

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
KITALE**

PETITION NO. E001 OF 2025

(Before Hon. Lady Justice Maureen Onyango)

**BONFACE WANYONYI COSMAS.....1ST
PETITIONER**

**JACKSON AMBOKA WANYUNGU.....2ND
PETITIONER**

JULIA CHEROBON RUTTO alias

**JULIE KICHWEN.....3RD
PETITIONER**

VERSUS

HIS EXCELLENCY GEORGE NATEMBEYA,

**GOVERNOR, TRANS NZOIA COUNTY.....1ST
RESPONDENT**

THE COUNTY SECRETARY,

**TRANS NZOIA COUNTY.....2ND
RESPONDENT**

**COUNTY GOVERNMENT OF TRANS NZOIA.....3RD
RESPONDENT**

JANEROSE MUTAMA.....4TH

CONTEMNOR

SAMSON OJWANG'.....5TH

CONTEMNOR

PEPELA WANJALA.....6TH

CONTEMNOR

MOSES LUPAO, THE CLERK

COUNTY ASSEMBLY OF TRANS NZOIA.....7TH

CONTEMNOR

ANDREW WANYONYI, THE SPEAKER

COUNTY ASSEMBLY OF TRANS NZOIA.....8TH

CONTEMNOR

COUNTY ASSEMBLY OF TRANS NZOIA.....9TH

CONTEMNOR

AND

ROBERT WAMALWA.....1ST INTERESTED

PARTY

CHRISTOPHER KERIO LOROT.....2ND INTERESTED

PARTY

PIUS GUMO OMULO.....3RD INTERESTED

PARTY

ELIUD KIPCHIRCHIR TORMOI.....4TH INTERESTED

PARTY

RULING

1. This Ruling is in respect of the Petitioners' application dated 6th October 2025 seeking the following orders: -
 - i. Spent
 - ii. That this honourable court finds his Excellency, Governor George Natembeya, Truphosa Amere, County Government of Trans-Nzoia, Janerose Mutama, Samson Ojwang', Pepela Wanjala, Moses Lupao-The clerk County Assembly of Trans Nzoia, Andrew Wanyonyi-the speaker County Assembly of Trans Nzoia, County Assembly of Trans Nzoia to be in contempt of the Orders of this Court dated 17th January and the Decree dated 3rd July 2025
 - iii. The 1st, 2nd, 4th, 5th, 6th, 7th and 8th contemnors be summoned into this court to personally appear and show cause why they should not be sentenced to six month imprisonment for disobeying the orders of this court dated 17th January 2025 and the decree dated 3rd July 2025 and further to show Cause why the 3rd and 9th contemnors should not pay a fine.

iv. THAT this Honourable Court be pleased to grant an order compelling the contemnors to purge the contempt by fully obeying the decree of this Honourable Court dated 3rd July 2025 by revoking the appointment of the Interested Parties herein as County Executive Committee Members of the County Government of Trans Nzoia.

v. That the costs of this application be provided for

2. The Application is based on the following grounds: -

i. That on 10th January 2025, His Excellency Governor George Natembeya issued Executive Order No. 1 of 2025 displacing Boniface Wanyonyi Cosmas, Jackson Amboka Wanyungu and Julia Cherobon from their departments without re-assigning them any duties. Following the said Executive Order No. 1 of 2025, the County Secretary of the County Government of Trans Nzoia proceeded to issue an internal memo dated 15th January 2025 directing the County Executive Committee Members to hand over without specifying

the fate of Boniface Wanyonyi Cosmas, Jackson Amboka Wanyungu and Julia Cherobon alias Kichwen.

