

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS**  
**COURT AT KERICHO**

**CAUSE NO. E003 OF 2024**  
***(Before Hon. Lady Justice Anna Ngibuini***  
***Mwaure)***

**KENYA UNION OF DOMESTIC, HOTELS,  
EDUCATION INSTITUTIONS, HOSPITALS, AND  
ALLIED WORKERS .....**  
**.....CLAIMANT**

**VERSUS**

**THE BOM OF MOTIGO SECONDARY.....**  
**RESPONDENT**

**AND**

**THE PRINCIPAL/SECRETARY  
(BOM).....1<sup>ST</sup> INTENDED  
CONTEMNOR**

**RULING**

**Introduction**

1. The Claimant/Applicant filed Chamber Summons dated 10<sup>th</sup> June 2025 under certificate of urgency seeking the following orders that:

***1. Spent***

***2. This Honourable Court be pleased to direct the Principal/Secretary to the Board of Management herein, who is the accounting officer, policy formulator and implementer with responsibility of executing court***

**orders show cause within 3 days of service of these orders why contempt proceedings should not be instituted against them.**

**3. Upon showing such cause as paragraph 2 above, this Honourable court be pleased to find the Principal/Secretary to the Board of Management guilty of contempt of court and be committed to civil jail for a period of not exceeding six months.**

**4. The costs of the application be granted to the Applicant.**

2. The application is brought under **section 3 of the Judicature Act, section 12 of the Employment and Labour Relations Court Act, 2015, sections 4(1)(a) & 6(c) of the Contempt of Court Act, 2016, section 3, 3A and section 63(c) of the Civil Procedure Act Cap 21 of the Laws of Kenya, Order 51 Rule 1 of the Civil Procedure Rules, Rules 81.4(1), 81.5, 81.7, 81.8, 81.9 and 81.10 of the English Procedure Rules.**

### **Claimant/Applicant's supporting affidavit**

3. The application is supported by the affidavit of Alice C. Ngeno, the Claimant/Applicant's Branch Secretary.

4. The Claimant/Applicant contends that the Respondent, who is responsible for implementing court orders as the accounting officer, has deliberately failed to comply with a judgment issued by the Honourable Court on 30<sup>th</sup> April 2025.
5. The Claimant/Applicant avers that the judgment delivered directed the Respondent to sign a Recognition Agreement with the Claimant within 30 days.
6. The Claimant/Applicant avers that the judgment was served to the Respondent on 12<sup>th</sup> May 2025, yet she refused to sign the agreement.
7. Despite multiple reminders, the Claimant/Applicant avers that the Respondent has continued to defy the court's directive, causing offence to it.
8. The Claimant urges the court not to tolerate such blatant disobedience of its orders and allow the application as prayed.
9. At the time of writing this ruling, the Respondent had not filed any response despite having been duly served, and neither party filed written submissions regarding the application.

### **Analysis and determination**

10. The court has considered the application and supporting affidavit. The issue for determination by the honourable court is whether the application is merited.
11. In ***Kenya Human Rights Commission V Attorney General; Law Society of Kenya (Interested Party) [2018] KEHC 9656 (KLR)***, the petitioner challenged the constitutionality of the Contempt of Court Act, 2016, arguing it undermined judicial independence and lacked public participation. The court held that Parliament failed to meet constitutional requirements for public involvement and that several provisions, particularly those shielding public officers and Speakers of Parliament, were discriminatory and unconstitutional. The court emphasized that the power to punish for contempt is an inherent judicial authority that cannot be limited by statute, declaring the Act invalid for contravening constitutional principles.
12. In the above-mentioned case, the court found that the Contempt of Court Act No. 46 of 2016 was found to be null and void; thus, the court will revert to the Civil Procedure Act and Judicature Act for guidance in terms of disobedience of the court orders.

13. **Section 63 of the Civil Procedure Act** provides as follows:

***“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed—***

***(a) issue a warrant to arrest the defendant and bring him before the court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security, commit him to prison;***

***(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the court, or order the attachment of any property;***

***(c) grant a temporary injunction, and in case of disobedience, commit the person guilty thereof to prison and order that his property be attached and sold;***

***(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;***

***(e) make such other interlocutory orders as may appear to the court to be just and convenient.”***

14. In ***Samuel M. N. Mweru & Others V National Land Commission & 2 others***

***[2020] KEHC 9233 (KLR)***, Mativo J stated as follows:

***“..... the court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal with proved contemnors. It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void...”***

15. In this instant case, judgment was delivered on 30<sup>th</sup> April 2025, and the Respondent failed to comply with the court orders issued despite being served with notices to do the needful by signing the Recognition Agreement within 30 days. The documents filed in court in form of affidavits of service however, the Applicants indicate they served Motigo Secondary School as per affidavit of service dated 26<sup>th</sup> September 2025 and the affidavit of service dated

19<sup>th</sup> June 2025 which comprised contempt application and court order which the process server **WALTERS KIPRONO KOSGEI** confirmed he served on the Respondent. The process server made it clear the Respondent was MOTIGO SECONDARY SCHOOL and he served the principal of the school. The Principal is also said to be the Secretary of the Board of the School and hence the accounting officer. It is evident the Principal received the application and the court order on 6<sup>th</sup> June 2025. The contemnor did not comply with the court order and has not filed a response.

16. The contemnor therefore has deliberately disobeyed court order and this cannot be tolerated by the court. The orders are made to be obeyed or else we might as well throw out the rule of law out of our windows and then we have a jungle nation.

As earlier said in the case of **Samwel M. N. Mwero & Others -Vs- National Land Commission & 2 Others (Supra)** the court stated:-

***“--- The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal with proved contemnors.”***

17. The court is therefore obliged to order the Principal/Secretary of the Board of Management of the Respondent to show cause within 14 days why he should not be cited for contempt and legal penalties be imposed upon him.

18. Case will be Mention on **18<sup>th</sup> December 2025** for progress report and the Principal/Secretary is summoned in court on that day to show cause why he should not be cited for contempt.

19. Claimant is awarded costs of this Application.

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru this 28<sup>th</sup> Day of November, 2025.**

**ANNA NGIBUINI MWAURE**  
**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1**

**of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**  
**JUDGE**