

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT CHUKA**  
**CIVIL SUIT NO. E002 OF 2024**

**HON. ONESMUS MUTHOMI**

**NJUKI.....PLAINTIFF/APPLICAN  
T**

**VERSUS**

**WILBERFORCE**

**NTWIGA.....DEFENDANT/RESPONDEN  
T**

**JUDGEMENT**

1. The Plaintiff filed a Complaint dated 16<sup>th</sup> September 2024 seeking the following: -

- i. A declaration that the publication made by the Defendant on or about 31<sup>st</sup> August 2024, 5<sup>th</sup> September 2024 and 11<sup>th</sup> September 2024 on the Defendant's Facebook account of and concerning the

Plaintiff are false, defamatory, libellous and malicious.

- ii. A permanent injunction restraining the Defendant from writing and/or publishing any defamatory statements in reference to the Plaintiff.
- iii. An order directing the Defendant to publish a suitable and fitting apology and retraction of similar prominence as the defamatory publication.
- iv. General damages for libel
- v. Aggravated and exemplary damages for defamation.
- vi. Interest on (c) and (d) at court rates from the date of judgment until payment in full.
- vii. Costs of the suit together with interests thereon.

viii. Any other that this honourable court may deem fit to award.

2. Alongside the Complaint, the Plaintiff filed a Notice of even date seeking the following orders: -

- i. Spent
- ii. That pending the hearing and determination of this Application inter partes, this honourable court be pleased to issue an order restraining the Defendant by himself, his agents and assigns from publishing, publicizing, writing, posting or in any way commenting on the Plaintiff, his character, person or the performance of his duties and functions as the duly elected Governor of Tharaka Nithi County.
- iii. That pending the hearing and determination of this application inter

partes, this honourable court be pleased to issue an order restraining the Defendant by himself, his agents and assigns from further publishing, publicizing, writing, posting or in any way commenting on the publications made on 31<sup>st</sup> August 2024, 5<sup>th</sup> September 2024, 10<sup>th</sup> September 2024 and 11<sup>th</sup> September 2024 on online platforms against the Plaintiff.

iv. That pending the hearing and determination of this suit, this honourable court be pleased to issue an order restraining the Defendant by himself, his agents and assigns from publishing, publicizing, writing, posting or in any way commenting on the Plaintiff, his character, person or the performance of his duties

and functions as the duly elected Governor of Tharaka Nithi County.

- v. That pending the hearing and determination of this suit, this honourable court be pleased to issue an order compelling the Defendant to pull down all the publications made by him on diverse dates between 31<sup>st</sup> August to 11<sup>th</sup> September 2024 on online platforms against the Plaintiff.
- vi. That the costs of the application be provided for.
- vii. That this honourable court be pleased to make such further orders as it may deem just and fit in the circumstances of the case.

3. Upon hearing the application ex parte, the court (Gitari J.) allowed the application in terms of payers

(i), (ii) and (iii) and directed that the Application be served upon the Defendant within three days to which he would reply to the application within three days of service.

4. Before the Application was heard, the Applicant filed the present Notice of Motion dated 1<sup>st</sup> October 2024 seeking the following orders: -

- i. Spent
- ii. That the Respondent herein Wilberforce Ntwiga be summoned to appear before this court and/or show why he should not be punished for persistent and deliberate contempt of court orders given on 17<sup>th</sup> September 2024.
- iii. That the honourable court be pleased to punish and commit the Respondent to civil jail for a period not exceeding six (6) months for wilful and deliberate

disobedience of the court orders given on 17<sup>th</sup> September 2024.

iv. That the costs of this application be borne by the Respondent.

5. The application is founded on the grounds on the face of the motion and on the supporting affidavit of Hon. Onesmus Muthomi Njuki the Applicant. He deponed that on 31<sup>st</sup> August 2024, 5<sup>th</sup> September 2024 and 10<sup>th</sup> September 2024 the Respondent published on his Facebook account false and defamatory statements meant to disparage his (Applicant's) reputation and were understood to refer to his direct connection with various allegations of abuse of office, gross misconduct and corruption which the Defendant knew or ought to have known to be untrue.

6. He stated that on 16<sup>th</sup> September 2024, he sought *inter alia* orders that: -

“That pending the hearing and determination of this Application inter partes, this honourable court be pleased to issue an order restraining the Defendant by himself, his agents and assigns from publishing, publicizing, writing, posting or in any way commenting on the Plaintiff, his character, person or the performance of his duties and functions as the duly elected Governor of Tharaka Nithi County.”

