

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**PETITION NO. E212 OF 2025**

*(Before Hon. Justice Dr. Jacob Gakeri)*

**LORIAN VINCENT EGESA ..... PETITIONER**

**VERSUS**

**AFRICAN ECONOMIC RESEARCH**

**CONSORTIUM..... RESPONDENT**

**RULING**

Before the court for determination is the applicant’s Notice of Motion dated 16<sup>th</sup> January, 2026 filed under certificate of urgency seeking orders that;-

1. Spent.
2. Spent.
3. Victor Murinde and Ernest Aryeetey, the Respondent’s Executive Director and Board Chair respectively to personally appear before this Honourable Court and show cause why they should not be punished for failing to comply with the judgment delivered on 20<sup>th</sup> November, 2025.
4. Victor Murinde and Ernest Aryeetey, the Respondent’s Executive Director and Board Chair respectively, be committed to Civil jail for a term not exceeding 6 months for deliberately and wilfully disobeying the court’s judgment.
5. This court be pleased to deny the Respondent’s audience in the matter until and unless it purges the contempt of court.

6. Respondent be ordered to pay for the costs of this application.

The Notice of Motion is expressed under section 1A, 1B, 3A and 63 (c) of the Civil Procedure Act, Section 5 of the Judicature Act and sections 12 and 13 of the Employment and Labour Relation Court Act and is based on the grounds set out on its face and the Supporting Affidavit of the applicant sworn on 16<sup>th</sup> January, 2026.

The Applicant's case is that the court delivered a judgment in his favour on 20<sup>th</sup> November, 2025 and although the Respondent's was directed to file a formal application for stay of execution which it did on 15<sup>th</sup> December, 2025, pursuant to which the court granted a stay of execution conditional upon the Respondent paying the Applicant's salary for December, 2025, January, 2026 and February 2026, as and when it fell due, but failed to do so reminders notwithstanding precipitating the instant application.

The Respondent's case is that it had the right of appeal and there was no personal liability on its Executive Director or Chair of the Board for their corporate actions and neither was guilty for contempt or wilful or deliberate defiance of the court's judgment.

Similarly, by a Replying Affidavit, sworn by Professor Victor Murinde, the Executive Director on 29<sup>th</sup> January, 2026, the affiant deposed that the Respondent

was dissatisfied with the judgment and had purposed to appeal and filed a Notice of Appeal and applied for certified copies of judgment and decree.

The affiant deposed that the Respondent's application for stay of execution had no prayer that the application be heard *ex parte* which the trial court did and aggrieved by the orders of the court filed a Notice of Appeal dated 18<sup>th</sup> December, 2025.

That Civil Application No. E006 of 2026 dated 7<sup>th</sup> January, 2026 was certified by the Court of Appeal on 9<sup>th</sup> January, 2026 and directions issued.

That the Applicant had sworn that he was a man of means with both current and non-current assets and thus the wherewithal to repay the sum of Kshs.3000,000.00 if the appeal succeeded. The affiant denied that the applicant was "kicked out of the building" on 14<sup>th</sup> January, 2026.

Finally, the affiant deposed that the Respondent had taken the necessary legal steps in exercise of the right of appeal and prayed for stay of execution and/or proceedings to preserve the appeal and pledged obedience and supplication to the court.

When the matter came up for mention on 11<sup>th</sup> March, 2023, counsel appraised the court on the status of appeal and the court gave directions on the filing and exchange of submissions and ruling date.

## **Applicant's submissions**

As to whether the Respondent's conduct was contemptuous, counsel submitted that the court had power to hold those who committed contempt of court accountable citing the decisions in **Samuel M. N. Mweru & others V. National Land Commission & 2 others (2020) eKLR**, **Republic V Ahmad Bolfathi Mohammed & another (2019) eKLR**, **Miguna Miguna V. Director of Public Prosecution & 2 others (2018) eKLR** and **Christine Wangari Chege V. Elizabeth Wanjiru Evans & others (2014) eKLR** among others, to submit that the Respondent's actions were contemptuous and the ingredients of contempt of court had been satisfied in terms of clarity of terms of the court's judgment and their binding nature and the judgment was delivered in the presence of the Respondent's counsel. That the Respondent was aware of the terms of the judgment.