- ii. That in the Executive Order No. 1 of 2025 the 1st Respondent/Contemnor had appointed Pepela Wanjala who is the 6th Contemnor to act as the County Executive Committee Member for the department of Water, Environment, Natural Resources and Climate Change in place of the 1st Petitioner.
- iii. That in the Executive Order No. 1 of 2025 the 1st Respondent/Contemnor had appointed Janerose N. Mutama who is the 4th Contemnor to act as the County Executive Committee Member for the department of Education and Training in place of the 2nd Petitioner.
- iv. That in the Executive Order No. 1 of 2025 the 1st Respondent/contemnor had appointed Samson O. Ojwang to act as County Executive Committee Member for Public Service Management and Governance in place of the 3rd Petitioner.
- v. The above events resulted to the filing of the above Kitale ELRC Constitutional Petition No. 1 of 2025,

against His Excellency Governor GEORGE NATEMBEYA, the County Secretary Truphosa Amere and the County Government of Trans Nzoia where the Court proceeded on an application to suspend the implementation of the said Executive Order and the internal memo.

- vi. That despite the court vide the amended order dated 17th January 2025 suspending the Executive Order No. 1 of 2025 together with the internal memo dated 15th January 2025, the 1st, 2nd, 3rd, 4th, 5th and 6th Contemnors insisted on proceeding with the terms of the Executive Order No. 1 of 2025.
- vii. The 1st Respondent/Contemnor has been working in collusion with the 7th, 8th and 9th Respondents to enable the 1st Respondent appoint the Interested Parties herein to replace the 1st, 2nd and 3rd Petitioners who are still the County Executive Committee Members in the County Government of Trans Nzoia.
- viii. The 7th, 8th and 9th Contemnors were served with the amended Orders dated 17th January 2025 and the decree of this court which quashed the Executive Order

No. 1 of 2025 but have deliberately joined hands to assist in the enforcement of Executive Order No. 1 of 2025 which had been quashed on 3rd July 2025.

- ix. When the Constitutional Petition proceeded for hearing, the Court quashed both the Executive Order No. 1 of 2025 together with the Internal Memo of 15th January 2025. The effect of the decision of the Court is that Boniface Wanyonyi Cosmas, Jackson Amboka Wanyungu and Julia Cherobon alias Kichwen are still County Executive Committee Members of the County Government of Trans Nzoia.
- x. The term of office for the Petitioners is 5 years effective from November 2022.
- xi. That despite the court quashing the decision in the 1st Respondent/contemnor's Executive Order No. 1 of 2025, the contemnors still insist on enforcing the terms of the Executive Order No. 1 of 2025 and the 2nd Respondent has expressly written to the petitioners not to report to their places of work.

xii. That so far the 1st Respondent with the aid of the 7th, 8th and 9th contemnors has purported to appoint the interested parties to replace the petitioners as County Executive Committee Members in the County Government of Trans Nzoia in an effort to enforce the 1st contemnor's Executive Order No. 1 of 2025 that was quashed on 3rd July 2025.

xiii. THAT this Honourable court be pleased to grant the orders sought in the instant application.

3. The Application is opposed. The Respondent filed a Replying Affidavit sworn on 23rd December 2025 by the County Secretary, the 2nd Respondent herein. In her affidavit, Truphosa Amere deposes that the application is unnecessary as the Petitioners have offended the requirements of Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010 wherein this Honourable court did not sanction the joinder of 1st to 4th Interested Parties and the 4th to 9th purported Contemnors as parties to this suit having not participated in the prior proceedings.

4. She avers that the joinder of parties was not sanctioned by the court *suo moto* or upon an application for such leave, without which any parties joined in any other manner are strangers, unprocedurally and unlawfully joined without substantive order of the court.
5. The Respondents aver that the Petitioners, Boniface Wanyonyi Cosmas, Jackson Amboka Wanyungu and Julia Cherobon Rutto filed a petition at the Employment and Labour Relations Court at Kitale on 16th January, 2025 contending that their employment had been terminated by way of constructive dismissal, and hence sought various reliefs pursuant to section 49 of the Employment Act.
6. It is averred that consequently, the Court delivered judgment in favour of the Petitioners against the Respondents in the following terms:
 - i. A declaration be and is hereby issued that the Respondents have violated the Petitioners' constitutional rights to fair administrative action under

Article 47 of the Constitution and that the Executive Order by the 1st Respondent the internal memo by 2nd respondent dated 15/1/2025 violates Article 10, 41, 47, 50 and 159 of the Constitution.

