later than close of day today the 19/05/2025*

d. THAT Respondents to file their response to the application not later than the day of hearing of the application inter partes

28. From a perusal of the record, it is evident that by the time the court issued the interim orders on 19th May 2025, the impeachment process had culminated in the publication of Gazette Notice No. 6425 on 15th May 2025. The order of the court, however, expressly suspended both the ongoing impeachment proceedings and any action already taken in respect of the said proceedings.
29. Contempt of Court is in the nature of criminal proceedings and therefore, proof of a case against a contemnor requires a higher threshold than that of balance of probabilities. Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is trite that the order be extracted and served. It must also be demonstrated that the person cited for contempt had personal knowledge of that order.
30. In order to find a person guilty of contempt there must therefore be proof of willful and intentional disobedience of a Court order.

31. In the case cited by the 2nd Respondent, **Mahinderjit Singh Bitta - v Union of India & Others 1A No. 10 of 2010** the Supreme Court of India stated as follows: -

a. *“In exercise of its contempt jurisdiction the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the order of the court, even to constitute a civil contempt. Every party is lis before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution.*

32. There is no controversy regarding the existence and clarity of the court order issued on 19th May 2025. The suspension order was explicit and unambiguous.

33. As can be deduced from the application herein, the dispute centers on whether the 2nd Respondent had knowledge of that order and whether any subsequent non-compliance was intentional.

34. The Applicant has contended that service of the court order was effected on 20th May 2025 upon one HOLS Jecinta Tulele, allegedly working in the office of the Speaker. The 2nd Respondent on the other hand questions the validity of the service arguing that the court had directed service “not later than close of day on 19th May 2025” and that he was never personally served within that timeline. He further states that the person served, known to him as Jacinta Chepkemoi Tulel, is the Director of Legal Services of the County Assembly and does not work in the Speaker’s office. Further, that the said person is not his proxy.
35. From a perusal of the affidavit of service dated 21st May 2025, it is evident that the process server did not effect service upon the 1st and 2nd Respondents on 19th May 2025 as directed in the court order. Service was done on 20th May 2025.
36. While the Applicant argues that personal service was not mandatory in the circumstances, which the court agrees with, the order itself required service upon the Respondents

forthwith and within the same day based on the urgency and the circumstances of the case.

37. Although the appearance of counsel for the Respondents on 22nd May 2025 indicates that the Respondents became aware of the proceedings, the jurisprudence on contempt is settled: knowledge of the existence of court proceedings is not equivalent to knowledge of the specific orders allegedly breached.
38. The Applicant bears the burden of proving that the 2nd Respondent had actual or constructive knowledge of the particular terms of the court order.
39. The Applicant relies heavily on the letters exchanged on 30th May and 12th June 2025, asserting that the response from the Respondents' counsel demonstrate willful disobedience. I have perused the said letter and noted that it does not expressly admit prior knowledge of the court order of 19th May 2025 at the material time when the alleged acts of contempt are stated to have occurred. The letter instead sets out the Respondents' position regarding the legal effect of the gazette notice.

40. On the issue of removal from the payroll and cessation of the Applicant's salary, the 2nd Respondent has deposed that he does not exercise administrative control over human resource functions and that such decisions were implemented by relevant officers based on the gazette notice. In the absence of proof that these actions were undertaken at the direction of the 2nd Respondent the court cannot infer deliberate disobedience on his part.
41. The evidence placed before this court falls short of demonstrating the required degree of certainty that the 2nd Respondent was duly served with the court order; that he had actual knowledge of the terms of the order; and that any subsequent actions were willful and deliberate violation of the court order.
42. In the circumstances, while the court strongly reiterates the importance of obeying court orders and maintaining the authority of the judicial process, it is not persuaded that the Applicant has met the threshold necessary to sustain the application for contempt.

43. Accordingly, the Notice of Motion dated 20th June 2025 fails and is hereby dismissed.
44. Each party shall bear their own costs.

**DATED, DELIVERED AND SIGNED
THIS 20TH DAY OF NOVEMBER, 2025.**

**M. ONYANGO
JUDGE**