Counsel submitted that the Respondent's appeal was neither a stay of execution nor a mitigating factor in contempt matters and dissatisfaction with a court order could not warrant its disobedience. Reliance was placed on **Woburn Estate Ltd V. Magaret Bashforth (2016) eKLR** and **Shimmers Plaza Ltd V. NBK Ltd (2015) eKLR**, to urge the court to grant the prayers.

## **Respondent's Submissions**

Reliance was placed on the sentiments of the court in **Republic V. Ahmad**

**Abutfathi Mahammed & another** (supra) on the essence of obeying court orders

Counsel further submitted that the Replying Affidavit was filed without leave of the court and objected to its production counsel submitted that being aggrieved by the judgment dated 20<sup>th</sup> November, 2025, the Respondent filed a Notice of Appeal on even date and obtained a conditional stay of execution and complied with the conditions and filed the appeal on 11<sup>th</sup> February, 2026.

According to counsel, the Respondent's appeal against the decision delivered on 20<sup>th</sup> November, 2025 could not amount to wilful disobedience of the judgment and the Executive Director and Chair of the Board of Directors were not liable for corporate actions of the Respondent and none of them had acted contemptuously or wilfully defied the court's judgment. Counsel submitted, specifically, on the meaning of the term 'wilful' or 'deliberate' disobedience or 'intentional' to urge that the Petitioner/Applicant was bound to establish that the Respondents conduct was deliberate wilful or intentional.

Pushing the case further, counsel urged that the applicant had not discharged the burden of proof to the requisite standard, citing the sentiments of the court in **Githiga & 5 others V. Kiru Tea Factory Co. Ltd (2013) eKLR** namely, higher than the balance of probabilities but below reasonable doubt. That the Petitioner had not shown that the Respondent's conduct was deliberate or wilful and the Respondent appealed the decision timeously.

The singular issue for determination is whether the Applicant's Notice of Motion is merited.

The pith and substance of the applicant's Notice of Motion is that the Respondent has deliberately and wilfully disobeyed the judgment dated 20<sup>th</sup> November, 2025 which declared the applicant's suspension by the Respondent unlawful, null and void *abinitio*, and quashed the Respondent's decision contained in the letter dated 13<sup>th</sup> October 2025 on suspension and withholding of remuneration and finally prohibited the Respondent from irregularly and unlawfully or unfairly terminating the applicant's employment.

It is common ground that the trial court granted a temporary stay of execution on 15<sup>th</sup> December, 2025 pending *inter partes* hearing of the Respondent's application dated 4<sup>th</sup> December, 2025.

However, the temporary stay of execution was subject to the Respondent herein paying the applicant his gross monthly pay less lawful deductions for the months of December, 2025, January 2026 and February, 2026 as and when payment fell due. The Respondent did not honour these directions. Evidently, the temporary stay of execution granted by the court *ex parte* on 15<sup>th</sup> December, 2025, lapsed at the end of December 2025 when the Respondent failed, refused or neglected to pay the applicants salary for the month of December, 2025.

Notably, although the Court of Appeal certified the Respondent's application for stay of execution urgent, it did not grant a temporary stay of execution.

The Respondent has no stay of execution of the Judgment against it. Even though the Respondent's appeal No. E103 of 2026 was filed on 11<sup>th</sup> February, 2026 as reported by the Respondent's counsel, and Civil Appeal No. E153 of 2026 challenging the *ex parte* Orders had been filed, the Respondent had no stay of execution or stay of proceedings by dint of the provisions of Order 42 Rule 6 (1) of the Civil Procedure Rules.