- ii. A Judicial Review Order of Certiorari is hereby issued to bring to this Court and quash the decision of the 1st Respondent embodied in the Executive Order No.1 of 2025 dated 10/1/2025 together with the internal memo of the 2nd Respondent dated 15/1/2025.
- iii. The Petitioners will however be entitled to all their remuneration and allowances during the period they were kept out of office. They will thus be placed in the same financial position that they would have been had their services not been terminated.
- iv. The Petitioners are awarded costs of the Petition with interests at court rates from the date of this judgment till payment in full.

7. According to the Respondents, there was no order or reinstatement sought, and that is why the same was not awarded. The Respondents contended that whereas the court quashed the said Gazette Notice and awarded monetary compensation, the same was in tandem with Section 49 of the Employment Act.
8. It is the Respondents assertion that the Petitioners have misinterpreted and misconstrued the said court orders by averring that they ought to be reinstated to their initial positions, yet they did not seek such an order.
9. The Respondents maintain that under Paragraphs 9 and 10 of the Respondent's Replying Affidavit to the main Petition, the Petitioner's employment was for a Three (3) year Contract period from 2nd November, 2022. It is averred that the environment thus not being workable, this court awarded monetary compensation and not reinstatement.
10. The Respondents asserted that court orders and or prayers should be pleaded and sought to be awarded. It is contended

that the court orders are express and or explicit and must be interpreted as such and that further, the specific wording of the order is crucial and any actions taken must directly align with what the said order explicitly states and not outside what the said order says.

11. It is the Respondent's position that to avoid any ambiguity in interpretation of an Order to reinstate an employee, the same should generally be an express order which means that the Order should explicitly state the employee's return to their previous position and terms of their reinstatement rather than implying it through other means.
12. According to the Respondents, a reinstatement order is clear and direct so as to ensure both the employer's compliance and the employee's understanding of their restored employment status. On this basis, the Respondents argued that the instant order did not order any reinstatement to the employment status but was very clear and precise on monetary compensation to aggrieved parties.

13. The Respondents contended that a strict scrutiny of the said orders, at paragraph a and b, it is was the finding of this honourable court that the Petitioners were unlawfully terminated and the decision to terminate them contained in Executive Order and internal memo dated 15/1/2025 is quashed. The court then went ahead to issue a recourse to the Petitioners in Orders c and d, wherein the court awarded monetary compensation as expressly stated and no any other form of recourse.
14. The Respondents maintained that there was specificity and precision in the instant order to the extent that monetary compensation be awarded.
15. It is asserted that the County Government has complied with the monetary compensation as ordered by this honourable court and therefore there is no need for contempt proceedings.
16. It is the Respondents assertion that there is no basis established at all as to why the orders sought in the instant application ought to be issued, and further, that this court is

functus Officio and cannot entertain this application other than execution which is not before this Honourable court.

17. The Court was urged to dismiss the application with costs.
18. The 7th, 8th and 9th Contemnors in reply to the application filed grounds of opposition dated 3rd November 2025 on grounds that-
 - i. The 7th, 8th and 9th alleged contemnors are not parties to these proceedings and therefore the orders sought cannot lie as against them
 - ii. The Petition offends the principle of constitutional separation of powers
 - iii. The application does not raise any specific acts of contempt of court against the 7th, 8th and 9th alleged contemnors whether jointly or severally
 - iv. This court has no jurisdiction to cite and punish the said persons or bodies for contempt of court in the circumstances of this case.

19. The Application was canvassed by way of written submissions. The Petitioners' submissions are dated 27th December 2025, the 7th, 8th and 9th Contemnors submissions are dated 22nd November 2025 while the 1st to 3rd Contemnors submissions are dated 20th January 2026.