7. It was his statement that the orders sought in the Application dated 16<sup>th</sup> September 2024 were necessary to restrain the Defendant from ruining his reputation as a Governor of Tharaka Nithi County. That the orders were given by Hon. Lady Justice Lucy Gitari on 17<sup>th</sup> September 2024 allowing the prayer restraining the Defendant by himself, his agents and assigns from publishing, publicizing,

writing, posting or in any way commenting on his character, person or the performance of his duties and functions as the elected Governor of Tharaka Nithi County.

8. He averred that the Defendant was served with the Application dated 16<sup>th</sup> September 2024 and the orders given on 17<sup>th</sup> September 2024 via the WhatsApp messaging platform on 18<sup>th</sup> September 2024.

9. He also stated that the Respondent proved his awareness of the court orders having posted the Application and the court orders on his Facebook account on 18<sup>th</sup> September 2024. That despite being aware of the court orders, the Respondent has wilfully and deliberately disobeyed the court orders by continuously posting and/or causing to be posted on his Facebook account allegations of the Applicant's alleged abuse of office, gross

misconduct, corruption and misuse of public funds in the county. That specifically, the said posts were made on 22<sup>nd</sup> September 2024, 23<sup>rd</sup> September 2024, 26<sup>th</sup> September 2024 and 1<sup>st</sup> October 2024 which publications are accessible to thousands of readers locally and internationally and continue to be read through his account and his actions amount to disobedience designed to defeat justice and render the court orders a nullity and an academic exercise.

10. He added that the Respondent will continue with his illegal and unlawful disobedience of the court orders at the expense of his reputation and he stands to suffer irreparable loss if not restrained.

11. In response, the Respondent filed an undated replying affidavit which summarized his defense to the contempt and lengthy Application. He stated

that he is registered voter in Maara Constituency Tharaka Nithi County. That the Applicant is well known to him having campaigned for him and would later be appointed as the Chief Officer in charge of Youth and Sports.

12. He stated that his advocate showed him two court orders relating to the same application. The first order is dated 17<sup>th</sup> September 2024 granting the Applicant orders in terms of prayers 1 and 2 of the Application dated 16<sup>th</sup> September 2024 for a period of 14 days. The second court order signed on 18<sup>th</sup> September 2024 granting the Applicant prayer 2 of the Application dated 16<sup>th</sup> September 2024 for a period of 14 days.

13. The Respondent averred that there is currently no contempt of court law enacted by parliament and as directed by Section 5 of the Judicature Act which the Applicant has relied on, the law currently

applicable for contempt is the English Civil Procedure (Amendment no. 3) Rules 2020. That contempt of court proceedings are special proceedings, quasi-criminal in character and accordingly the special procedures provided by law must strictly be adhered since there is a good reason for such strict procedures.

14. The Respondent averred that the instant application does not comply with certain mandatory requirements under Rule 81.4 of the England Civil Procedure (amendment no. 3) Rules 2020. Further, that there was no personal service of the impugned orders nor personal service of the Application yet the Applicant needs to prove that there was proper service.

15. He further averred that when the court purportedly extended the orders on 2<sup>nd</sup> October

2024, there were no ex parte orders in place to extend.

16. He deponed that the affidavit of service dated 30<sup>th</sup> September 2024 sworn by the Applicant's advocate bears annexures of some screenshots that were intended to prove service which screenshots disclose two dates of 7<sup>th</sup> November 2022 and Wednesday September without the year and the said discrepancy puts into question the credibility of service. Further, that the affidavit bears claims that he published information on his Facebook page on various dates which makes the specificity of the date of service pertinent. That since electronic service on the dates alleged is disputed, cross examination of the deponent was necessary.

17. The Respondent further states that his interpretation of the order issued by court, the impugned posts do not speak to the character,

person or the performance of the governor's duties and functions as the duly elected governor of Tharaka Nithi County. In addition, the posts made reference to performance of some functions, duties and responsibilities which in law are tasked to other public officers and not the Applicant.

18. He averred that the Applicant can only claim violation of the court order on the basis of specific duties and functions he is supposed to perform under Section 30 of the County Governments Act. That even if the Applicant was unintentionally mentioned in the posts, it is practically impossible to write about the County without mentioning or reference to the Applicant who is the face of the County.

19. He maintained that his statements were made in good faith and the order alleged to be violated is a gag order limiting his right of expression.

