

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**JUDICIAL REVIEW DIVISION**  
**JUDICIAL REVIEW MISC APPLICATION NO. E159 OF 2025**  
**IN THE MATTER OF AN APPLICATION FOR LEAVE TO  
COMMENCE JUDICIAL REVIEW PROCEEDINGS FOR ORDERS OF  
CERTIORARI AND MANDAMUS**  
**AND**  
**IN THE MATTER OF THE CIVIL AVIATION ACT, 2013**  
**AND**  
**IN THE MATTER OF THE KENYA AIRPORTS AUTHORITY ACT**  
**AND**  
**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT**  
**AND**  
**IN THE MATTER OF THE LEADERSHIP AND INTEGRITY ACT**  
**AND**  
**IN THE MATTER OF ARTICLE 3 (1), 10, 19, 20, 21(1), 22, 23(3)(f), 25 (c),  
27(1) & (2), 40(1), (2) & (3), 46, 47, 48, 50 (1), 165 (3), (b) & (6), 232 (1) (d)  
(e) & (2), 259 & 260 OF THE CONSTITUTION OF KENYA, 2010.**  
**AND**  
**IN THE MATTER OF REGULATION 50 (4) (a), (b) & (c) OF THE CIVIL  
AVIATION REGULATIONS, PARTS A (1) (b) & (c) & B (1), (d) & (h) OF  
CHAPTER VII OF THE NATIONAL CIVIL AVIATION SECURITY  
PROGRAMME; AND PARTS 4.1 AND 4.3.1. OF THE TRADE WINDS  
SECURITY PROGRAMME ‘THAT REQUIRE ALL TRANSFER  
PASSENGER AND THEIR BAGGAGE TO BE SCREENED BEFORE  
EMBARKATION’**  
**AND**  
**IN THE MATTER OF KCAA’S ADVANCED AIR TRANSPORT  
INFORMATION SYSTEM**  
**-BETWEEN-**

**CORPORATE AVIATION LIMITED ..... APPLICANT**

**-VERSUS-**

**KENYA CIVIL AVIATION AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**KENYA AIRPORTS AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling determines the Notice of Motion Application is dated **30<sup>th</sup> December 2025** and is filed pursuant to Articles 19, 20, 21, 22, 23, 159 and 258 of the Constitution, Rule 19 of the Consortium of Kenya (Protection of Rights and Protection of Fundamental Freedoms) Practise and Procedure Rules, 2013; Section 5 of the Judicature Act, Sections 1A, 3, 3A and 68 of the Civil Procedure Act Cap 21 Laws of Kenya, Order 40 Rule 3 (1), Order 51 Rule 1 of the Civil Procedure Rules of the Civil Procedure Rules, 2010 and all other enabling provisions of the law.

2. The Applicant seeks the following orders:

***(1) THAT one EMILE NGUZA ARAO being the Director General of the 1<sup>st</sup> Respondent herein be summoned to personally attend court to show cause why he should not be cited for contempt of court and committed to civil jail for blatantly disobeying court orders granted by this Court on 8<sup>th</sup> December 2025 and issued on 9<sup>th</sup> December 2025.***

***(2) THAT failure to comply with the Summons issued by this Court, warrants of arrest be issued against the said EMILE NGUZA ARAO, being the Director General of the 1<sup>st</sup> Respondent herein***

*which warrants be executed by the Court bailiff with the assistance of the Officer Commanding Jomo Kenyatta International Airport Police Station, so as to produce the said EMILE NGUZA ARAO in this Honourable Court to show cause why he should not be committed to civil jail for disobeying and/or wilfully disregarding the summons and lawful court orders made on 8<sup>th</sup> December 2025.*

*(3) THAT the honourable court be pleased to find the said EMILE NGUZA ARAO being the Director General of the 1<sup>st</sup> Respondent herein, in contempt of court for breach and wilful disobedience of the Court orders made on 8<sup>th</sup> December and issued on 9<sup>th</sup> December 2025 and served upon him and the 1<sup>st</sup> Respondent as a corporate entity on 11<sup>th</sup> December 2025.*

*(4) THAT in default of sufficient cause being shown, this Honourable Court be pleased to find the said EMILE NGUZA ARAO guilty of contempt of court and move to commit him to a civil jail term of six (6) months or such other period as the Honourable Court shall deem fit, for blatantly disobeying and/or defying court orders granted on 8<sup>th</sup> December 2025 and in addition, he be fined such amount of money as may be ordered by this Honourable Court for the said contempt of court.*

**(5) THAT the 1<sup>st</sup> Respondent be directed to purge its contempt by complying with the court order granted on 8<sup>th</sup> December 2025.**

**(6) THAT the said EMILE NGUZA ARAO be personally condemned to pay the costs of this Application or otherwise, the 1<sup>st</sup> Respondent to pay the costs.**

