

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL CASE NO. E076 OF 2024**

BENJAMIN NJOROGE  
MBURU.....PLAINTIFF/APPLICANT  
VERSUS  
REV. DR. ROBERT WAIHENYA  
(Sued as the Secretary General of the Presbyterian  
Church of East Africa).....1<sup>ST</sup>  
DEFENDANT/RESPONDENT  
RT. REV. PATRICK THEGU MUTAHI  
(Sued as the Moderator of the General Assembly  
of the Presbyterian Church of East Africa).....2<sup>ND</sup>  
DEFENDANT/RESPONDENT  
THE REGISTRAR OF SOCIETIES.....3<sup>RD</sup>  
DEFENDANT/RESPONDENT

**RULING ON SENTENCE**

**Brief background**

1. These proceedings relate to disobedience of this court’s order issued on 8<sup>th</sup> April 2024, in which this Honourable Court issued an interim order restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents (hereinafter the 1<sup>st</sup> Contemnor and the 2<sup>nd</sup> Contemnor), either directly or through anyone acting on their behalf, from implementing the Nomination Committee’s/Business Committee’s recommendation to the

General Assembly of the Presbyterian Church of East Africa (PCEA) to elect, appoint or install David Nderitu Ndumo as Honorary Treasurer of the Presbyterian Church of East Africa (PCEA) during the 24<sup>th</sup> General Assembly held on 9<sup>th</sup> April 2024.

2. That order was not obeyed. That disobedience led to the filing of the Notice of Motion dated 15<sup>th</sup> April 2024 seeking issuance of the Notice to show Cause to the 1<sup>st</sup> and 2<sup>nd</sup> Contemnors why they should not be committed to civil jail for willfully disobeying that court order.
3. That application was considered and through a Ruling of this Honourable Court delivered on 26<sup>th</sup> November 2025, the 1<sup>st</sup> and 2<sup>nd</sup> Contemnors were found in contempt of this Honourable Court, for failing to obey the said orders. The matter was fixed for mitigation by the 1<sup>st</sup> and 2<sup>nd</sup> Contemnors before sentencing on 15<sup>th</sup> December 2025.

### **Mitigation of the 2<sup>nd</sup> Contemnor**

4. The 2<sup>nd</sup> Contemnor mitigated on that day ,but the 1<sup>st</sup> Contemnor was absent for reasons recorded in the court

file. In his mitigation, the 2<sup>nd</sup> Contemnor, through his legal representative, Mr. Njaramba, told the court that he is the Moderator and spiritual head of the PCEA and therefore he has no personal interest in the matter as he acts on behalf of the Church. He stated that he has served as a church minister for 26 years ministering the gospel; that he has held various leadership positions in the church and that he has never been faced with similar circumstances as these.

5. He submitted in mitigation that the General Assembly is the highest organ of the Church that meets every 3 years; that this particular Assembly was the physical assembly in 6 years due to the Covid 19 pandemic with many guests in attendance, making the day very busy during which sobriety may have been difficult to maintain. That during the General Assembly, 3 officers were being installed including the Moderator and therefore he was a subject of the proceedings of that day.

6. He told this Honourable Court, further, that he was remorseful and that even under the pressures of the activities of that day, he ought to have been more careful.

He expressed deep remorse for his role and conduct that led to the finding of contempt of court and stated that he now appreciates the seriousness of the offence and the importance of upholding the dignity and authority of the court.

7. The 2<sup>nd</sup> Contemnor tendered his sincere and unconditional apology to this Honourable Court for his actions and omissions and expressed that his intention was not to undermine or disregard the authority of the court; that he now understands that court orders must be strictly obeyed and that any dissatisfaction with court orders must be addressed only through lawful processes. He undertook to ensure that all court directives are respected and complied with by himself and the entire institution. He took it upon himself to educate the Church on matters of justice and the place of court orders.

8. He urged the court to consider his remorse, cooperation and commitment to compliance as mitigating circumstances in determining an appropriate sanction. He urged the court to exercise leniency as a first offender.