20. The Application was canvassed by way of written submissions. The Applicant filed his written submissions dated 20<sup>th</sup> January 2025. He raised one issue for determination being whether contempt application meets procedural merit. The Respondent elected not to file any submissions.

21. Counsel for the Applicant submitted that the Application was well grounded on the Applicable law having been filed under Section 5 (1) of the Judicature Act and Order 50 Rule 1 of the Civil Procedure Rules following the declaration of unconstitutionality of the Contempt of Court Act. Counsel relied on the case of **OGM (Suing as the father of KGW) v FG and Another [2020] eKLR** where the court stated that the Applicable law for contempt of court is Section 5 of the Judicature Act.

22. It was submitted that the Application was procedurally merited as it was in the form of an

application supported by written evidence given by an affidavit; detailed the nature of contempt; date and terms of the order disobeyed; confirmed personal service on the Defendant; date and terms when the contempt occurred; and brief summaries of facts constituting the contempt: therefore satisfying the conditions required pursuant to Rule 81.4 of the English Civil Procedure Rules (Amendment No.3) Rules, 2020. Counsel relied on the case of **Alfred Mutua v Boniface Mwangi [2022] eKLR** for the proposition that the procedure for contempt of court proceedings though provided for under English laws, must, where necessary, be modified to fit the Kenyan circumstances.

23. It was further submitted that the application meets both the principles and the standard of proof required for finding of contempt of court. Counsel

cited the case of **Cecil Miller v Jackson Njeru & Another [2017] eKLR** where the court held that for a person to be punished for contempt certain ingredients must be present being; the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the Defendant), the Defendant had knowledge of or proper notice of the terms of the order, the Defendant has acted in breach of the terms of the order and the Defendant's conduct was deliberate.

24. Counsel submitted that the orders issued by this honourable court on 17<sup>th</sup> September 2024 were very clear that the Defendant by himself, his agents and assigns refrain from publishing, publicising, writing, posting or any way commenting on the Plaintiff, his character person or the performance of his function as the duly elected governor of Tharaka Nithi County. That the

order was clear as to whom it referred to, gave precise details as to what actions of the Defendant was barred from and the consequence of disobedience. In support of the tenet of clarity, counsel relied on the case of **Sheila Cassat Issenberg & Another v Anthony Machatta Kinyajui [2021] eKLR.**

25. Counsel further submitted that even where an order is unclear or ambiguous, the courts have held that that does not constitute grounds for violation of the order and the correct approach is for the Defendant to seek the court's clarification of the order as was held in the case of **Manoti & Another v Manoti [2022] KEELC 2353 (KLR).**

26. It was further submitted that as regards service, the Defendant was personally served via the WhatsApp platform with the orders issued on 17<sup>th</sup> September 2024 and the application dated

16<sup>th</sup> September 2024 in accordance with Order 5 Rule 22C of the Civil Procedure Rules which service the Defendant acknowledged. Further, that the Defendant posted the order and application on his Facebook account. The Applicant relied on the cases of **Tom Ojienda & Associates v County Secretary, Nairobi City County & Another [2022] KEHC, Basil Criticos v Attorney General and 8 Others [2012] eKLR and Africa Management Communication International Limited v Joseph Mathenge Mugo & Another [2013] eKLR**

27. It was also submitted that the terms were clear that the Defendant was barred in the interim for 14 days from publishing and posting on the character of the Plaintiff, a duration which was extended on 2<sup>nd</sup> October 2024 yet the Defendant continued posting

on the Plaintiff's character when the court order was in force.

28. Finally, Counsel submitted that the Applicant had demonstrated that the Defendant was in contempt of the court orders issued on 17<sup>th</sup> September 2024 and that the Plaintiff has met the requisite standard of proof for contempt of court proceedings which was higher than on the balance of probabilities and almost but not exactly, beyond reasonable doubt. He cited the case of **Stephen Maina Kimanga & 4 Others v Lucy Waithira Mwangi & 2 Others [2015] eKLR.**

**Issues for determination**

29. From the party's rival affidavits and the submissions of the Applicant the following issues lend themselves for my determination:-\_

- i. Whether the contempt proceedings are properly anchored in law and procedure.

- ii. Whether the Respondent is in contempt of the court orders issued on 17<sup>th</sup> September 2024.
- iii. Whether the Respondent should be called upon to show cause why he should not be punished if contempt is established.

