

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC PETITION NO. E049 OF 2024

(Before Hon. Lady Justice Hellen Wasilwa, J)

ERICK AGURE.....1ST
PETITIONER

JONATHAN KYALO.....2ND
PETITIONER

IDRIS SHWAIB.....3RD
PETITIONER/APPLICANT

RACHAEL NJERI.....4TH
PETITIONER

STANLEY SIMIYU.....5TH
PETITIONER

HUDSON IMALWA.....6TH
PETITIONER

MERCY ESTHER.....7TH
PETITIONER

VS

KENYA RAILWAYS CORPORATION1ST
RESPONDENT

PUBLIC SERVICE COMMISSION.....2ND
RESPONDENT

HONOURABLE THE ATTORNEY GENERAL.....3RD
RESPONDENT

ETHICS AND ANTI-CORRUPTION
COMMISSION.....4TH
RESPONDENT

OFFICE OF THE DIRECTOR
OF PUBLIC PROSECUTION.....5TH
RESPONDENT

**KENYA NATIONAL EXAMINATION COUNCIL...6TH
RESPONDENT**

**KENYA SCHOOL OF LAW.....7TH
RESPONDENT**

**KENYA INSTITUTE OF MANAGEMENT.....8TH
RESPONDENT**

**MINISTRY OF EDUCATION.....9TH
RESPONDENT**

RULING

1 The 3rd Petitioner/Applicant filed a Notice of Motion dated 21st November 2025 seeking orders that: -

1. *Spent*
2. *The Mr. Philip J Mainga being the Chief Executive Officer of the 1st Respondent, Mr. Paul Famba being the Chief Executive Officer of the 2nd Respondent and Ambassador Anthony Muchiri being the chairman of the 2nd Respondent be cited for contempt of court for wilfully disobeying the Judgment and Orders issued by Honourable Lady Justice Hellen Wasilwa on 11th March 2025.*
3. *Consequent to the grant of prayer 2 above, the contemnor be committed to civil jail for a duration exceeding six (6) months and/or such other duration as this Honourable Court may deem fit and expedient and In addition to or in the alternative to this, this Honourable Court do impose an appropriate penalty /fine upon the contemnor.*
4. *This Honourable Court do impose such other sanctions as it deems fit until the said contempt is purged.*

5. *Costs of this Application be in the cause.*
6. *Such further and/or other orders be made as this Honourable Court may deem just and expedient in the circumstances.*

3rd Petitioner/Applicant's Case

- 2 The Applicant avers that on 11th March 2025, this Court delivered a judgment directing that: all money, allowances and benefits due to an employee upon dismissal for lawful cause are payable; the Court further held that the Petitioners herein are entitled to their dues, Pension/NSSF and that such amounts must be paid subject to section 5(3) of the Pensions Act; the Court also found that the Respondents' withholding of the Petitioners' terminal dues, Pension/NSSF was unlawful, unconstitutional, null and void, and set aside the said decision; and the Petitioners be paid their dues as per their terminal letters.
- 3 It was the Applicant's case that despite all parties being present during the delivery of the judgment, the 1st and 2nd Respondents had blatantly, intentionally and contemptuously failed, refused and/or neglected to comply with the Court's directives.
- 4 The Applicant avers that the 1st and 2nd Respondents had refused to pay him all his allowances, benefits, pension and NSSF dues owed to him subject to Section 5(3) of the Pensions Act despite the Honourable Court directing that the withholding of the same was unlawful and unconstitutional.

- 5 The Applicant further avers that the 1st and 2nd Respondents' actions has placed the Petitioners' lives and livelihoods at serious risk by exposing them to severe economic hardship and infringing on their socio-economic rights.
- 6 It was the Applicant's position that unless the Court intervenes and cites the 1st and 2nd Respondents for contempt, the disobedience of the Court's orders would persist, thereby rendering the judgment ineffective and diminishing the authority and dignity of the Court.
- 7 The Applicant contends that the Respondents' conduct amounted to gross disobedience of the Court's orders and constituted a serious mockery of the authority of the Court.
- 8 The Applicant therefore urges the Court to intervene, arguing that the deliberate frustration of a valid court order was contemptuous conduct and it is in the interest of justice for the application to be certified urgent and allowed so as to safeguard the authority of the Court.

1st Respondent's Case

- 9 In opposition to the Application, the 1st Respondent filed a replying affidavit dated 9th January 2026 sworn by its Acting General Manager, Legal Services and the Corporation Secretary, Stanley Gitari.

