

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. E076 OF 2024

BENJAMIN MBURU.....PLAINTIFF/APPLICANT

NJOROGE

-VERSUS-

REV. DR. ROBERT WAIHENYA
(Sued as the SECRETARY GENERAL
of the PRESBYTERIAN
CHURCH OF EAST AFRICA).....1ST
DEFENDANT/RESPONDENT

RT. REV. PATRICK THEGU MUTAHI
(Sued as the MODERATOR of the
GENERAL ASSEMBLY of the
PRESBYTERIAN CHURCH OF
EAST AFRICA).....2ND
DEFENDANT/RESPONDENT

THE REGISTRAR OF
SOCIETIES.....3RD
DEFENDANT/RESPONDENT

RULING

Background

1. The circumstances giving rise to the Notice of Motion (the Application) dated 15th April 2024 are that this Court (Ongeri, J), upon considering the Notice of Motion dated 6th April 2024, issued an interim order dated 8th April 2024, directed at Rev. Dr. Robert Waihenya, the 1st Respondent and Rt. Rev. Patrick Thegu Mutahi, the 2nd

Respondent, restraining them, either by themselves, their agents, employees or servants, from implementing the Nomination Committee's/Business Committee's recommendation to the General Assembly to elect, appoint or install David Nderitu Ndumo as Honorary Treasurer of the Presbyterian Church of East Africa (PCEA) during the 24th General Assembly that was to be held on 9th April 2024 at St. Andrew's Church in Nairobi, pending interpartes hearing of that Application.

2. Benjamin Njoroge Mburu, the Applicant, felt aggrieved by the actions of the 1st and 2nd Respondents, who he has accused of ignoring that Court Order and proceeding to install David Nderitu Ndumo. This informed the decision by the Applicant to return to court through the instant Application.

3. The Application seeks the following orders:

(i) THAT this Honourable Court do issue a NOTICE TO SHOW CAUSE to the 1st and 2nd Respondents so that they can appear in Court in person on a date appointed by the Court for purposes of showing why they should not be committed to civil jail for willfully

disobeying the Court Order issued on 8.04.2024.

(ii) THAT consequent to the interparties hearing of the Application, the 1st and 2nd Respondents be committed to civil jail for a period of six (6) months or for such other period as this Honourable Court may deem fit and just and/or their properties sequestered and/or attached and/or fined for willfully disobeying the Court Order issued on 8.04.2024.

(iii) THAT this Honourable Court do issue such further or other reliefs it might deem fit to grant.

(iv) THAT the 1st and 2nd Respondents do meet the costs of the Application.

4. In support of this application, the Applicant has invoked Sections 1A, 1B and 3A of the Civil Procedure Act (CPA); Order 40, Rule 3 of the Civil Procedure Rules (CPR); and Sections 5 and 28 of the Contempt of Court Act and supported the application with the grounds found on the face of it and in the Supporting Affidavit sworn the Applicant.

5. The Applicant has deposed that the 1st and 2nd Respondents were restrained whether by themselves or

through their agents, from implementing the Nomination Committee's/Business Committee's recommendation to the General Assembly to elect, appoint or install one David Nderitu Ndumo as Honorary Treasurer of the Presbyterian Church of East Africa (PCEA) during the 24th General Assembly which was to be held on 9th April 2024 at St. Andrew's Church Nairobi; that the said Court Order was duly served upon the 1st and 2nd Respondents through the Legal Officer of PCEA, Patricia Karanja on 8th April 2024 at 6.18 p.m. and that the order was served upon the 1st Respondent in person on the same date and upon the 2nd Respondent the following day , on 9th April 2024 at 9.33 a.m. through his WhatsApp number as well as his official email address.

6. He has deposed that despite service, the 1st and 2nd Respondents willfully disobeyed the said Court Order by facilitating the installation of David Nderitu Ndumo as Honorary Treasurer of PCEA during the 24th General Assembly held on 9th April 2024.