The Petitioners' submissions

20. In their submissions, the Petitioners contended that they challenged the 1st Respondent's executive Order No. I of 2025 displacing them from their departments as County Executive Committee Members without reassigning them any duties and that as a result, they filed the instant Petition challenging the said Executive order and that the court in its judgment and decree dated 3/7/2025 quashed the 1st Respondent's order which meant that they remained County Executive Committee Members for the County Government of Trans Nzoia for a term of five years unless lawfully removed. The Petitioners submit that the terms of the said decree were clear, that the decree was served on all the contemnors and the interested parties.

21. The Petitioners further submitted that the said orders, suspending the executive orders dated 29th January 2025 were served on the contemners as evidenced by the affidavit of service sworn on 2nd September 2025 by Jackson Nyongesa Simiyu.
22. With regard to their term of office, the Petitioners submitted that they were appointed to the positions of County Executive Committee members for the County Government of Trans Nzoia on 22nd November 2022 vide Gazette Notice No. 13296 pursuant to Article 179(2)(b) of the Constitution of Kenya, section 30(2)(i),31(d) and 35 of the County Governments Act. While citing section 42 of the County Governments Act, the Petitioners submitted that their terms of office was for a term of five years. They submitted that from their pay slips, their retirement date is 10th August 2027.
23. On the issue whether the appointment of Interested Parties should be annulled, the Petitioners submitted that the interested parties were nominated, vetted and appointed to take up the positions of the petitioners in an effort by the 1st

Contemnor and the County Assembly of Trans Nzoia to circumvent the decree of this court dated 3rd July 2025.

24. The Petitioners submitted that the appointment of the interested parties was based on a process that undermined the authority of this court and should be set aside and the contemnors punished as prayed in the application for contempt.

The 7th, 8th and 9th Contemnors' submissions

25. The 7th, 8th and 9th Contemnors in their submissions basically reiterated the grounds of opposition dated 3rd November 2025 and urged the court to dismiss the application dated 6th October 2025.

1st, 2nd and 3rd Contemnors submissions

26. In their submissions, the 1st, 2nd and 3rd Contemnors framed the issues for determination to be: -
- i. Whether the joinder of 1st to 4th Interested Parties and the 4th to 9th purported Contemnors is procedural?

- ii. Whether the 1st to 3rd Respondents are in contempt of the court orders dated 17/1/2025 and the Decree dated 3/7/2025?
- iii. Costs of the Application.

27. On the first issue, it is submitted that is trite law that the joinder of parties has to be sanctioned by the court *suo moto* or upon an application for such leave, without which any parties joined in any other manner are strangers, unprocedurally and unlawfully joined without substantive order of the court. In this regard, the 1st ,2nd and 3rd Contemnors submitted that the Petitioners herein have offended the requirements of provision of Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010 by including the 1st to 4th Interested Parties and the 4th to 9th purported Contemnors as parties to this suit having not participated in the prior proceedings without being sanctioned.

28. On the second issue, it is submitted that there was specificity and precision in the judgment of the court to the extent that monetary compensation be awarded. The 1st, 2nd and 3rd Contemnors submitted that an order for reinstatement of a terminated employee should expressly specify the specific

terms of reinstatement, for instance, when to reinstate, if it is immediately or on a specified date, inter alia. On this basis, it is contended that the instant order has not provided any reinstatement or any terms applicable to reinstatement and the same cannot therefore be assumed. Reliance was placed in the case of ***Aggrey Lukorito Wasike v Kenya Power and Lighting Company Limited [2016] (eKLR)***,

29. It is asserted that the Petitioners have misconstrued and misinterpreted the instant order to mean that that the Petitioners ought to be reinstated to their previous respective positions.
30. The 1st, 2nd and 3rd Contemnors submitted that the court awarded the Petitioners herein monetary compensation as it is evident from the Judgment of the court and not reinstatement to their positions, as no such was sought and or issued. It is submitted that the 1st and 3rd Respondents have already settled the monetary compensation as it was ordered by the court.
31. In the end, the court was urged to dismiss the instant application and uphold its decision on monetary compensation.