- 10 The 1st Respondent avers that the Application is misconceived, bad in law, frivolous and an abuse of the court process as it had fully, faithfully and substantively complied with this court's judgment delivered on 11th March 2025.
- 11 The 1st Respondent avers that contempt proceedings are quasi-criminal in nature and where committal is sought, the Applicant must prove to a standard higher than a balance of probabilities that: there existed a clear and unambiguous court order; the alleged contemnor had knowledge or notice of the order; and that the alleged contemnor wilfully and deliberately disobeyed the order. It contends that the 3rd Petitioner had failed to meet this threshold.
- 12 The 1st Respondent further avers that the relevant portion of the judgment, particularly paragraphs 143 and 144, stated *"This is the law and the petitioners herein having been dismissed or having resigned for whatever reason are indeed entitled to the dues, Pension/NSSF and this should be paid subject to section 5(3) of the Pension Act."*
- 13 According to the 1st Respondent, the order was declaratory in nature and directs that the Petitioners be paid their dues as per their terminal letters and subject to section 5(3) of the Pensions Act, but it does not prescribe any specific timelines, set out precise amounts, or distinguish between dues payable directly by the employer and benefits payable by statutory schemes such as NSSF and pension scheme funds.

- 14 It is the 1st Respondent's case that for purposes of contempt, the order alleged to have been breached must be clear, specific, and capable of immediate performance, and, where personal committal is sought, it should ordinarily be endorsed with a penal notice and be shown to have been served or brought to the personal knowledge of the alleged contemnor.
- 15 The 1st Respondent avers that pursuant to and in strict compliance with the said order, it undertook an internal computation, reconciliation and verification of all terminal dues payable to each of the Petitioners, in accordance with the applicable law, their respective contracts of employment, the contents of their terminal letters, and subject to statutory deductions. Following the said reconciliation, it processed payment of the terminal dues that are payable directly by the employer to all Petitioners, including the 3rd Petitioner.
- 16 It was the 1st Respondent's case that the 3rd Petitioner's terminal dues amounting to Kshs. 97,597.10, net of lawful statutory deductions, were processed and paid on 29th May 2025. The said sum represented the full and final terminal dues payable directly by the employer in accordance with the judgment, the 3rd Petitioner's terminal letter and section 5(3) of the Pensions Act.
- 17 The 1st Respondent further avers that during the 3rd Petitioner's employment, statutory contributions to the National Social Security Fund had been duly deducted and

remitted as required by law. Once such deductions are remitted, the employer's role in relation to payment of NSSF benefits comes to an end and any issues regarding posting, updating or disbursement of such benefits fall within the mandate of NSSF as a statutory body.

- 18 The 1st Respondent contends that the 3rd Petitioner had not demonstrated that he made any formal demand to NSSF or to a pension scheme administrator regarding payment or rectification of pension or NSSF benefits, nor had he shown that the 1st Respondent refused to provide documentation or otherwise frustrated any such process.
- 19 The 1st Respondent avers that the Applicant had not exhibited any extracted order, decree or penal notice endorsed on the judgment and served upon the Managing Director of the 1st Respondent as required where committal for contempt is sought.
- 20 It avers that there was no affidavit of service demonstrating that the Managing Director had been personally served with an extracted order containing a penal notice or any formal demand requiring compliance within a defined timeline.
- 21 The 1st Respondent also disputed the correspondence relied upon by the Applicant, contending that the letters allegedly dated 2nd April 2025 and 12th September 2025 were not addressed to the Managing Director and were not reflected in the official correspondence records of the Managing Director.

- 22 It further avers that the 3rd Petitioner had not demonstrated that he presented himself to the 1st Respondent for clearance or collection of his terminal dues and was turned away, nor that any request for payment or clarification was made and declined.
- 23 The Applicant had also failed to pursue normal enforcement mechanisms such as extraction of a decree and execution proceedings before resorting to contempt proceedings.
- 24 The 1st Respondent maintains that neither the institution nor its Managing Director had wilfully or deliberately disobeyed the orders of the Court. On the contrary, the 1st Respondent acted promptly, transparently and in good faith to ensure compliance with the judgment by computing, processing and paying the terminal dues payable directly by the employer.
- 25 The 1st Respondent asserts that no evidence of wilful and deliberate disobedience had been placed before the Court and that the Applicant's dissatisfaction with the amount paid or interpretation of the judgment did not amount to contempt of court.
- 26 It is the 1st Respondent's position that contempt proceedings, being quasi-criminal in nature, ought not to be invoked lightly or used as a tool of harassment where there has been demonstrable compliance with court orders. The Applicant has failed to disclose the material

fact that he had already received his terminal dues payable by the 1st Respondent and had therefore approached the Court without candour.