7. The Applicant claims that the actions of the 1st and 2nd Respondents constitute a blatant disregard for and a

disobedience of the Court Order, thus necessitating the instant Motion which ought to be allowed as prayed

The Response

8. The 1st Respondent has sworn a replying affidavit on 16th May 2024 to oppose the Application. He deposed that he is the Secretary General of the PCEA; that he received a copy of the relevant court order on the evening of 8th April 2024 and upon consultations with the Legal Officer of PCEA, he made efforts to contact the 2nd Respondent with the aim of informing him of the existence of the court order, without success. That he contacted the Past Moderators of PCEA and advised that they hold a meeting on 9th April 2024 prior to commencement of the General Assembly to discuss the matter. That during the scheduled meeting, the Past Moderators agreed that it would be necessary for the court order to be complied with but the then Moderator insisted on proceeding with the installation of David Nderitu Ndumo, notwithstanding the court order.
9. The 1st Respondent deposed, further that in view of the foregoing, he personally chose to distance himself from

the installation proceedings and conveyed the said decision to the Moderator. That he did not therefore participate in the installation proceedings and that to his knowledge, a few other church officials including Reverend Timothy Njoya, protested the installation process but were denied an opportunity to voice their sentiments.

10. It is equally the 1st Respondent's averment that upon receipt of the instant Motion, he wrote letters dated 24th April 2024 and 2nd May 2024 addressed to the Moderator, proposing that an urgent Business Committee Meeting be convened with a view to discussing the rescission of the installation of David Nderitu Ndumo but the said letters were not responded to; that he wrote a letter dated 26th April 2024 advising David Nderitu Ndumo not to assume office until the present suit is heard and determined. That he likewise issued an internal memo advising the Finance Officer not to undertake a handover of the Office of Honorary Treasurer to the aforementioned person, until the suit is determined.

11. The 2nd Respondent's Replying Affidavit was sworn on 13th May 2024. He has deposed that he is the Moderator of the 24th General Assembly of PCEA, having served in a similar capacity in the previous General Assembly. He confirmed that the phone number and email address referred to as having been used to serve him the Court Order belong to him, the 2nd Respondent deposed that he did not have an opportunity to see the served documents until the evening of 9th April 2024 due to the various engagements he was involved in during the course of the 24th General Assembly. That while the programme for the said Assembly began at 8.30 a.m. on 9th April 2024, he was at the venue by 8.00 a.m. to commence preparations, thereby making it impossible for him to check his phone and email correspondences at the time.

12. The 2nd Respondent deposed that in the circumstances, any failure to obey the court order made on 8th April 2024 was not intentional or wilful, as he was unaware of the existence of that court order at the time of participating in the General Assembly. That the planning

process for the 24th General Assembly; including the installation of the Honorary Treasurer, had taken place over a course of time and it was therefore unexpected for the same to be challenged at the last minute. He termed the media publications referenced in the application as hearsay and misleading in nature, and ought to be disregarded by this court.

13. It is the 2nd Respondent argument that the Applicant ought to have served him with the requisite documents physically on 9th April 2024 with ample time, since he and/or his advocates had prior knowledge of the scheduled General Assembly and his expected whereabouts. That had he possessed prior knowledge of the court order of 8th April 2024, the 2nd Respondent would have complied accordingly.

14. The 2nd Respondent urged this Court to find that any contempt of the court order has been purged in light of the correspondences by the 1st Respondent advising David Nderitu Ndumo not to assume office until determination of the present dispute. The 2nd Respondent has equally conveyed his apologies for any acts

undertaken and which may appear offensive or disrespectful to the court.

15. The 2nd Respondent swore a further affidavit on 29th May 2024 in which he has deposed that the replying affidavit earlier sworn by the 1st Respondent is actuated by malice and mischief; that he never received any prior communication from his counterpart, regarding the court order made on 8th April 2024. And that any attempts by the 1st Respondent to convey a meeting with past Moderators were acted upon without the knowledge or approval of the 2nd Respondent.

16. The 2nd Respondent claimed that contrary to the averments made in the replying affidavit of the 1st Respondent, the latter participated in the installation process of David Nderitu Ndumo, in his capacity as Secretary General. That the 1st Respondent was in charge of the day's programme and moved the General Assembly to pass the agenda. That it is the 1st Respondent who led David Nderitu Ndumo in signing the Oath of Office as Honorary Treasurer and bore witness thereto. That all along, the 1st Respondent did not inform the members of

the General Assembly of the existence of the court order; otherwise, they would have ensured compliance. That the 1st Respondent is intent on sanitizing his actions whilst simultaneously accusing the 2nd Respondent and therefore, the replying affidavit by the 1st Respondent has been brought in bad faith.