It is noteworthy that other than the Civil Application No. E006 of 2026 which sought a stay of execution at the Court of Appeal and Civil Appeal Civil Appeal No. E153 of 2026 challenging the Judgment and Decree and the *ex parte* Orders issued on 15<sup>th</sup> December, 2025, respectively, the Respondent provided no justification why the applicants gross salary for the months of December, 2025, January, 2026 and February, 2026 had not paid as ordered by the Court. This was the cost Respondent had to meet to enjoy the temporary stay.

Strangely, the Respondent did not seek a variation or setting aside of the Orders dated 15<sup>th</sup> December, 2025. The court directed service within 2 days and *inter partes* hearing on 24<sup>th</sup> February 2026.

The principles that govern contempt of court matters are well settled. Section 5 of the Judicature Act provides;-

- (1) The High Court and the Court of Appeal shall have the same power to punish contempt of Court as is for the time being possessed by the High Court of Justice in England and such power shall extend to upholding the authority and dignity of subordinate courts.
- (2) An Order of the High Court made by way of punishment for contempt of Court shall be appealable as if it were a conviction and sentence made in exercise of the ordinary criminal jurisdiction of the High Court. See in this regard **Justus Kariuki mate & another V. Hon. Martin Wambora & another**, Civil Appeal No. 24 of 2014 (Wambora Case).

The need to punish persons who disobey Court Orders cannot be over-emphasized. It ensures that the dignity and authority of the Courts is maintained and enhances the rule of law.

See in this regard **Refrigeration and Kitchen Utensils Ltd v Gulabchand Popatlal Shah & another**, Civil Application No. 39 of 1990 **Hadkinson v Hadkinson** (1952) A. LLER, 567, **Shimmers Plaza Ltd v National Bank of Kenya Ltd** (2015) KECA 945 (KLR), **Republic v Ahmad Abdulfathi Mohammed & another** (2018) eKLR, **Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another** (2005) KLR, **Attorney Beneral v Times Newspaper Ltd** (1947) A.C. 273, **A B & another V. RB** Civil Application No. 4 of

**2016 (2016) EKLR, B V Attorney General (2004) IKLR 431, Republic County Chief Officer Finance & Economic Planning, Nairobi City County *Ex parte* David Mugo Murangi, (2018) eKLR, Central Bank of Kenya & another v Ratilal Ltd Automobiles Ltd & other Civil Application No. 247 of 2006 and Wildlife Lodges Ltd v County Council of Narok and another (2005) 2 E.A. 344.**

As regards the elements of contempt of court, the sentiments of Mativo J (as he then was) in **Samuel M. N. Mweru & others V. National Land Commission & 2 others (2020) KEHC 9233 KLR** are worth capturing thus;

*“It is an established principle of law that in order to succeed in civil contempt, the applicant has to prove;*

- (i) The terms of 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:- Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book **Contempt in New Zealand** who succinctly stated;-

*“There are essentially fair 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;-*

- (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 had acted in breach of the terms of the order, and*
- (d) the defendant’s conduct was deliberate.”*

The Court of Appeal cited the foregoing sentiments with approval in **Wekesa & 2 others v Munialo (2025) KECA 679 (KLR)**.

Relatedly, and as the Court of Appeal explained in **Mutitika v Baharini Farm Ltd (1985) KECA, 60 (KLR)** the standard of proof in contempt proceedings is higher than proof on a balance of probabilities but below proof beyond reasonable doubt in criminal cases. Civil contempt is *quasi* criminal in nature. The applicant must discharge the heavy burden of proof in civil contempt.

Applying the foregoing principles to the facts of this case, the court is persuaded that the applicant had demonstrated that the Respondent wilfully failed, refused and or neglected to obey the court orders. The orders were clear, the Respondent was aware of the orders and acted in breach of the orders without any justification. The

Respondent did not allege or aver or depose that it was unaware of the court orders or that they were unclear or not served or provide any explanation why it did not comply with the orders. It did not deny having breached the terms of the Order but denied having done so wilfully or deliberately.