27 The 1st Respondent avers that the threshold for contempt had not been met and that the orders sought against its Managing Director, including committal to civil jail, were unwarranted and constituted a misuse of the Court's contempt jurisdiction.

2nd Respondent's Case

28 The 2nd Respondent avers that he had neither disobeyed nor intended to disobey any lawful court order. He stated that where a party is dissatisfied with a court order, the proper recourse is either to file an appeal or seek a review of the decision.

29 The 2nd Respondent avers that being dissatisfied with this Court's judgment delivered on 11th March 2025, it had filed Appeal No. E588 of 2025, which is currently awaiting the setting of a hearing date.

30 The 2nd Respondent avers that the Court in its judgment found that the Petitioners were entitled to their terminal dues, pension and benefits under the National Social Security Fund, and directed that the Petitioners be paid their terminal dues as per their respective terminal letters.

31 It is the 2nd Respondent's position that the Petitioners were employees of the 1st Respondent and it was not responsible for the payment of their salaries or

allowances. He further contended that he was neither a trustee of the 1st Respondent's pension scheme nor a trustee of the National Social Security Fund and had therefore been wrongly enjoined in the contempt application relating to the release of pension dues.

32 The 2nd Respondent avers that the Applicants had not demonstrated that they have applied for their pension benefits from the 1st Respondent's pension scheme or from the National Social Security Fund and that such applications had been denied.

33 According to the 2nd Respondent, the application is therefore not only wrongly brought against it but it is also premature. The Applicants ought to first apply for their pension dues from the respective schemes and if the same is denied the court can have clarity on who is in contempt of the court orders.

34 The 2nd Respondent further avers that the Public Service Commission has not barred the pension schemes from performing their duties.

35 It is the 2nd Respondent's case that the application lacks merit and urged the Court to dismiss it with costs.

4th Respondent's Case

36 In opposition to the application, the 4th Respondent filed grounds of opposition dated 23rd February 2026 on the following grounds:

1. *THAT the Applicant has not met the standard of proof for grant of orders of contempt of court which is “higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt.”*
2. *THAT contempt proceedings involve much more than the private interests of the Applicants and the Respondents and implicate the public interest at large.*
3. *THAT the Applicant has failed to prove beyond peradventure, actual disobedience of court order or that the conduct complained of was deliberate.*
4. *THAT no sufficient material has been placed before this court to prove the efforts made by the Applicant; contempt proceedings are to be adopted only as a last resort as an application of this nature deals with the liberty of a person.*
5. *THAT the Applicant has failed to demonstrate the presence of wilfulness and bad faith for orders of contempt to issue.*
6. *THAT the application is a gross abuse of the court process.*
7. *THAT the Application has been brought in bad faith and is merely meant to frustrate, delay and/or disrupt the appeal and court process.*
8. *THAT the orders sought can only issue in the clearest circumstances.*

3rd Petitioner/Applicant’s Submissions

- 37 The Applicant submitted on two issue: whether a bona fide contempt of court threshold has been met at all; and who should bear the costs of this application.
- 38 On the first issue, the Applicant submitted that contempt of court arises where a party engages in conduct that defies or disrespects the authority of the court and interferes with the administration of justice. Reliance was placed on the definition in Black's Law Dictionary (9th Edition) which defines: *"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."*
- 39 The Applicant further submitted that Section 5 of the Judicature Act confers jurisdiction on the superior courts to punish for contempt. He cited the South African High Court in ***Kristen Carla Burchell versus Barry Grant Burchell No. 364 of 2005*** held that for an application for contempt to succeed, the Applicant should prove that: *"a. The terms of the order were clear and unambiguous and binding upon the Defendant; b. The Defendant had knowledge or proper notice of the orders; c. The Defendant acted in breach of the terms of the order; and d. That the Defendant's conduct was deliberate."*
- 40 On the first element, the Applicant submitted that the judgment delivered on 11th March 2025, clearly directed that all monies, allowances and benefits due to the Applicant be paid, and further declared the withholding of the Applicant's terminal dues and pension/NSSF unlawful,

unconstitutional, null and void. The Applicant contended that the orders were clear, unambiguous and binding upon the Respondents.