17. The Applicant filed a supplementary affidavit sworn on 4th June 2024. He has stated that both the 1st and 2nd Respondents had prior knowledge of the existence of the court order made on 8th April 2024 prior to the installation ceremony; that while the 1st Respondent seems remorseful for the disobedience of the court order, the 2nd Respondent's averments and actions convey an indifference on his part; that the 2nd Respondent deliberately disobeyed the court order through his various actions.

18. The Applicant stated that the installation of David Nderitu Ndumo having not been rescinded or reversed, this court ought not to find that the contempt by the 1st and 2nd Respondents has been purged.

Oral Testimonies

19. Upon application by the Applicant, this court allowed the cross examination of the Process Server, the 1st and 2nd Respondents on 2nd April 2025.

20. **Josephat Simeon Mutunga**, the Process Server, told the court, on cross-examination, that he personally served the Legal Officer of the PCEA and the 1st Respondent with a physical copy of the court order on 8th April 2024. He stated that the Legal Officer assisted him by calling the 1st Respondent and that the Legal Officer could not reach the 2nd Respondent. He stated that his efforts to serve the 2nd Respondent with the court order physically on 8th April 2024 were unsuccessful because he did not manage to trace his whereabouts; that he served him the following day, the 9th April 2024 at 9.33 a.m. via WhatsApp message.

21. The 1st Respondent upon taking the stand, relied on his replying affidavit and swore that he serves as the Secretary General at PCEA.

22. The 1st Respondent admitted, on cross-examination, that he was served with a copy of the court order on the evening of 8th April 2024 at Serena Hotel in Nairobi; that

he tried to reach the 2nd Respondent on phone without success; that he sent communication to the 2nd Respondent via WhatsApp which message was received but did not elicit a response.

23. It is the 1st Respondent's evidence that while he participated in the 24th General Assembly, he did not actively take part in the installation of David Nderitu Ndumo, though he was present and that he nevertheless, did not object to the said installation ceremony.

24. In re-examination, the 1st Respondent testified that upon unsuccessful attempts to reach the 2nd Respondent following receipt of the court order of 8th April 2024, he contacted two (2) other Moderators to inform them of the situation; that on 9th April 2024, the 2nd Respondent claimed that he had not been served with a copy of the said court order but nonetheless insisted on proceeding with the installation process.

25. The 2nd Respondent relied on his Replying and Further affidavits, that he was not aware of the court order. During cross-examination, he gave evidence that he had no prior knowledge of the court order, and only

came to learn of its existence on the evening of 9th April 2024 by which time the installation of David Nderitu Ndumo had already taken place. He claimed that he was not properly served with a copy of the said order and that he had no prior knowledge of service of the court order upon the Legal Officer of PCEA and/or the 1st Respondent.

26. The 2nd Respondent stated, further, that while he previously stated in his affidavit that the contempt has since been purged, the installation process has not been reversed to his knowledge; that as far as he knows, David Nderitu Ndumo continues to hold the position of Treasurer; that no procedure exists in the PCEA Constitution for reversal of an installation and that while Article 10.7 of the said Constitution gives the General Assembly wide powers, such powers would not necessarily extend to the reversal of an installation.

27. The 2nd Respondent testified that he presided over the installation of David Nderitu Ndumo but that at the time of such installation, he was unaware of the existence of the injunctive orders issued by the court on 8th April 2024 and that it was not a requirement for the 1st

Respondent, being the Secretary General, to participate in the installation process.

Submissions

28. In addition to oral evidence, parties also filed written submissions. The Applicant's submissions are dated 23rd June 2025. He cited the decision in **Katsuri Limited v Kapurchand Depar Shah [2016] eKLR** on the definition and elements of Contempt of Court, and Sections 5 and 28 of the Contempt of Court Act, which make provision for punishment for contempt of court.
29. The Applicant submitted on the following issues:
- (i) Whether the terms of the court order issued on 8th April 2024 were clear, unambiguous and binding on the 1st and 2nd Respondents;**
 - (ii) Whether the 1st and 2nd Respondents had knowledge or proper notice of the terms of the court order;**
 - (iii) Whether the 1st and 2nd Respondents have acted in breach of the court order;**
 - (iv) Whether the 1st and 2nd Respondents' conduct was deliberate.**

30. The Applicant submitted in respect of the issue that the Court Order of 8th April was clear both in substance and in timelines for compliance. The Applicant relied on Katsuri case on this issue.