32. The 1st ,2nd and 3rd Contemnors also sought for costs of the Application.

Analysis and Determination

33. Having considered the application, the affidavits on record, the grounds of opposition and the parties' respective submissions, the issues that arise for determination are:

- i. Whether the joinder of 1st to 4th Interested Parties and the 4th to 9th purported Contemnors is procedural
- ii. Whether the cited Contemnors are in contempt of the court orders dated 17th January 2025 and the decree dated 3rd July 2025.
- iii. What orders should issue?

Whether the joinder of 1st to 4th Interested Parties and the 4th to 9th cited Contemnors is procedural

34. The Respondents contend that the 4th to 9th cited contemnors and the 1st to 4th Interested Parties were irregularly joined without leave of court as required under Order 1 Rule 10(2) of the Civil Procedure Rules.

35. While joinder of parties ordinarily requires leave of court, contempt proceedings are sui generis. A person who was not an original party to proceedings may nonetheless be cited for contempt if it is demonstrated that they had knowledge of the court order and willfully disobeyed it or aided in its disobedience.
36. Courts have consistently held that non-parties who aid, abet, or facilitate disobedience of court orders may be cited for contempt if knowledge and participation are proved. See **Supreme Court Decision in Petition No. 5 of 2020: The Executive Committee, Kisii County & others v Masosa Construction Limited & another**
37. Accordingly, it follows that failure to obtain prior leave for joinder is not fatal in contempt proceedings, provided the threshold for contempt is established. The objection on joinder therefore does not, by itself, dispose of the application.

Whether the cited Contemnors are in contempt of the court orders dated 17th January 2025 and the decree dated 3rd July 2025.

38. A brief background to this case is necessary for context. The Petitioners approached this court by way of a Petition dated 16th January 2025 alleging that on 10th January 2025, the 1st Respondent through Executive Order No. 1 of 2025 made changes in the departments with the aim of removing the Petitioners from their departments and re-assigning the functions and duties of the Petitioners to other County Executive Members without due process.
39. Alongside the Petition, the Petitioners filed an application seeking injunctive relief to suspend the implementation of the said Executive Order and internal memo pending determination of the Petition. The Court granted the injunctive relief, directing the Respondents to refrain from implementing the changes pending the hearing and determination of the Petition.
40. In the Petition, the Petitioners sought for the following orders: -
- i. A declaration that the Respondents have violated the petitioners' constitutional rights to fair administrative action under Article 47 of the Constitution and that the Executive Order by the 1st Respondent the internal memo by 2nd Respondent dated 15/1/2025 violates

Article 10, 41,47, 50 and 159 of the Constitution of the Republic of Kenya.

- ii. An order of Certiorari to bring into this court and to quash the decision of the 1st Respondent embodied in the Executive Order No. 1 of 2025 dated 10/1/2025 together with the internal memo of the 2nd Respondent dated 15/1/2025.
- iii. An order for general damages against the respondents jointly and severally for violating the constitutional rights of the petitioners as outlined in this Petition.
- iv. The costs of the Petition to be borne jointly and severally by the Respondents.
- v. Any other relief the court may deem fit

41. Upon consideration of the Petition, this Court delivered judgment on 3rd July 2025 in the following terms: -

- i. A declaration be and is hereby issued that the Respondents have violated the Petitioners' constitutional rights to fair administrative action under Article 47 of the Constitution and that the Executive Order by the 1st Respondent the internal memo by 2nd*

respondent dated 15th January 2025 violates Article 10, 41, 47, 50 and 159 of the Constitution.