41 The Applicant submitted that the judgment dated 11th March 2025 was delivered in the presence of all parties and their advocates. It was therefore argued that the Respondents were fully aware of the orders. Additionally, the Applicant's advocates subsequently notified the Respondents of the judgment and reminded them of the need to comply with the Court's directions, when they failed to remit the applicant's dues as was expressly directed by the Court.

42 It is the Applicant's submission that despite the respondents herein being duly aware and informed of the above court directions they have failed to comply with the Court's judgment and being aware of the same.

43 On the issue of knowledge and service, the Applicant submitted that the said judgment was delivered in the presence of all parties and even and despite all parties being present for the said delivery the applicant's advocates still went ahead and notified the Applicants of the judgment on several occasion and on the need to comply with the Courts Orders.

44 The Applicant submitted that Rule 81.4 of the English Civil Procedure Rules (Amendment No. 3) Rules, 2020, which outlines the requirements of a contempt application, including confirmation that the order was personally

served and the date of service, unless personal service has been dispensed with by the court or the parties. He cited ***Alken Connections Limited V Safaricom Limited & 2 others [2013] eKLR*** where the court stated that *“Therefore, the law is that no order requiring a person to do or abstain from doing any act may be enforced by contempt unless a copy of the order has been served personally and endorsed with a notice informing him that if he disobeys the order, he is liable to the process of execution.”*

45 It was the Applicant’s submission that there was proper evidence of service of the orders. The Applicant further invoked Rule 81.5(2) of the English Civil Procedure Rules (Amendment No. 3) Rules, 2020, which allows service of the contempt application and supporting evidence upon a party’s legal representative where such advocate is on record in the proceedings.

46 The Applicant therefore submitted that the Respondents had both actual knowledge of the judgment and legal representation at the time it was delivered.

47 With regard to breach of the orders, the Applicant submitted that despite being aware of the judgment and having been reminded on several occasions by the Applicant’s advocates, the Respondents had deliberately refused and/or failed to comply with the Court’s directions. It was therefore contended that the Respondents’ conduct amounted to wilful and deliberate disobedience of the

Court's orders, thereby satisfying the threshold for a finding of contempt of court.

- 48 On the issue of costs, the Applicant submitted that the general principle is that costs follow the event and that the successful party should be awarded costs. Section 27 of the Civil Procedure Act, provides that the award of costs lies within the discretion of the court, but ordinarily costs follow the event unless the court orders otherwise.
- 49 The Applicant also relied on Halsbury's Laws of England (4th Edition) Vol. 37, which states that although the court retains discretion in matters of costs, the general rule is that costs follow the event unless there are circumstances warranting a different order. In view of the foregoing, the Applicant urged the Court to allow the application and award the costs of the application to the Applicant.

1st Respondent's Submissions

- 50 The 1st Respondent submitted that contempt proceedings are *sui generis* and quasi-criminal in nature since the liberty of the alleged contemnor is at stake. The standard of proof is therefore higher than on a balance of probabilities, though not beyond reasonable doubt.
- 51 The 1st Respondent submitted that before a party can be cited for contempt, certain elements must be strictly proved. Reliance was placed in ***Samuel M. N. Mweru & Others v National Land Commission & 2 others***

[2020] eKLR where the court noted: *“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 wilfulness 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.”*

52 It was submitted that the order relied upon by the Applicant arose from paragraphs 143 and 144 of the judgment delivered on 11th March 2025, which stated: *“The petitioners herein having been dismissed or having resigned for whatever reason are indeed entitled to the dues, Pension/NSSF and this should be paid subject to section 5(3) of the Pension Act.”*

53 The 1st Respondent submitted that this order was purely declaratory in nature, as it merely acknowledged the Petitioners’ entitlement to dues subject to statutory provisions. It did not specify the exact amounts payable, impose a specific actionable obligation, or prescribe timelines for compliance. Therefore, the order required reconciliation and computation by the employer before payment could be effected.

54 The 1st Respondent further submitted that even assuming, without conceding, that a valid and enforceable

order existed, the Applicant had failed to demonstrate wilful or deliberate disobedience. On the contrary, the evidence before the Court showed that the 1st Respondent had acted in compliance with the judgment.