31. On whether the 1st and 2nd Respondents had knowledge or proper notice of the terms of the court order, the Applicant submitted that it has been demonstrated that both the 1st and 2nd Respondents had prior knowledge of the aforesaid court order, the same having been served upon them as the evidence shows; that this was re-affirmed in the respective testimonies by the said Respondents; that in addition, the video clips tendered as “**Exhibit BM 6**” and played in court affirmed that the installation of David Nderitu Ndumo was undertaken amidst protests and objections raised in the course of the 24th General Assembly proceedings.

32. On whether the 1st and 2nd Respondents acted in breach of a court order, the Applicant submitted that the court order made on 8th April 2024 was blatantly breached by the 1st and 2nd Respondents, as seen in the installation of David Nderitu Ndumo; that in addition, the

said conduct on the part of the 1st and 2nd Respondents was deliberate and intentional. The Applicant relied on the case of **Katsuri Limited v Kapurchand Depar Shah**.

33. On the premise of the above arguments, the Applicant has urged this court to find that he has demonstrated that the 1st and 2nd Respondents are in contempt of the court order made on 8th April 2024 and to allow this application as prayed.

34. The 1st Respondent has briefly submitted that going by the decision in **Kigio Group Company Limited v Kibaara & 8 others [2024] KECA 919 (KLR)**, the Applicant herein must collectively prove the elements of contempt of court, in order for his application to succeed.

35. The 1st Respondent, in his submissions dated 27th June 2025, admitted service with a copy of the court order on 8th April 2024. He submitted that he did not participate in the installation of David Nderitu Ndumo as Treasurer and that it is the 2nd Respondent who moderated the installation process. He submitted that he took active steps in purging the contempt by writing the

letters referenced in his replying affidavit, in an attempt to have the installation rescinded and that David Nderitu Ndumo has not assumed office.

36. The 1st Respondent asked the court to exercise its discretion in excusing the contempt. He relied on the case of **Sang v Auctioneers & another; Kipketer (Interested Party); Kipketer (Third party) [2023] KEHC 25208 (KLR)** where the court exonerated the contemnors therein, upon them purging the contempt in question.

37. The 2nd Respondent's submissions are dated 14th July 2025.. On the issue of service, reference is made to the case of **Tom Ojienda & Associates v County Secretary, Nairobi City County & another [2022] KEHC 10705 (KLR)** in which the court reasoned that in a claim for contempt of court, it must be demonstrated that a party took reasonable steps to serve the court order in question, upon the contemnor. He submitted that in this matter, no proper service was effected upon him, in line with Order 5, Rule 8(1) of the CPR which requires that personal service be effected upon a defendant. He

submitted that the process server merely called the him on the evening of 8th April 2024 without clearly disclosing the purpose of the call to him, but did not serve him with the court order until the morning of 9th April 2024, by which time the 24th General Assembly proceedings had already commenced.

38. He submitted that service effected vide WhatsApp is in non-compliance with Order 5, Rule 22C of the Civil Procedure Rules which requires a process server to attach a delivery receipt indicating service via mobile-enabled messaging applications. He relied on the case of **Tek v Kibet [2024] KEELC 6478 (KLR)** and the case of **Realty Brokers Limited v Mwadi Women Entrepreneurs Ltd & 4 others [2024] KEELC 3804 (KLR)** to support his submissions on the mode of service.

39. The 2nd Respondent submitted that neither the Applicant nor the 1st Respondent has tendered any evidence to support their respective averments that they informed him of the existence of the court order prior to the 24th General Assembly proceedings and therefore, the true position is that he was unaware of the existence of

the said court order, at all material times prior to the installation process.

40. He submitted, further, that the court order purportedly served upon him was not accompanied by a penal notice, as is a legal requirement. He cited the case of **Sam Nyamweya & 3 others v Kenya Premier League Limited & 2 others [2015] KEHC 6265 (KLR)** and **Tom Ojienda & Associates v County Secretary, Nairobi City County & another**, where the respective courts reaffirmed the above position and submitted that in the absence of the requisite penal notice, the instant application is premature.