## **Mitigation of the 1<sup>st</sup> Contemnor**

9. The 1<sup>st</sup> Contemnor mitigated on 18<sup>th</sup> December 2025 through his legal representative, Mr. Mwangi. Mr. Mwangi submitted in mitigation that the 1<sup>st</sup> Contemnor is the Secretary General of the PCEA; that he is a law-abiding citizen and that this is the first time he is facing contempt of court proceedings. That the 1<sup>st</sup> Contemnor did all he could, within his powers, to ensure that the order was complied with by the relevant officials and organs of the Church.

10. Mr. Mwangi narrated the efforts the 1<sup>st</sup> Contemnor made including calling for a meeting of the church officials in the morning of 9<sup>th</sup> April 2024 on the issue of the court order. It was submitted that the 1<sup>st</sup> Contemnor has limited powers in his capacity as the Secretary General and was not in a position to make major decisions for the Church without the other officials. Mr. Mwangi mitigated that the 1<sup>st</sup> Contemnor was profusely apologetic for the acts or omissions on his part which resulted in the disobedience of the court order of 8/4/2024 and pleaded for leniency. Counsel urged that this Court considers the efforts

exhibited by the 1<sup>st</sup> Contemnor and the limitations he faced and give him a chance to correct the errors made by complying with the court order.

11. Mr. Mwangi referred this court to **Miguna Miguna v DPP and 2 others [2018] eKLR** where the Court (Kimaru J, as he then was) observed that:

***The Court has other options to secure the respect of the court orders and meet the ends of justice. The court may direct the contemnor to take positive action to purge the contempt. In the circumstances of this case, this court will exercise the third option as imposing a fine or committing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to prison may not serve the ends of justice in the particular circumstances or this case. in that regard, this court will not convict the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents but will give them an opportunity to assist the court in purging the contempt of the court that they have been found by this court to have committed.***

12. Mr. Mwangi urged this court to exercise discretion in this matter and allow the 1<sup>st</sup> Contemnor and other officials to act and comply with the court order.

### **Submissions by the Applicant**

13. Mr. Mochu, on behalf of the Applicant, submitted that contempt of court is a serious matter touching on the authority and dignity of the court; that nobody is above the law and that if anyone is allowed to disobey court orders the result will be lawlessness.

14. He submitted that although the 2<sup>nd</sup> Contemnor has apologized and asked for leniency, he has not demonstrated any efforts towards complying with the court order; that he has not undertaken to reverse or nullify the installation and that there was no promise to convene the organs of the church with a view to reversing the installation. Counsel submitted that the 2<sup>nd</sup> Contemnor is a beneficiary from the leniency he is seeking and that it is not enough to apologize without showing any efforts to purge the contempt.

15. Mr. Mochu urged that this court imposes the maximum penalty under the law to deter the 2<sup>nd</sup> Contemnor from committing such offences. Mr. Mochu asked the court to impose a 6-month jail term as well as a fine for the 2<sup>nd</sup> Contemnor.

16. In respect of the 1<sup>st</sup> Contemnor, Mr. Mochu submitted that he has asked for a chance to attempt to comply with the court orders.

### **Determination**

17. I have considered the mitigation tendered by the 1<sup>st</sup> and 2<sup>nd</sup> Contemnors, as well as submissions by the Applicant through his legal representative, Mr. Mochu.

18. Contempt of court is defined in ***Black's Law Dictionary 9<sup>th</sup> Edition***, as:

***The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.***

19. I have read Section 5 of the Judicature Act, which is the bases of contempt of court proceedings. It 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 such power shall extend to upholding the authority and dignity of subordinate courts.***

***(2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.***

20. Further, I have also read **Order 40 Rule (3) of the Civil Procedure Rules (2010)**, cited by the Applicant in support of the Notice of Motion dated 15<sup>th</sup> April 2024. That Notice of Motion is the genesis of these contempt of court proceedings as it led to the order that was disobeyed. The Order provides that in cases of disobedience, or of breach of

any terms of a temporary injunction, the court granting that injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.

