



**Republic v Chief Magistrate’s Court at Keroka & another; Nyasani & 55 others (Interested Party); Araka (Ex parte Applicant) (Judicial Review E008 of 2024) [2026] KEHC 699 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 699 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
JUDICIAL REVIEW E008 OF 2024  
TW CHERERE, J  
JANUARY 22, 2026**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE CHIEF MAGISTRATE’S COURT AT KEROKA ..... 1<sup>ST</sup> RESPONDENT  
FOOTBALL KENYA FEDERATION ELECTORAL BOARD .. 2<sup>ND</sup> RESPONDENT**

**AND**

**VINCENT MEROKA NYASANI AND 55 OTHERS ..... INTERESTED PARTY**

**AND**

**THOMAS MONG’ARE ARAKA ..... EX PARTE APPLICANT**

**RULING**

**Introduction**

1. By an order issued on 03<sup>rd</sup> December 2025, Football Kenya Federation was joined to these proceedings as the 53<sup>rd</sup> Interested Party, while Mr. Hussein Mohammed Rashid, Mr. McDonald Mariga, and Mr. Harold Ndege were joined as the 54<sup>th</sup>, 55<sup>th</sup>, and 56<sup>th</sup> Interested Parties, respectively.
2. The joinder was necessary in light of the fact that the Notice of Motion dated 24<sup>th</sup> November 2025 seeks penal orders of contempt against the said parties, yet they were not parties to the proceedings at the time the application was filed. Their joinder ensured that they were accorded an opportunity to be heard before any adverse findings could be made, consistent with the requirements of procedural fairness.
3. The Notice of Motion dated 24<sup>th</sup> November 2025 was filed by the 6<sup>th</sup> to 52<sup>nd</sup> Interested Parties.



4. The Motion is grounded on Article 159(1) and Article 165(6) and (7) of *the Constitution* of Kenya, section 5 of the *Judicature Act* (Cap. 8, Laws of Kenya), Order 53 of the Civil Procedure Rules, and the inherent jurisdiction of this Court to protect the authority, dignity, and efficacy of its processes. The application invokes the Court's contempt jurisdiction, which is penal and quasi-criminal in nature and therefore attracts a strict standard of proof.
5. The Notice of Motion is anchored on the judgment delivered by this Court on 19<sup>th</sup> September 2025.
6. In that judgment, the Court issued, inter alia, an order of mandamus compelling the 2<sup>nd</sup> Respondent, the Football Kenya Federation Electoral Board, within seven days of service, to publish and recognise the Nyamira County Branch election results arising from elections held on 14<sup>th</sup> November 2024, and to include Mr Vincent Meroka Nyasani, the chairman-elect, in the list of Football Kenya Federation National Delegates.
7. The present application is therefore not directed at the enforcement, variation, or clarification of the judgment, but is confined to seeking a penal determination of contempt founded on alleged conduct occurring after its delivery.

## **The Applicants' Case**

### **(6th to 52nd Interested Parties)**

8. The application is supported by the Supporting Affidavit sworn on 24<sup>th</sup> November 2025 by Mr. Thomas Mong'are Araka, the Ex Parte Applicant.
9. The Applicants also rely the Further Affidavit sworn on 21<sup>st</sup> December 2025 by Mr. Benard Momanyi Michieka (6<sup>th</sup> Interested Party), and the Supplementary Affidavit sworn on 23<sup>rd</sup> December 2025 by Mr. Christopher Ong'aro Matakore (26<sup>th</sup> Interested Party).
10. Their case is that, following delivery of the judgment on 19<sup>th</sup> September 2025, communications emanating from within the structures of the 53<sup>rd</sup> Interested Party, Football Kenya Federation, intimidated stakeholders, undermined the authority of this Court, and frustrated compliance with its orders.
11. In submissions dated 30<sup>th</sup> December 2025, the Applicants relied on *Samuel M. N. Mweru & Others v National Land Commission & 2 Others* [2020] eKLR, in which the Court restated the settled principles governing civil contempt and emphasised that contempt proceedings are penal and quasi-criminal in nature, thereby attracting a strict standard of proof. The Court held that a finding of contempt must be founded on clear and cogent evidence demonstrating the existence of a valid and binding court order, knowledge of that order by the alleged contemnor, and deliberate or contumacious disobedience thereof. The decision further underscored that contempt jurisdiction is exercised to uphold the authority and efficacy of court orders, and not as a substitute for ordinary enforcement mechanisms.
12. The Applicants also relied on *Sang v Keter & 5 Others* [2024] eKLR, where the Court addressed the broader scope of contempt jurisdiction and observed that contempt is not confined to direct disobedience of express court orders. The Court held that conduct calculated to interfere with, obstruct, or impede ongoing judicial proceedings, or otherwise undermine the authority and dignity of the Court, may equally amount to contempt. At the same time, the Court cautioned that such jurisdiction must be exercised sparingly and only where the impugned conduct is shown to be contumacious and inimical to the administration of justice.



