

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KISII**

**CIVIL APPEAL NO E067 OF 2025**

**TOM MULATI WANJALA, THE PRINCIPAL KISII NATIONAL  
POLYTECHNIC.....1<sup>ST</sup> APPELANT /APPLICANT**

**MONGERI MIRIERI, THE CHAIRMAN KISII NATIONAL  
POLYTECHNIC GOVERNING COUNCIL.....2<sup>ND</sup>  
APPELANT/APPLICANT**

**AND**

**MORARA EVANS NYANGONGO.....  
RESPONDENT**

**SENTENCE ON CONTEMPT OF COURT**

1. On 4.12.25, this court found the contemnors guilty of contempt of court. They appeared before this court on 16.12.25 to purge the contempt.
2. Mr. Andrew Nyongesa Masolo advocate appeared in person and told this court that the contempt was not deliberate and that he had misconstrued the status quo orders. He sought the mercy of this court saying he is a young advocate of only 2 years standing and, an officer of this court who was appearing for the 1<sup>st</sup> contemnor /respondent before the trial court and also before this court on appeal.
3. Mr. Evans Nyangongo also expressed his remorse saying the contempt he was not deliberate as he was not served with the orders dated 5.5.25 and he misconstrued the status quo orders to mean the attached buses were to remain where they were. He said he later instructed Mr. Masolo to withdraw the garnishee proceedings in the lower court upon realizing the conflict.

4. Mr. Meroka advocate represented Mr. Evans and urged this court to tamper justice with mercy as his client was remorseful.
5. Mr. Ndiritu for the applicant submitted that the contemnors deliberately disobeyed the orders of this court emanating from orders issued in the application dated 30.4.25 which was pending. Also, that the respondent ensured that he did not file an affidavit in the impugned proceeding by instructing an instruct an advocate to sign an affidavit on his behalf. He said that Mr. Masolo disobeyed the orders of this court despite being it's officer by swearing an affidavit in his name saying that there were no stay orders. Also, that he gave instructions that the decretal sum be deposited in his firm's account. Mr. Ndiritu further submitted that Mr. Masolo has not stated that he was neither aware nor had no knowledge of the orders issued herein. He further stated that the status quo orders were extended on 29.7.25 in the presence of Mr. Masolo the court. Also, that the court proceeded for August recess and Mr. Masolo went to the lower court on 7.8.25 through garnishee application seeking to attach the appellants bank account in execution of the decree. He said he was surprised that counsel claims he was not aware of what status quo means and that there was a confusion as he decided to disobey the court orders instead of coming to court for clarification. Further that he only ceased acting when applicant filed application dated 16.9.25. He urged this court to deal with the contemnors accordingly.

6. Section 28 of the Contempt of court Act empowers this court to punish for contempt committed either on its face or out of court. The said section provides that -

***(1)Save as otherwise expressly provided in this Act or in any other written law, a person who is convicted of contempt of court is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.(2)Without prejudice to subsection (1), the court may***

*order that the accused person be detained in police custody until the rising of the court.(3)A court may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his discharge. (4)Subject to subsection (1), the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.(5)Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in subsection (1) for any contempt either in respect of that court or of a court subordinate to it.(6)Notwithstanding anything contained in this section, where a person is found guilty of civil contempt, the court may if it considers that the fine will not meet the ends of justice and that imprisonment is necessary direct that the person be detained in civil jail for such period not exceeding six months as the court may deem fit.*

7. I have heard the contemnors herein and the applicant, though the contemnors

say they are remorseful and that the contempt was not deliberate but due to the fact that they misconstrued the status quo orders, the ruling of this court dated 4.12.25 was clear that the respondent and his counsel were guilty of contempt of court orders which were unambiguous. This was not a one-off contempt but a continuous one as the contemnors were playing cat and mouse game with this court.

8. This is a court of justice and the dignity of the court must always be upheld. Mr. Andrew Masolo is an officer of this court and has a duty to ensure that the court orders are respected, upheld and obeyed. Mr. Evans also has a similar duty.

9. This is a classic case of blatant disobedience of court orders by the contemnors. This court is not toothless as the contemnors may have thought as section 28 of the Contempt of court Act empower it to punish contemnors to protect and uphold its dignity. Having considered the mitigation of the

contemnors and reply by the applicant, the record and all the necessary factors, I proceed to sentence the contemnors as follows;

- a. Andrew Nyongesa Masolo advocate and Morara Evans Nyanyongo are each fined Kshs. 100,000/= or 3 months imprisonment in default.*
- b. I grant them 72 hours to pay the fine or surrender themselves to the custody of OCS Central Police station who will escort them to officer in charge Kisii prison to serve the sentence in civil jail.*
- c. In case of default on the part of the contemnors warrant of arrest to issue.*
- d. Mention on 22.1.26 for compliance.*

**T.A ODERA  
JUDGE  
15.1.26**

**Delivered Virtually in the presence of the Contemnors.**

Mr. Meroka for the 1<sup>st</sup> Contemnor,

Mr. Masolo advocate /2<sup>nd</sup> contemnor, and

Mr. Ndiritu for the applicant

Court Assistant - Kipchirchir

**Meroka:** I seek that the payment period be varied to 7 days instead of 72 hours. This is January and my client is paying school fees for his children. Can the fine be paid in instalments?

**Masolo:** I seek that the period of 72 hours be varied to 14 days.

**Ndiritu:** We have no objection that the fine be paid in 7 days. We can come back on 22.1.26 for compliance.

**Order:** I have heard the parties herein. Considering the history of the matter, instalments will not be appropriate. The fine be paid within 7 days from today.

T.A ODERA

JUDGE

15.1.26

**Meroka:** I seek that the payment period be varied to 7 days instead of 72 hours. This is January and my client is paying school fees for his children. Can the fine be paid in instalments.?

**Masolo:** I seek that the period of 72 hours be varied to 14 days.

**Ndiritu:** We have no objection that the fine be paid in 7 days. We can come back on 22.1.26 for compliance.

**Order:** I have heard the parties herein. Considering the history of the matter, instalments will not be appropriate. The fine be paid in 7 days from today.

Mention on 23.1.26.

**T.A ODERA**

**JUDGE**

**15.1.26**

**Court:** I have seen a letter dated 12.1.26 by Mr. Morara Evans Nyanyongo addressed to the Deputy Registrar of this court seeking clarification of orders herein and at the same time challenging the same. The said respondent is represented by counsel in this case and it is counsel who ought to address this court on his behalf. In any event, the issues raised in the said letter were addressed in the ruling dated 4.12.25 and thus can only be subjected to appeal.

**T.A ODERA**

**JUDGE**

**15.1.26**