21. There are many authorities on the subject of contempt of court. In **Miguna Miguna v Fred Matiang’i, Cabinet Secretary Ministry of Interior and Coordination of National Government & 8 others [2018] eKLR**, the Court (**Odunga, J as he then was**) opined that:

*Contempt of court is no doubt an affront to judicial authority and therefore is not a remedy chosen by a party but is invoked to uphold the dignity of the court..... I reiterate what I said in the earlier ruling that those who disobey Court orders risk being declared by the Court to have breached Article 10 of the Constitution which prescribes national values and principles of*

*governance with the attendant consequences among other appropriate sanctions.....*

*In deciding what sanction to mete, this Court must reflect on the need to maintain the rule of law and to ensure that the authority and the dignity of our Courts are upheld at all times and to stamp the Court's authority and uphold the values and principles of governance enshrined in Article 10 of the Constitution.*

22. In **Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui**[2021] eKLR, this court (Mwita, J) cited with approval the decision of the Supreme Court of India in **T. N. Gadavarman Thiru Mulpad v Ashok Khot And Anor** [2006] 5 SCC, where that court emphasized on the dangers of disobeying Court orders, as follows:

*Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third*

***pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.***

23. In **B vs. Attorney General [2004] 1 KLR 431**, the Court (Ojwang J, as he then was) stated that:

***The Court does not, and ought not to be seen to, make orders in vain; otherwise, the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.***

24. I have considered the mitigation offered by the 1<sup>st</sup> and 2<sup>nd</sup> Contemnors. I have also considered the submissions of the Applicant. I am alive to the fact that there is no prescribed punishment for contempt of Court because of the

lacuna in the law resulting from the declaration as unconstitutional of **The Contempt of Court Act**, (see **Kenya Human Rights Commission v Attorney General & another [2018] eKLR**).

25. I have noted that Section 39 Rules (1) and (2) (g) of the of High Court (Organization and Administration) Act provides that **the Chief Justice may make Rules generally for the effective organization and administration of the High Court**. Among the Rules to be made under that section are rules **on the procedure relating to contempt of court** (see section 39 (2) (g) of the Act.

26. To my knowledge, such rules are yet to be formulated. Therefore, to punish for contempt of court, this Court must resort to judicial discretion donated to the High Court by Section 5 of the Judicature Act and judicial pronouncements on the subject.

27. Courts have handled contempt of court proceedings from the point of view that each case is to be judged within its unique circumstances and that each case must be

handled on a case-by-case basis (**See Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui [2021] eKLR**).

28. The 1<sup>st</sup> Contemnor has expressed remorse and has apologized to this court for his actions and/or omissions in the way he handled this matter. He has asked for leniency and sought a chance to act within his limited powers to correct the wrongs committed.
29. The 2<sup>nd</sup> Contemnor, likewise, has expressed deep remorse and has profusely apologized to this court. He has, however, not demonstrated what he plans to do to right the wrongs committed in respect of this matter, save for stating that he, in his capacity as the Moderator of the PCEA, undertakes to ensure that all courts directives are respected and complied with by himself and the entire institution (PCEA). He expressed his preparedness to take it upon himself to educate the Church on matters of justice and the place of court orders.
30. In my determination of the issues before the court, I wish to distinguish the case cited by Mr. Mwangi in support

of his submissions urging that this court has alternative ways of punishing for contempt. Counsel relied on **Miguna Miguna v DPP and 2 others**, cited above. This case was decided based on the Contempt of Court Act which is no longer applicable after it was declared unconstitutional. However, in my considered view, the opinion of the court in that case is still relevant given that the punishment for contempt of court is left to the discretion of the court.

31. The 1<sup>st</sup> and 2<sup>nd</sup> Contemnors are not ordinary congregants in the PCEA. They are leaders. Shepherds of their flock in their different capacities, if you will. Their actions and behavior are under scrutiny by their congregants and Kenyans at large. Leading by example is no option for them. It is an imperative. They ought to know better.

32. The 2<sup>nd</sup> Contemnor started his mitigation by demonstrating the important role he plays as the Moderator and Spiritual Leader of the PCEA. He told the court that he has no personal interest in the activities he undertakes on behalf of the Church. To my mind, no leader can feign

disinterest in the responsibilities and duties falling under their docket. That interest may not be monetary or tangible benefits. To my mind, anyone occupying any leadership position must have some personal interest in the activities undertaken in service to the institution he/she is working for. If for nothing else, at least there must personal interest in the outcomes of his performance and the sense of achievement. Who doesn't take pride in seeing positive outcome?