### **The Case of the 1<sup>st</sup> to 5<sup>th</sup> Interested Parties**

13. The 1<sup>st</sup> to 5<sup>th</sup> Interested Parties, namely Vincent Meroka Nyasani, Innocent Nyambane Mayaka, Richard Mabuka Obero, Josephat Momanyi Gichana, and Yvonne Rema Kerubo, supported the application through affidavit evidence and written submissions.
14. In particular, they relied on the Further Supplementary Affidavit sworn on 28<sup>th</sup> November 2025 by Mr. Vincent Meroka Nyasani, the 1<sup>st</sup> Interested Party. In that affidavit, Mr. Nyasani deposes that following the delivery of the judgment on 19<sup>th</sup> September 2025, officials of Football Kenya Federation, including its President, Vice President, and Chief Executive Officer, continued to exercise oversight and control over matters relating to the Electoral Board and Nyamira County Branch affairs. He avers those various letters, internal directives, electronic communications, and administrative actions were issued or sanctioned within Football Kenya Federation structures which, in his view, undermined the judgment, discouraged compliance, and perpetuated parallel governance arrangements contrary to the Court's determinations.
15. The 1<sup>st</sup> to 5<sup>th</sup> Interested Parties also filed written submissions dated 16<sup>th</sup> December 2025, in which they submitted that the judgment of 19<sup>th</sup> September 2025 conclusively determined the legality of the Nyamira County Branch elections and that any attempt to evade or delay compliance through internal administrative restructuring of Football Kenya Federation amounted to conduct calculated to weaken the authority of this Court.
16. They further contended that the impugned communications, when viewed cumulatively, demonstrated institutional resistance to the judgment and were intended to discourage compliance with, and participation in, the lawful processes flowing from the Court's decision.
17. They cited *Kenya Human Rights Commission v Attorney General & another* [2018] eKLR for the proposition that, following the declaration of unconstitutionality of the *Contempt of Court Act*, 2016, the jurisdiction of courts in contempt matters is exercised pursuant to section 5 of the *Judicature Act*, applying common law principles, and that contempt proceedings are penal and quasi-criminal in nature, attracting a strict standard of proof.
18. They further relied on *Samuel M. N. Mweru & Others v National Land Commission & 2 Others* [2020] eKLR, in which the Court restated the essential elements of civil contempt, namely the existence of a valid court order, knowledge of the order by the alleged contemnor, and wilful disobedience thereof. They invoked this authority to submit that conduct calculated to undermine or evade a court order strikes at the authority of the judiciary.
19. They also referred to *Matende v Ngawo & another* [2025] KESDT 69 (KLR) illustratively, to underscore the importance of compliance with lawful decisions within sports governance structures and to demonstrate the consequences of persistent disregard of binding determinations.

### **The Case of the 2<sup>nd</sup> Respondent**

#### **(Football Kenya Federation Electoral Board)**

20. The Football Kenya Federation Electoral Board opposed the application through a Replying Affidavit sworn on 10<sup>th</sup> December 2025 by Mr Patrick Korir.
21. The Board contended that the judgment of 19<sup>th</sup> September 2025 was directed at it as an institution, that contempt proceedings cannot be expanded to unnamed individuals, and that disputes over compliance fall within enforcement mechanisms rather than penal jurisdiction.



## **Position of the 53rd Interested Party**

### **(Football Kenya Federation)**

22. The 53<sup>rd</sup> Interested Party, Football Kenya Federation, did not file a replying affidavit or written submissions in response to the Notice of Motion dated 24<sup>th</sup> November 2025. Consequently, no independent evidential or legal position was placed before the Court on its behalf in opposition to the application.