41. On the element of willful disobedience, the 2nd Respondent submitted that the video clips produced as “**Exhibit BM 6**” are purely aimed at portraying him in a negative manner; that in the absence of any prior knowledge of the existence of the relevant court order, the 2nd Respondent cannot be deemed to have willfully disobeyed the same; that the 1st Respondent was at all material times an active participant in the installation of the Honorary Treasurer but did not raise any objection as

claimed and that the Honorary Treasurer, upon being installed, signed the formula of installation in the presence of the 1st Respondent.

42. In view of the foregoing, the 2nd Respondent urged this court to declare him innocent of any contempt of the court order made on 8.04.2024 and to thus dismiss the instant Motion, as against him.

43. From the record, **the Registrar of Societies** (hereafter the 3rd Respondent) did not participate in the hearing of the instant Motion or file any documents in that respect.

Analysis and Determination

44. I have read the record of the court, the application under determination, the responses by the Respondents and parties' rival submissions. The background of this matter, as can be discerned from the record, is that, the Applicant lodged the present suit vide a plaint dated 6th April 2024 accompanied by a Notice of Motion of even date, brought under a certificate of urgency in which the Applicant sought injunctive orders. On 8th April 2024, this court (**Ongeri, J**) issued an interim injunctive order

restraining the 1st and 2nd Respondents, whether by themselves or by their agents, servants or employees, from implementing the Nomination Committee's/Business Committee's recommendation to the General Assembly to elect, appoint or install David Nderitu Ndumo as Honorary Treasurer of PCEA during the 24th General Assembly to be held at St. Andrew's Church, Nairobi on 9th April 2024.

45. It is apparent from the record that the installation process took place as scheduled on 9th April 2024. It is on that premise that the Applicant has now moved this court vide the instant application, seeking, *inter alia*, an order to cite the 1st and 2nd Respondents for contempt of court for disobeying the said court order and to have the said Respondents ordered to show cause as to why they should not be punished or committed to civil jail for 6 months for contempt.

46. The application is said to be brought primarily under the provisions of the Contempt of Court Act, Cap. 8F Laws of Kenya, which has been declared unconstitutional.

Section 5 of the Judicature Act, Cap. 8 Laws of Kenya

is the substantive law granting superior courts the power to punish for contempt. The Section provides that:

“(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts...”

47. The Court of Appeal, in **Kyoga Hauliers Limited v Long Distance Truck Drivers & Allied Workers Union [2015] eKLR**, had this to say in respect of the power of the Court to deal with contempt of court:

“The power to deal with contempt of court is provided for under Section 5(1) of the Judicature Act, Section 63(c) of the Civil Procedure Act and Order 40 Rule 31 of the Civil Procedure Rules. Of importance in the determination of this issue is however Section 5(1) of the Judicature Act, since Section 63(c) of the Civil Procedure Act and Order 40 Rule 31 of the Civil Procedure Rules are concerned with

disobedience of an order of temporary injunction and resultant consequences which are punishment in the form of imprisonment or attachment and sale of the contemnor's property."

48. The term '**contempt**' is defined in the **Black's Law Dictionary 9th edition** as:

"a disregard of, or disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body."

49. Further, the **Black's Law Dictionary**, the same edition, defines 'contempt of court' using the following words:

"Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment."

50. In **Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others [2014] eKLR**, the Court of Appeal held that in punishing contempt, the court exercises ordinary criminal jurisdiction. The Supreme Court of Kenya in **Republic v Ahmad Abolfathi Mohammed & Another (2018) eKLR**, explained the rationale for effecting punishment for contempt in the manner hereunder:

“In Econet Wireless Kenya Ltd v. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828 Ibrahim J (as he then was) relied on the Court of Appeal decision in Gulabchand Popatlal Shah & Another Civil Application No. 39 of 1990 (unreported), where the Court of Appeal stated as follows:

“It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away

from its responsibility to deal firmly with proved contemnors...In HADKINSON v. HADKINSON (1952) 2 All E.R. 567, it was held that:

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.”

...

We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of Court is well established. In the case of Mutitika v. Baharini Farm Limited [1985] KLR 229, 234 the Court of Appeal held that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.