33. The fact that the 2<sup>nd</sup> Contemnor is the Moderator and spiritual leader is reason enough to take a higher responsibility to ensure that the orders of the court are obeyed. All the congregants and PCEA followers must look up to him and other top leaders of the Church for spiritual guidance and exhibition of a leadership beyond reproach.

34. I have considered the submissions by Mr. Mochu for the Applicant. He has urged this court to impose the maximum penalty under the law as a deterrence for the 2<sup>nd</sup> Contemnor. He has specifically urged this court to impose

both a fine and a sentence of 6 months' jail term for the 2<sup>nd</sup> Contemnor.

35. The discretion bestowed on this court in sentencing contempt of court, just as in other cases, must be exercised judicially. Though found guilty of contempt of court, the 1<sup>st</sup> and 2<sup>nd</sup> Contemnors, this court, having received their respective mitigation and applied its mind to the issues before it, is of the view that the contemnors have learned their lessons. Both told the court that it was their first time to face contempt of court proceedings. I can only hold the belief that it was their first and last time to face contempt of court proceedings.

36. The contemnors ought to remind themselves that they, especially the 2<sup>nd</sup> Contemnor, in his capacity as the Moderator and spiritual leader as he described himself, is a leader of an institution that is regarded as the moral compass of the society and should therefore lead by example.

37. In pronouncing the sentence in this matter, I am guided by the decision of this Court (Kuloba, J as he then

was) in **Mbugua vs. Mbugua [1992] KLR 448** regarding committal to civil jail. The learned Judge pronounced himself thus:

*The committal to civil jail will be an end in itself, serving no useful purpose. It will be for vindictiveness only; but civil justice is placatory, not retaliatory or revengeful. As Courts administering civil justice we do not sit here unleashing reprisals of vengeance to satisfy egoistic vendetta veneered with some court orders. Committal to civil jail is redressal, not merely punitive. In this case if the Court sends the defendant to jail for six months, the wrong will not have been redressed; her sojourn in jail will be punishment to her, but it will not enforce the order said to have been disobeyed.*

38. I am satisfied, and I so believe, that these proceedings have taught the 1<sup>st</sup> and 2<sup>nd</sup> Contemnors a valuable lesson as was echoed in the case of **Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya &**

**another** [2005] KLR 828, where the Court underscored the importance of obeying court orders, thus:

*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. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void.*

### **Sentence**

39. Having considered all the circumstances of this case, it is my view that the following sentences will be

commensurate with the acts and omissions of the 1<sup>st</sup> and 2<sup>nd</sup> Contemnors:

- (i) ***That, in respect of the 1<sup>st</sup> Contemnor, Rev. Dr. Robert Waihenya, the court imposes a fine of Kshs 100,000, in the first instance, as punishment for his contempt. The 1<sup>st</sup> Contemnor is allowed 30 days within which to pay the fine, failing which, a warrant of arrest shall issue, and the 1<sup>st</sup> Contemnor shall on arrest, be directly committed to civil jail for a period one (1) month.***
- (ii) ***That, in respect of the 2<sup>nd</sup> Contemnor, Rt. Rev. Patrick Thegu Mutahi the court imposes a fine of Kshs 150,000, in the first instance, as punishment for his contempt. The 2<sup>nd</sup> Contemnor is allowed 30 days within which to pay the fine, failing which, a warrant of arrest shall issue, and the 2<sup>nd</sup> Contemnor shall on arrest, be directly committed to civil jail for a period two (2) months.***

(iii) ***The 1<sup>st</sup> and the 2<sup>nd</sup> Contemnor shall bear the cost of these contempt of court proceedings.***

40. Orders shall issue accordingly.

**Dated, signed and delivered this 19<sup>th</sup> day of December 2025 in open court.**

**S. N. MUTUKU  
JUDGE**

**In the presence of:**

1. Mr. Mochu for the Applicant
2. Mr. Mwangi for the 1<sup>st</sup> Respondent/Contemnor
3. Mr. Njaramba for the 2<sup>nd</sup> Respondent/Contemnor