## **The Case of the 54th to 56th Interested Parties**

### **(Mr. Hussein Mohammed Rashid, Mr. McDonald Mariga and Mr. Harold Ndege)**

23. The 54<sup>th</sup> to 56<sup>th</sup> Interested Parties advanced a separate and personal defence.
24. Mr. Harold Ndege opposed the application through a Replying Affidavit sworn on 11<sup>th</sup> November 2025, and a Supplementary Affidavit sworn on 26<sup>th</sup> November 2025. In those affidavits, he deponed that he is neither a member nor an office bearer of the Football Kenya Federation Electoral Board, denied having been personally served with the judgment or any order of this Court, and denied engaging in any conduct intended to interfere with, obstruct, or undermine the proceedings of this Court.
25. Mr. Hussein Mohammed Rashid opposed the application through a Replying Affidavit sworn on 16<sup>th</sup> December 2025 and a Supplementary Affidavit sworn on 22<sup>nd</sup> December 2025. In those affidavits, he denied that he was personally bound by the judgment delivered on 19<sup>th</sup> September 2025, denied any wilful interference with the proceedings of this Court, and denied obstructing or attempting to obstruct the fair administration of justice.
26. Mr. McDonald Mariga opposed the application through a Replying Affidavit sworn on 17<sup>th</sup> December 2025, in which he denied any personal involvement in the matters complained of, disavowed authorship or issuance of the impugned communications, and denied engaging in any conduct capable of constituting contempt of court or interference with the administration of justice.
27. Collectively, the 54<sup>th</sup> to 56<sup>th</sup> Interested Parties submitted that contempt of court is personal in nature, penal and quasi-criminal, and must therefore be established against an individual contemnor on the basis of personal knowledge, conduct, and culpability. They contended that liability for contempt cannot be inferred merely from institutional office, seniority, or association with a body against which a court order has been issued.

## **Issues for Determination**

28. Flowing strictly from the prayers in the application and the respective positions taken by the parties, the issues for determination are:
1. Whether the alleged contemnors wilfully interfered with the proceedings of this Court or otherwise obstructed, impeded, or undermined the fair administration of justice.
  2. Whether, in light of the evidence and the applicable legal principles, contempt of court has been proved against any of the alleged contemnors.



## Analysis

### **Whether the alleged contemnors wilfully interfered with the proceedings of this Court or otherwise obstructed, impeded, or undermined the fair administration of justice**

29. Having identified the issues for determination, the Court now turns to examine the affidavit evidence, the communications relied upon, and the rival submissions with a view to resolving whether the conduct complained of amounted to wilful interference with the proceedings of this Court or obstruction of the administration of justice.
30. In support of this issue, the Applicants rely on a series of communications annexed to the affidavits filed in support of the application. The Court has accordingly examined each such communication, both individually and cumulatively, to ascertain their nature, context, and legal effect.
31. The first communication is a letter dated 27<sup>th</sup> February 2025, annexed as BMM-1, authored by Mr Patrick Korir. The letter asserts internal protocol within Football Kenya Federation and cautions against administrative infractions. It is administrative in tone and content and does not direct disobedience of any court order or restrain access to this Court.
32. The second is a letter dated 25<sup>th</sup> February 2025, annexed as HN-1, authored by Dr. Hesbon Owilla and addressed to this Court. In that letter, Dr. Owilla disowns an affidavit purportedly filed in his name and seeks clarification from the Court. The communication invokes, rather than undermines, the supervisory jurisdiction of the Court.
33. A further letter dated 05<sup>th</sup> March 2025, annexed as BMM-2, acknowledges Dr Owilla's resignation as Chairperson of the Electoral Board. It is declaratory in nature and bears no relation to the conduct of proceedings before this Court.
34. Also relied upon is an extract of the Football Kenya Federation Constitution relating to the Electoral Board, annexed as BMM-3. This is an institutional governance document and does not constitute a communication capable of grounding a finding of contempt.
35. A convocation notice dated 01<sup>st</sup> May 2025, annexed as BMM-4 and signed by Mr Harold Ndege, convenes the Annual General Meeting pursuant to the Federation's constitution. It does not reference the judgment of this Court, direct disobedience thereof, or restrain access to judicial processes.
36. The Applicants further relied on a Notice of Motion dated 19<sup>th</sup> March 2025, annexed as BMM-5, filed by the Football Kenya Federation Electoral Board, seeking procedural reliefs before this Court. The filing of court pleadings constitutes an invocation of judicial process and cannot, without more, amount to interference with ongoing proceedings.
37. The WhatsApp message exchanges annexed as VMN-2 and VMN-3 reflect internal consultation and correspondence within Football Kenya Federation structures. They do not threaten court sanctions, discourage recourse to the Court, or direct defiance of court orders.
38. Finally, letters annexed as VMN-5 and VMN-8, authored by Ms Merceline Sande and Dr Hesbon Owilla respectively, address matters of representation and authorship of documents and facilitate participation in the proceedings.
39. Having considered the foregoing communications individually and cumulatively, and against the specific reliefs sought in the Notice of Motion dated 24<sup>th</sup> November 2025, namely a penal finding that the alleged contemnors wilfully interfered with the proceedings of this Court or impeded the