55 It was submitted that following delivery of the judgment, the 1st Respondent undertook reconciliation and verification of the Petitioners' terminal dues. Thereafter, the 1st Respondent processed payment of the amounts payable directly by the employer. Specifically, the 3rd Petitioner was paid Kshs. 97,597.10 on 29th May 2025, which represented his full and final terminal dues payable by the employer. Therefore, the 1st Respondent duly complied with the judgment

56 The 1st Respondent further submitted that the Applicant's allegation that allowances, benefits, pension and NSSF dues had not been paid was unfounded. It was argued that the Applicant had not demonstrated that he had approached the National Social Security Fund or any pension scheme administrator to collect his pension benefits, nor had he shown that the 1st Respondent had refused to provide any documentation necessary for such claims.

57 The 1st Respondent submitted that matters relating to the payment of NSSF or pension benefits fall within the statutory mandate of the relevant statutory bodies and pension scheme administrators. Once an employer deducts and remits the relevant contributions, it has no further role in the disbursement of such benefits.

- 58 The 1st Respondent also submitted that any issues relating to NSSF or pension disbursement fall within the statutory mandate of those bodies, not the employer. Once contributions are deducted and remitted, the employer has no further role in the payment of NSSF benefits. The Applicant has also produced no evidence that the 1st Respondent refused to comply with any specific obligation.
- 59 It is the 1st Respondent's submission that where committal for contempt is sought against an individual, personal service of an extracted order containing a penal notice is the general rule. It placed reliance in the Court of Appeal decision ***Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR*** wherein it was reaffirmed that service or clear knowledge of the order must be demonstrated.
- 60 The 1st Respondent submitted that the Applicant had not produced an extracted order, proof of service of such order upon the Managing Director of the 1st Respondent, or any order endorsed with a penal notice. Further, no affidavit of service had been filed to demonstrate personal service upon the alleged contemnor. Consequently, it contends that the Applicant had failed to demonstrate that the alleged contemnor had proper notice of any enforceable order.
- 61 The 1st Respondent further submitted that given the serious consequences of contempt proceedings, which may result in the curtailment of personal liberty, strict

adherence to procedural requirements, particularly those relating to service and identification of the alleged contemnor, was mandatory.

- 62 It was also submitted that the Applicant had not attempted to enforce the judgment through the ordinary execution mechanisms provided under the law. The Applicant had not extracted a decree, initiated execution proceedings, or sought clarification or computation orders from the Court. Instead, the Applicant had invoked the contempt jurisdiction as the first resort.
- 63 The 1st Respondent argued that courts have consistently held that contempt proceedings should not be used as a substitute for execution procedures where ordinary enforcement mechanisms are available.
- 64 The 1st Respondent submitted that the Applicant had approached the Court with unclean hands and that the application was frivolous and intended to harass the 1st Respondent's Managing Director. The 1st Respondent has shown goodwill by strictly complying with the directives of the Court. The 1st Respondent undertook an internal computation, reconciliation and verification of all terminal dues payable to each of the seven Petitioners, in accordance with the applicable law, their respective contracts of employment, the contents of their terminal letters and subject to statutory deductions.

- 65 The 1st Respondent submitted that the Applicant had failed to disclose to the Court that he had already received payment of his terminal dues on 29th May 2025. According to the 1st Respondent, this material non-disclosure demonstrates that the application was not intended to enforce compliance with the Court's judgment but rather to harass the Respondent and its Managing Director.
- 66 It is the 1st Respondent's submission that it is a cardinal principle of equity that he who comes to equity must come with clean hands. The Court of Appeal in ***Uhuru Highway Development Ltd v Central Bank of Kenya & 2 others [1995] eKLR*** held that a party seeking equitable relief must make full and frank disclosure of all material facts.
- 67 The 1st Respondent therefore submitted that the Applicant failed to disclose the material fact that he had already received payment of his terminal dues from the 1st Respondent. This material non-disclosure amounts to misrepresentation and disentitles the Applicant from obtaining the equitable relief sought from this Honourable Court.
- 68 It was the 1st Respondent's submission that the evidence before the Court instead demonstrated that it had complied with the judgment by computing and paying the dues payable by the employer. The 1st Respondent therefore urged the Court to find that the application was devoid of merit and should be dismissed.