The question that begs an answer, thus, is: did the applicant willfully disobey this Court's Orders?"

51. The message in the above authorities is that court orders are not issued in vain; that court orders create an obligation to those such orders are directed to comply with them as long as they remain in force and that the standard of proof in contempt of court proceedings is higher than in normal civil cases but below the standard of proof in criminal matters.

52. The duty of this court is to determine whether the Applicant has met the threshold specified in the case of **Pinnacle (K) Travel and Safaris Limited v Omar Faruk Osman & 5 others [2017] eKLR** and **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR** as well as the case of **Katsuri Limited v Kapurchand Depar Shah [2016] eKLR**, that:

a) That the order was clear, unambiguous and binding on the defendant.

b) That the defendant had knowledge of or proper service of the terms of the order.

c) That the defendant acted in breach of the terms of the order.

d) That the defendant's conduct was deliberate.

53. In this matter, the record is clear that this court made an injunctive order on 8th April 2024 restraining the 1st and 2nd Respondents whether by themselves or by their agents, from implementing the recommendation to the General Assembly of the PCEA to elect, appoint or install David Nderitu Ndumo as Honorary Treasurer of PCEA during the 24th General Assembly scheduled for 9th April 2024. The terms of that order are clear, unambiguous and easy to understand. Further I find that there is no dispute from any party before the court that the said order was issued or that it was ambiguous.

54. Regarding the issue of service, the Applicant's stand is that the said order was served on both the 1st and the 2nd Respondents. The Applicant called the Process Server, one Josephat Simeon Mutunga for cross-examination on the issue of service. Mutunga explained the role he

played in serving the court order. He managed to serve the 1st Respondent on 8th April 2024 but encountered difficulties in serving the 2nd Respondent on that day. He explained that efforts to get through to the 2nd Respondent to know his whereabouts for purposes of service were not successful. This was confirmed by the 1st Respondent who told the court that he also tried to call the 2nd Respondent without success.

55. Mutunga told the court that he managed to serve the 2nd Respondent on the morning of 9th April 2024, the day of the General Assembly. Mutunga, having encountered difficulties in finding out the whereabouts of the 2nd Respondent who was not reachable through a phone call, served the court order through the 2nd Respondent's WhatsApp number and through his official email. The 2nd Respondent did not deny that the court documents were sent to him through his official email and WhatsApp. His case is that he was too busy with the proceedings of the General Assembly to check WhatsApp messages on his phone or his email. He told the court that he saw the messages in the evening after the event.

56. In my considered view, it is undisputed that the 1st Respondent was duly served in person and had prior knowledge of the existence of the court order at all material times. The Process Server swore an affidavit of service on 11th April 2024 to that effect. This Affidavit of Service forms part of the court record. It is also apparent from the court record that the Process Server effected service of a copy of the court order upon the Legal Officer at PCEA, on the evening of the said 8th April.2024.

57. In respect of the 2nd Respondent, however, service and prior knowledge of the court order are disputed. The 2nd Respondent has maintained that while the court order was sent to his WhatsApp number and email address, this was done at a time when he was too busy with the organizing of the AGM that he did not manage to open and read the court order and by the time he accessed this information, the installation process had already taken place. The 2nd Respondent has also challenged the service claiming that the same ought to have been made in person and accompanied by a penal notice. .

58. **Order 5, Rule 8** of the **CPR** expresses that as far as is practicable, service shall be effected upon a defendant in person. That notwithstanding, pursuant to the fairly recent amendments to the CPR, provision is made for additional modes of service, including electronic email (under **Order 5, Rule 22B**) and mobile enabled messaging applications (under **Order 5, Rule 22C**). The 2nd Respondent, having admitted receipt of the court order and accompanying documents via his WhatsApp number, and in view of above provisions of the CPR, it is clear that while service in person is encouraged, the law makes allowance for other modes of service, particularly where personal service is difficult or impossible. In the present instance, the Process Server stated that he was unable to locate the 2nd Respondent in person, hence resorting to service by the means set out above. The court finds this explanation to be satisfactory. On this issue, it is my finding that given the circumstances that the 2nd Respondent was not reachable either by the Process Server, the 1st Respondent and even by the Legal Officer, it was not viable to serve him in person and that the

service through his WhatsApp and email is proper service under the law.