30. The Contempt of Court Act, 2016 was declared unconstitutional on 9<sup>th</sup> November 2018 in **Kenya Human Rights Commission vs. Attorney General & Another [2018] eKLR** for lack of public participation as required by Articles 10 and 118(b) of the Constitution, and for encroaching on the independence of the Judiciary. The consequential effect is that the applicable law would then be that which was applicable before the enactment of the Contempt of Court Act, 2016, which is section 5 of the Judicature Act which provides that:-

**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.**

31. Courts have reaffirmed that civil contempt jurisdiction derives from section 5 of the Judicature Act, the Constitution, and common law principles.
32. In **HMI v KBH [2021] KEHC 4462 (KLR)**, the High Court held that the applicable law and procedure for civil contempt are those of the High Court of Justice in England as reflected in the relevant rules and common law framework, imported by section 5 of the Judicature Act.

33. Rule 81.4 of the ***English Civil Procedure Rules (Amendment No. 3) Rules, 2020***

provides that:-

**(1) Unless and to the extent that the court directs otherwise, every contempt application must be supported by written evidence given by affidavit or affirmation.**

**(2) A contempt application must include statements of all the following, unless (in the case of (b) to (g)) wholly inapplicable**

—

**(a) the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court);**

**(b) the date and terms of any order allegedly breached or disobeyed;**

**(c) confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;**

**(d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service;**

**(e) confirmation that any order allegedly breached or disobeyed included a penal notice;**

**(f) the date and terms of any undertaking allegedly breached;**

**(g) confirmation of the claimant's belief that the person who gave any undertaking understood its terms and the consequences of failure to comply with it;**

**(h) a brief summary of the facts alleged to constitute the contempt, set out numerically in chronological order;**

**(i) that the defendant has the right to be legally represented in the contempt proceedings;**

**(j) that the defendant is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test;**



**(k) that the defendant may be entitled to the services of an interpreter;**

**(l) that the defendant is entitled to a reasonable time to prepare for the hearing;**

**(m) that the defendant is entitled but not obliged to give written and oral evidence in their defence;**

**(n) that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant;**

**(o) that the court may proceed in the defendant's absence if they do not attend but (whether or not they attend) will only find the defendant in contempt if satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute contempt;**

**(p) that if the court is satisfied that the defendant has committed a contempt, the court may punish the defendant by a**

**fine, imprisonment, confiscation of assets or other punishment under the law;**

**(q) that if the defendant admits the contempt and wishes to apologise to the court, that is likely to reduce the seriousness of any punishment by the court;**

**(r) that the court's findings will be provided in writing as soon as practicable after the hearing; and**

**(s) that the court will sit in public, unless and to the extent that the court orders otherwise, and that its findings will be made public.**

34. Rule 81.5 deals with the manner of service of the application and provides that: -

**(1) Unless the court directs otherwise in accordance with Part 6 and except as provided in paragraph (2), a contempt application and evidence in support must be served on the defendant personally.**

**(2) Where a legal representative for the defendant is on the record in the proceedings in which, or in connection with which, an alleged contempt is committed—**

**(a) the contempt application and evidence in support may be served on the representative for the defendant unless the representative objects in writing within seven days of receipt of the application and evidence in support;**

**(b) if the representative does not object in writing, they must at once provide to the defendant a copy of the contempt application and the evidence supporting it and take all reasonable steps to ensure the defendant understands them;**

**(c) if the representative objects in writing, the issue of service shall be referred to a judge of the court dealing with the contempt application; and the judge shall consider written representations from the parties and determine the issue on the papers, without (unless the judge directs otherwise) an oral hearing.**

35. Rule 81.7 then deals with directions for hearing of contempt application and provides that: -

**(1) The court shall give such directions as it thinks fit for the hearing and determination of contempt proceedings, including directions for the attendance of witnesses and oral evidence, as it considers appropriate.**

**(2) The court may issue a bench warrant to secure the attendance of the defendant at a directions hearing or at the substantive hearing.**

**(3) The court may not give any direction compelling the defendant to give evidence either orally or in writing.**

36. Rule 81.8 then deals with hearings of such applications and provides that: -

**(1) In accordance with rule 39.2, all hearings of contempt proceedings shall, irrespective**

**of the parties' consent, be listed and heard in public unless the court otherwise directs.**

**(2) Advocates and the judge shall appear robed in all hearings of contempt proceedings, whether or not the court sits in public.**