Black Law Dictionary 10<sup>th</sup> Edition defines the term ‘deliberate’ as Intentional, premeditated fully considered, unimpulsive, slow in deciding.”

The fact that the Respondent ignored a binding court order in its endeavour to exercise its right of appeal left it exposed. This was an intentional act in that the Respondent had considered all its options and was pursuing them in total disregard of binding Court Orders.

In the Court’s view, the fact that the Respondent had up to three matters pending before the Court of Appeal could not avail it. The *ex parte* Orders granted by the court on 15<sup>th</sup> December, 2025 remained in force. They had neither been set aside nor varied. The orders were directed at the Respondent but it opted to concentrate on the matters before the Court of Appeal, thereby breaching the Orders.

As adverted to elsewhere in this ruling, that the temporary stay of execution granted on 15<sup>th</sup> December, 2025 was conditional. It was subject to payment of the applicant’s salaries for December, 2025, January 2026 and February, 2026 as and when it fell

due and although the Respondent had no stay of execution after December, 2025 owing to its failure to satisfy the attendant condition the Respondent did not proceed to execute the decree.

Regrettably, the Respondent provided no evidence to demonstrate having made any attempt to comply with the court orders or explain the challenges, if any, it faced in complying with the Orders.

Contrary to the Respondents' Counsel's submission that the Respondent's Executive Director and Chair of the Board could not be held liable for Corporate Acts, they can under the corporate law doctrine of organic theory which attributes to the company the thoughts and deeds of its directors as they are the directing mind and will of the company.

This theory exposes direction to criminal responsibility for the acts of the company for the simple reasons that a body corporate acts through human agents who become its mind and soul.

The foregoing is fortified by the persuasive sentiments of Viscount Holdane L C in *Leonards carrying Co. Ltd v Asiatic Petroleum Co. Ltd (1915) A. C 75*, thus;

*“My Lords, a corporation is an abstraction. It has no mind of its own. Its active and directing will must consequently be sought in the person of somebody who for some purpose may be called an agent but who is really the*

*directing mind and will of the corporation, the alter ego and centre of the personality of the corporation... somebody for whom the company is liable because his actions is the very action of the company itself.”*

Similarly, in Bolton Engineering Co. Ltd v Graham & Sms Ltd (1957) I.Q.B. 159 (1957 E.W.L.R 454 Lord Denning held:

*“... A company may in many ways be likened to a human body. It has a brain and nerve centre which contrals what it does... Others are direction and managers who represent the directing mind and will of the company and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such... so here, the intention of the company can be derived from the intention of its officers and agents.”*

Applying the foregoing principles to the instant case, it is clear that the Respondent’s Executive Director and Chair of the Board of direction are the directing mind and will of the company and thus liable for crimes committed by the company including breach of court orders which is quasi-criminal.

It is trite that all payments by a company are approved by the Executive Director or Managing Director with authority of the Board of Directors.

Understandably, Professor Victor Murinde, the Respondent's Executive Director deponed under oath that the Respondent, its Chair of the board and himself would obey court orders.

From the above analysis and findings, it is discernible that the applicant has satisfied the prerequisites writes of Civil contempt for the court to grant the orders sought.

Consequently,

1. The Respondent shall comply with the Orders of the Court issued on 15<sup>th</sup> December, 2025 within 3 days, failing which the Respondent's Executive Director and Chair of the Board of Director shall appear in court in person during the virtual hearing on 20<sup>th</sup> April, 2026 to show cause why they should not be punished for disobeying court orders.
2. The Respondent shall pay the applicant's cost of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI**

**ON THIS 13<sup>TH</sup> DAY OF APRIL, 2026**

**DR. JACOB GAKERI**  
**JUDGE**  
**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They

have waived compliance with **Order 21 Rule 1** of the **Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**  
**JUDGE**