fair administration of justice, the Court is not persuaded that the impugned communications disclose conduct meeting that threshold.

40. None of the communications demonstrates intimidation, obstruction, or interference of the nature contemplated in the application, nor do they reveal conduct calculated to hinder participation in, or the orderly disposal of, the proceedings before this Court.
41. The Applicants have therefore failed to establish wilful interference or obstruction within the meaning of the orders sought in the application.

#### **Whether contempt of court has been proved against the alleged contemnors**

42. Contempt of court is personal, penal, and quasi-criminal in nature. A finding of contempt must therefore be grounded on clear and cogent evidence establishing deliberate or contumacious conduct attributable to the alleged contemnor, and the standard of proof is higher than on a balance of probabilities, though not as high as beyond reasonable doubt.
43. The Applicants' case is founded not on direct disobedience of an express court order, but on alleged interference with the authority of the Court and obstruction of the administration of justice through institutional and internal communications. In such circumstances, the Court must be satisfied that the impugned conduct was contumacious in character and calculated to subvert the judicial process.
44. As already found under issue (1) above, the communications relied upon were administrative or governance-oriented in nature and did not interfere with the proceedings of this Court, impede compliance with its orders, or obstruct access to justice. Further, save where expressly identified, the communications were not personally attributable to the alleged contemnors.
45. Applying the principles articulated in *Samuel M. N. Mweru & Others v National Land Commission & 2 Others (supra)* and *Sang v Keter & 5 Others (supra)* to the facts as found, the Court is not satisfied that the Applicants have discharged the burden of proof required to sustain a finding of contempt against any of the alleged contemnors.

#### **Disposition**

46. Where a court order is directed at an institutional body, contempt cannot be visited upon individuals unless it is shown that they were members of that body or were otherwise personally bound by the order. In such circumstances, the personal and penal nature of contempt requires proof of a direct legal nexus between the individual and the obligation imposed by the court, and precludes liability founded merely on institutional association or seniority.
47. For the reasons set out above, the Court makes the following orders:
  1. The Notice of Motion dated 24<sup>th</sup> November 2025 is found to be devoid of merit and is hereby dismissed.
  2. The 6<sup>th</sup> to 52<sup>nd</sup> Interested Parties shall bear the costs of the application, which costs are awarded to the 54<sup>th</sup>, 55<sup>th</sup>, and 56<sup>th</sup> Interested Parties.
  3. The 1<sup>st</sup> to 5<sup>th</sup> Interested Parties, having supported the application, shall bear their own costs.

**DELIVERED AT NYAMIRA THIS 22<sup>ND</sup> DAY OF JANUARY 2026**

**WAMAE.T. W. CHERERE**

**JUDGE**



## Appearances

Court Assistant - Terer

For Exparte Applicant - Mr. Mbetera for Makonjio, Nyaberi & Co. Advocates

For 1<sup>st</sup> Respondent - N/A

For 2<sup>nd</sup> Respondent - Mr. Maecha for Maeche & Company Advocates

For 1<sup>st</sup> to 5<sup>th</sup> Interested Parties- Mr. Mbetera for Makonjio, Nyaberi & Co. Advocates

For 6<sup>th</sup> to 52<sup>nd</sup> Interested Parties – Mr. Korir & Mr. Chirchir for J.K. Kaptich & Co. Advocates

For 54<sup>th</sup> to 56<sup>th</sup> Interested Parties – Mr. Kariuki for K.N. Mburu & Associates