**(3) Before deciding to sit in private for all or part of the hearing, the court shall notify the national print and broadcast media, via the Press Association.**

**(4) The court shall consider any submissions from the parties or media organisations before deciding whether and if so to what extent the hearing should be in private.**

**(5) If the court decides to sit in private it shall, before doing so, sit in public to give a**

**reasoned public judgment setting out why it is doing so.**

**(6) At the conclusion of the hearing, whether or not held in private, the court shall sit in public to give a reasoned public judgment stating its findings and any punishment.**

**(7) The court shall inform the defendant of the right to appeal without permission, the time limit for appealing and the court before which any appeal must be brought.**

**(8) The court shall be responsible for ensuring that judgments in contempt proceedings are transcribed and published on the website of the judiciary of England and Wales.**

37. I have set out *in extenso* the applicable procedure under the English Law. This procedure cannot be applied in Kenya without due

modification to suit local circumstances. In **Alfred Mutua v Boniface Mwangi [2022] eKLR** cited to me by the Applicant, Odunga J. (as he then was) stated the following regarding the procedure to institute contempt proceedings: -

**“I must point out that what section 5 of the *Judicature Act* provides is that the High Court and the Court of Appeal 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 extends to upholding the authority and dignity of subordinate courts. It is also my view that the Court in exercising such power ought as much as our circumstances permit adopt the procedure in England for the time being. That, however, does**

**not mean that the said procedure must be copiously followed. That procedure must, where necessary, be modified to fit our circumstances. For example, Rule 81.8(8) of the English Rules provides that:**

**The court shall be responsible for ensuring that judgements in contempt proceedings are transcribed and published on the website of the judiciary of England and Wales.” [Underline mine.]**

38. The Applicant submitted that the application is procedurally merited in conformity with Rule 81.4 of the English Civil Procedure Rules (Amendment No. 3) Rules 2020. The Respondent on the other hand in his replying affidavit contended that the application does not comply with the mandatory requirements of the Rules aforesated.

39. I have considered the Application, the Replying affidavit, the Applicant's submissions and the record and I am satisfied that the present application is competently before this Court. The Applicant has filed a notice of motion supported by an affidavit, clearly setting out the nature of the alleged contempt, the terms of the order allegedly breached, the dates of service, and a chronological summary of the facts constituting the alleged contempt, in line with the requirements of Rule 81.4 of the English Civil Procedure Rules (Amendment No. 3) 2020 as adopted and adapted to our legal framework under section 5 of the Judicature Act, Cap. 8. The Respondent has been served with the application and afforded notice of the proceedings, thereby ensuring compliance with the principles of fair hearing under Article 50 of the Constitution.

40. While the Respondent contends that some formalities of the English Rules are not strictly complied with, it is clear from the affidavit and accompanying documents that the essential ingredients for instituting civil contempt proceedings, being notice, evidence of the order, particulars of the alleged breach, and opportunity to respond have been satisfied. In the circumstances, the application is properly instituted and before the Court for determination on its merits.

41. To establish civil contempt, an Applicant must prove the following elements:-

- i. Existence of a valid court, order the order must be clear, binding, and unambiguous.
- ii. Knowledge of the order, the contemnor must have had actual or constructive knowledge of the order.
- iii. Breach of the order, there must be evidence of non-compliance with the order and such breach has to be deliberate or wilful conduct, the breach must be intentional and without lawful excuse.

42. These elements were well laid down in **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR** where Mativo J. (as he then was) stated as follows:

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**“It is an established principle of law that  
in order to succeed in civil contempt**

**proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book Contempt in Modern New Zealand, who succinctly stated: -**

**a.the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the**

**defendant;b.the defendant had knowledge of or proper notice of the terms of the order;(c)the defendant has acted in breach of the terms of the order; and; There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:(d)the defendant's conduct was deliberate.”**

### **Existence of the Order**

43. As earlier stated, the Applicant vide the Application dated 16<sup>th</sup> September 2024, moved the court seeking inter alia that pending the hearing and determination of the Application, the Respondent be restrained by himself or by proxy from publishing, publicizing, writing, posting or in

any way commenting on the Plaintiff, his character, or the performance of his duties and functions as the duly elected Governor of Tharaka Nithi County.

44. Subsequently, the Court granted the orders ex parte on 17<sup>th</sup> September 2024 and the same expressly extracted on 18<sup>th</sup> September 2024 restraining the Respondent in the interim for 14 days by himself, his agents and assigns from publishing, publicizing or in any way commenting on the Plaintiff, his character, person or the performance of his duties and functions as the duly elected Governor of Tharaka Nithi County pending the hearing and determination of the Application inter partes.