2nd Respondent's Submissions

- 69 The 2nd Respondent submitted that contempt of court proceedings are quasi-criminal in nature and may result in the deprivation of liberty. Consequently, the standard of proof required is higher than proof on a balance of probabilities.
- 70 It placed reliance in ***Ubora Housing Co-operative Society Ltd v Tripple Two Properties Ltd & 7 others [2023] KECA 675 (KLR)*** , where the Court held that: *“This principle was reiterated in the case [Gatharia K. Mutikika v Baharini Farm Ltd](#) (1985) KLR 227 and cited in the case [Katsuri Ltd v Kapurchand Depar Shali](#) (2016) eKLR whereof it was stated: “The courts take the view that where the liberty of the subject is, or might be involved, the breach for which the alleged contemnor is cited must be precisely defined. A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved it must be higher than proof on a balance of probabilities, almost, but not exactly, beyond reasonable doubt.” The said Court proceeded to add, thus: “the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge “*
- 71 The 2nd Respondent submitted that the judgment and the extracted decree relied upon by the Applicant did not specify the amounts payable. The order was broad and general in nature as it merely addressed the withholding of terminal dues, pension and NSSF benefits.

- 72 It is the 2nd Respondent's submission that the Applicant was not directly employed by the 2nd Respondent, further the 2nd Respondent does not manage the retirement scheme for the applicant neither is it a trustee in NSSF.
- 73 The 2nd Respondent submitted that it has been demonstrated by the 1st Respondent that it has released withheld payments to the Applicant on 28th May 2025. The withheld salaries having been settled the application for contempt is an abuse of the due process of the court.
- 74 It was further submitted that the Applicant has not shown that he applied for his terminal benefits to the retirement scheme or NSSF and the same was denied. Even if the same was denied, the course of action would be against the trustees of the retirement scheme or NSSF not the 2nd Respondent.

4th Respondent's Submissions

- 75 On whether the Applicant had met the conditions for grant of the orders sought to the required standard, the 4th Respondent submitted that although contempt proceedings arise in civil matters, it is well established that an Applicant must prove the elements beyond reasonable doubt, at least higher than the standard in civil cases. The fact that the liberty of the Respondent could be affected means that the standard of proof is higher than the standard in civil cases.

- 76 The 4th Respondent submitted that the Applicant had failed to meet this threshold. In support of this position, it was argued that the evidence presented by the Applicant, including the affidavit filed in support of the application, did not demonstrate the necessary elements required to sustain a finding of contempt.
- 77 The 4th Respondent submitted that four essential elements must be proved to make a case for civil contempt. The applicant must prove that: (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant; (b) the respondent had knowledge of or proper notice of the terms of the order; (c) the respondent has acted in breach of the terms of the order; and (d) the respondent's conduct was deliberate. Reliance was placed on ***Peter K. Yego & 3 Others V Pauline Nekesa Kode [2009] eKLR***, where the Court recognizing that contempt of court is criminal, held that it must be proved that one has actually disobeyed the court order before one is cited for contempt. The Applicant in an application for contempt must prove beyond peradventure that the Respondent is guilty of contempt.
- 78 On standard of proof, the 4th Respondent submitted that the standard of proof placed upon the respondent on a balance of probabilities. It is incumbent on the Applicant to prove that the Respondent's conduct was deliberate in the sense that he or she deliberately or wilfully acted in a manner that breached the order. The Respondent on the

other hand is required to rebut the inference of the contempt, by furnishing the court with contrary proof.

79 On discretion, the 4th Respondent submitted that this court ought not to grant the orders sought for reasons below: The power to commit for contempt is one to be exercised with great care; An application of this nature deals with the liberty of a person therefore such an order ought to be granted in the clearest circumstances; Contempt orders are coercive in its function rather than punitive; An order committing a person to prison for contempt is to be adopted only as a last resort.

80 The 4th Respondent submitted that an appeal has been instituted at the Court of Appeal by the 2nd Respondent in this matter. The substratum of the Appeal ought to be preserved. The funds in this matter involve public funds. Contempt proceedings involve much more than the private interests of the Applicants and the Respondents, they do implicate the public interest at large.

81 It is the 4th Respondent's submission that if the orders sought in this application are granted, the substratum of the appeal will be lost.

82 I have considered the averments and submissions of the parties herein. It is apparent that the court delivered its judgment directing payment of some dues to the petitioners including the 3rd petitioner herein on 11/3/25. What the court directed should be paid was the

petitioner's terminal dues including gratuity/pension as the case may be as per this terminal letter.

- 83 There is no indication from this application what the respondents have failed to do in that issues of pension are handled by the respondent's provident fund and NSSF payments by NSSF. The applicant has not set out clearly what the respondents still owe her and no denial has been extended. In the circumstances, the claim for contempt cannot stand and is dismissed accordingly. There shall be no order of costs.

**Dated, Signed and Delivered Virtually at Nairobi
this 19th Day of March, 2026.**

**HELLEN WASILWA
JUDGE**