59. Further, I have considered the issue as to whether the 2nd Respondent had knowledge of the court order. The evidence of the 1st Respondent is that after he was served with the court order, he contacted the Past Moderators of PCEA and advised that they hold a meeting on 9th April 2024 prior to the commencement of the General Assembly to discuss the matter; that during the scheduled meeting, the Past Moderators agreed with the 1st Respondent that it would be necessary for the court order to be complied with; that, however, the 2nd Respondent insisted on proceeding with the installation of David Nderitu Ndumo, notwithstanding the court order.

60. On the question whether it was mandatory for the court order to be accompanied by a penal notice, previously, it was held by superior courts that for an applicant to succeed in contempt proceedings, he must prove personal service of the subject orders and the attendant penal notice upon the alleged contemnor (See the Court of Appeal decision in **Nyamogo & Another v**

**Kenya Posts and Telecommunications Corporation
[1994] KLR 141.)**

61. In recent years, however, the position is that where the applicant is able to demonstrate awareness by such alleged contemnor of the orders and not necessarily personal service of the order upon the contemnor, such awareness is sufficient (See **Kenya Tea Growers Association vs Francis Atwoli & Others [2012] eKLR.**).

62. Guided by the above authority, it is my view that the failure by the process server to endorse a penal notice to the court order would not in and of itself render the service as well as the instant Motion incompetent.

63. My considered view, after taking all the circumstances of this matter into consideration, I arrive at a conclusion that the 2nd Respondent was aware and had knowledge of the court order. I have considered the video clips availed to the court and I have noted the complaints raised by various parties in the course of the installation process in reference to the injunctive order. For instance, the audio at 2.46-2.49pm, the 1st

Respondent is captured referring to a court order restraining him from conducting the installation proceedings; the issue about the court order was raised asking to whom it was addressed. The 2nd Respondent gave a ruling that the matter of the court order should not be debated any further.

64. In view of the evidence presented before this court including the video clips, I am persuaded that the 2nd Respondent proceeded with the installation process while aware that there was a court order restraining that process.

65. On the issue whether the 1st and 2nd Respondents acted deliberately while aware of the court order and therefore breached it, I have considered evidence and the submissions tendered. Both Respondents were present during installation. The 1st Respondent maintains that he did not take part in the installation of the Honorary Treasurer, but the other office bearers. He was nonetheless present. He did not distance himself with the process or leave the General Assembly, if that was the only way he could have evaded taking part in the

installation proceedings. I have noted various correspondences requesting for the subsequent rescission of the installation of David Nderitu Ndumo copies of which are in the court record. There is a letter dated 24th April 2024 **(Exh 1)**; two (2) separate letters each dated 26th April 2024 **(Exh 2)** and **(Exh 3)**; and a letter dated 2nd May 2024 **(Exh 4)**. These letters were written after the event.

66. Further, while it is the 1st and 2nd Respondents allege that David Nderitu Ndumo has not assumed office as Honorary Treasurer, there is no way of ascertaining this to be the true position. Be that as it may, I am satisfied that the court order issued on 8th April 2024 was disobeyed and the disobedience was deliberate given that both Respondents were aware of the court order stopping the installation until the matter in court was determined.

67. Consequently, the Applicant has demonstrated that the Notice of Motion dated 15th April 2024 is merited. To that end, it is my finding that while aware of the Court Order of 8th April 2024, the 1st and 2nd Respondents proceeded to participate, as demonstrated in this ruling,

in the installation of Mr. David Nderitu Ndumo as the Honorary Treasurer, thereby breaching the court order. For the above reasons, I hereby find the 1st and 2nd Respondents in contempt of this court and grant Prayer 1 of the application.

68. Further, I do issue an order that the 1st and the 2nd Respondents shall attend court on a date to be fixed by this court for mitigation and sentencing.

69. Orders shall issue accordingly.

Dated, signed and delivered this 26th November 2025.

**S. N. MUTUKU
JUDGE**

In the presence of:

- 1. Mr. Mochu for the Applicant**
- 2. Mr. Mwangi for the 1st Respondent**
- 3. Mr. Njaramba for the 2nd Respondent**
- 4. Mr. Mkamba for the 3rd Respondent**

ORIGINAL