45. From the record, these orders were never set aside or varied. It is clear to me therefore that the

orders were in existence thus dispensing the first element.

### **Knowledge of the Court Orders.**

46. In contempt proceedings, it is fundamental to prove that the alleged contemnor had knowledge of the court order or judgment which is alleged to have been breached. Knowledge is a pre-condition to liability because a party cannot be expected to obey an order of which they are genuinely unaware.

47. It is trite that electronic service is accepted in our legal system and our courts have moved away from the rigid requirement that the alleged contemnor must be personally served with a court order for contempt to be established. Instead, what matters is whether the contemnor had actual knowledge or could reasonably be inferred to have had knowledge of the order.

48. I am persuaded by the recent decision in **Ngugi v Muchiri & 2 others; Mwongeli & 4 others (2025)**, where Mogeni J. held that:-

**“knowledge of an order supersedes personal service...to excuse a contemnor who has knowledge simply because he was not personally served is to open court orders and process to deliberate, wilful contemptuous and cynical disobedience.”**

49. I am guided by the decision of the Court of Appeal in **Justus Kariuki Mate & Another v Martin Nyaga Wambora & Another [2014] eKLR** where the court categorically held:-

**“A party will be taken to have knowledge of a court order if they have actual knowledge of it, have received information about it, have reason to**

**know about it, or know about a related fact.”**

50. In the present matter, the Respondent publicly posted the application and the orders on his Facebook account, which is a clear demonstration of knowledge. The Respondent therefore, cannot purport that he did not have knowledge of the said orders.

### **Breach of the orders**

51. Court Orders must be obeyed as long as they remain in force. A party who believes a court order to be irregular may seek clarification or variation, but such belief does not absolve compliance. The law was aptly stated by Nyaundi J in **AYK v PNE [2024] KEHC 11631 (KLR)** that orders of a duly constituted court must be obeyed unless and until discharged or varied.

### **Willful/Intentional disobedience.**

52. Contempt proceedings demand that disobedience be shown to be intentional and not accidental. In **Mugambi v Mwaita & 3 Others [2023] KEELC 21377 (KLR)**, Mogeni J. underscored that evidence in contempt applications must leave no doubt about the contemnor's culpability and deliberate conduct.

53. In this case, despite actual and confirmed knowledge of the orders, the Respondent continued publishing posts relating to the Applicant's character and conduct. This conduct was persistent and repeated over multiple dates a pattern inconsistent with inadvertence or misunderstanding.

54. The Respondent put forward an argument that the restraining order amounted to a gag order. That argument misses the point that a valid order must be obeyed until and unless it is varied or set

aside. It was open to him to seek its variation or setting aside. It was not open to him to violate as to do so would undermine the authority of the court. There was no application to vary or clarify the orders. Instead, the Respondent chose to ignore them. Such conduct is deliberate and wilful.

55. Further, the Respondent alleges that there were two different court orders. A cursory glance of the record shows that the order dated 17th September 2024 was generated by the CTS whereas the order dated 18th September was extracted to capture in detail the system generated order. It therefore, cannot be said that the two are distinct. I therefore find that the breach was wilful and deliberate.

56. It is my finding that the Applicant has satisfied the threshold required to demonstrate that the Respondent was in contempt of the court orders

dated 17<sup>th</sup> September 2024. I find the Respondent (Wilberforce Ntwiga) in contempt of court.

57. Contempt of court is not a mere technicality. It is fundamental to the authority of courts and the beginning of rule of law. It therefore attracts sanctions, including committal to civil jail, fines, or other penalties, to vindicate the authority of the court and compel compliance.

58. The Respondent, having been found in contempt of the court orders dated 17<sup>th</sup> September 2024 and extracted on 18<sup>th</sup> September 2024, is now called upon to show cause why he should not be punished for the contempt. He is directed to appear before this court for mitigation before sentence.

59. The Application is thus allowed with costs to the Applicant.

Orders accordingly.

**Judgement delivered, dated and signed at Chuka  
this 19<sup>th</sup> day of February, 2026.**

.....  
**R. LAGAT-KORIR**  
**JUDGE**

**Judgement delivered in the presence of Mr.  
Saluny for the Applicant and Mr. Mwiti for the  
Respondent. Muriuki (Court Assistant).**

ORIGINAL