- ii. A Judicial Review Order of Certiorari is hereby issued to bring to this Court and quash the decision of the 1st Respondent embodied in the Executive Order No.1 of 2025 dated 10th January 2025 together with the internal memo of the 2nd Respondent dated 15th January 2025.*
- iii. The Petitioners are awarded costs of the Petition and interests at court rates from the date of this judgment till payment in full.*

42. The Petitioners contend that the Contemnors have disobeyed the court orders by proceeding to implement Executive Order No. 1 of 2025, facilitating the appointment of the Interested Parties, and preventing the Petitioners from resuming their duties despite the quashing of the Executive Order and internal memo.

43. The test applicable in an application for contempt was articulated in ***Samuel M. N. Mweru & Others vs National Land Commission & 2 others [2020] eKLR***, where the Court

held that for an applicant to succeed in civil contempt proceedings, they must prove:

- i. The terms of the order were clear, unambiguous and binding on the respondent
- ii. The respondent had knowledge of the order
- iii. The respondent acted in breach of the order
- iv. The breach was deliberate.

44. Contempt of court proceedings serve to uphold the authority and dignity of the court and to ensure compliance with its orders. Courts therefore exercise this jurisdiction cautiously and only where willful and deliberate disobedience is demonstrated.

45. In the present case, there is no dispute that this Court issued orders on 17th January 2025 suspending the implementation of Executive Order No. 1 of 2025 and the internal memo dated 15th January 2025. There is equally no dispute that the Court, in its judgment delivered on 3rd July 2025, quashed both the Executive Order and the internal memo.

46. The evidence on record, including affidavits of service, demonstrates that the cited Contemnors were served with the said orders and had knowledge of their existence and effect.
47. The critical question, however, is whether the actions complained of constitute disobedience of the Court's orders.
48. The judgment of 3rd July 2025 reproduced above clearly granted declaratory relief and an order of certiorari quashing the Executive Order and internal memo. Notably, the Court did not issue an express order reinstating the Petitioners to their positions, nor did it restrain the Respondents from making fresh appointments in accordance with the law. However, the effect of quashing an unlawful decision is to nullify it, meaning that the status quo ante is restored. The impact of the court orders were therefore that the Petitioners were reinstated to offices they held before the issuance of the Executive Order and internal memo.
49. The argument of the Respondents that there were no express orders reinstating the Petitioners back to office is therefore fallacious. The restoration of the salaries of the Petitioners meant that the Contemnors understood they were restored to

their offices as they cannot be paid salaries if they were not in employment.

50. The foregoing however did not interfere with the powers of the Governor to reassign them to other offices at the same level. The orders therefore imply that the Executive Order and internal memo that stripped the Petitioners of their offices was no longer in force and the Petitioners should be restored to their previous officer, or other offices at the same level.
51. There is no ambiguity in the court order as there is no other interpretation that can be given to the order quashing the Executive Order No. 1 of 2025 and the internal memo dated 15th January 2025.
52. Consequently, the Court is satisfied that the threshold for civil contempt has been met as against the 1st 2nd and 3rd Contemnors. I however find no proof of contempt against all the other alleged contemnors.

What orders should issue?

53. The upshot is that the Notice of Motion dated 6th October 2025 is found to be meritorious and the court makes the following orders:

- a. This court finds his Excellency, Governor George Natembeya, the County Secretary Truphosa Amere and the County Government of Trans-Nzoia to be in contempt of the Orders of this Court dated 17th January and the Decree dated 3rd July 2025.
- b. The contemnors are hereby directed to purge the contempt by complying with the decree of this Court dated 3rd July 2025 by reinstating the Petitioners to the offices which they held prior to the Executive Order No. 1 of 2025 or other offices of equivalent rank.
- c. The 1st and 2nd contemnors are hereby summoned to appear in court either personally or by duly authorized representative on **19th May, 2026 at 2.30 pm** to show cause why they should not be punished for disobeying the orders of this court dated 17th January 2025 and the decree dated 3rd July 2025.

54. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 26TH DAY OF FEBRUARY, 2026**

**MAUREEN ONYANGO
JUDGE**