3. The Application is premised on the grounds on the face of it and supported by the affidavit of John Kamau Ngunjiri, the Applicant's Managing Director, sworn on even date. He deposes that the Applicant filed Chamber Summons seeking leave to file Judicial Review proceedings challenging *inter alia*, the 1<sup>st</sup> Respondent's decision to deactivate their Advanced Air Transport Information System (AATIS) Account, which was granted on 8<sup>th</sup> December 2025. That the same leave also operated as an immediate temporary stay of the said decision contained in their letter dated 20<sup>th</sup> November 2025 **Reference No. KCAA/ASL/125/VOL.17(79)** in order to restore the Applicant's AATIS account to avert further business losses and ensure their operational continuity until determination of the Application.
4. Mr. Ngunjiri deposes that the said Court Orders and their advocate's letter dated 10<sup>th</sup> December 2025 were served upon the 1<sup>st</sup> Respondent's Director General Mr. Emile Nguza Arao, the 1<sup>st</sup> Respondent's Corporation Secretary Mr. George Mogaka through their Whatsapp numbers and the 1<sup>st</sup> Respondent itself through its official e-mail [info@kcaa.or.ke](mailto:info@kcaa.or.ke). It is also averred that the said orders were issued in the presence of the 1<sup>st</sup>

Respondent's legal counsel Mr. Ambrose Njagi who alongside Mr. Mogaka were officers of the court and were deemed in law to have notified and exhaustively advised the 1<sup>st</sup> Respondent about the Court's decision on 8<sup>th</sup> December 2025 and its implications.

5. It is also deposed that the Court orders had a clear penal notice prominently displayed on its face alongside the further warning issued in their advocate's letter that disobedience of those orders would constitute contempt of court punishable by the law. As such, Mr. Nguza cannot feign ignorance as it has been demonstrated that he had actual or constructive unequivocal knowledge but chose to blatantly defy or fail to comply with the said orders. It is their case that Mr. Nguza continued to disobey the court orders as at the date of swearing the affidavit which continued disobedience invariably attracts the consequences of contempt of court against him personally in his capacity as the 1<sup>st</sup> Respondent's Director General and Chief Executive Officer.
6. Mr. Ngunjiri depones that the continued disobedience of the Court orders during the entire festive season hampered and gravely prejudiced their business operations and visited immense loss upon them as they were unable to process their clients' instructions during the peak Christmas season. He avers that the said Mr. Nguza was ungrateful to the Court and the Rule of Law yet his appointment as the Director General of the 1<sup>st</sup>

Respondent which was initially challenged in *Nakuru ELRC Petition No. E002 of 2022* was salvaged by the court whose orders he now defies.

7. It is his averment that Mr. Nguza's continued disobedience undermines judicial authority, besmirches and disparages the dignity of the court in perpetration of impunity, which warrants the intervention of this Court to protect the sanctity of its orders by summoning him to show cause why he should not be held in and punished for contempt of court.

### **Responses to the Application**

8. In response to the Application, the 1<sup>st</sup> Respondent filed a further affidavit dated 2<sup>nd</sup> February 2026 sworn by **EMILE NGUZA ARAO**, its Director General where he reiterated the contents of their Replying Affidavit dated 22<sup>nd</sup> December 2025 filed in response to the Applicant's Chamber Summons dated 1<sup>st</sup> December 2025.
9. He further avers that they have since reactivated the Applicant's Advanced Air Transport Information System (AATIS) Account upon concluding their investigations. He states that they were investigating the Applicant's operations where they had reason to believe that the Applicant in collaboration with Tradewinds Aviation Services Limited committed acts of grave security concerns on 12<sup>th</sup> November 2025 under Tradewinds Aviation Services Limited overflight clearance/landing permit No.

KCAA/ASL/2025005084 dated 11<sup>th</sup> November 2025 with Aircraft YR-ADD: A320 1-320 2301/2402 operated by FLYYO S.R.L.

10. It is also averred that the security concerns were also committed on 13<sup>th</sup> November 2025 under the Applicant's overflight clearance/landing permit No. KCAA/ASL/2025005083 dated 11<sup>th</sup> November 2025 with Aircraft ZS-GAC:A20N-A 320 NEO GBB901 operated by Global Airways where there was a transfer of 153 Palestinians at the Jomo Kenyatta International Airport.
11. The 1<sup>st</sup> Respondent avers that the deactivation of the Applicant's account was informed by the provisions of **Sections 7 and 21 of the Civil Aviation Act, Cap 394 Laws of Kenya**, in compliance with the provisions of **Regulations 50 (4) (a), (b), and (c) of the Civil Aviation Security Regulations, 2020, Parts A (1) (b) and (c) and B (1) (d) and (h) of Chapter VII of the Nation Civil Aviation Security Programme and Parts 4.1. and 4.3.1.** of the Tradewinds Security Programme which requires all transfer passengers and their cabin baggage to be screened before embarkation.
12. It is their case that the 1<sup>st</sup> Respondent had received a letter on 26<sup>th</sup> November 2025 from the Directorate of Criminal Investigations stating that they were investigating an incident where Flight No. YR-ADD:A320 1-320 2301/2402 operated by FLYYO S.R.L. via Tradewinds Aviation Services Limited was sighted at the airside disembarking passengers into

flight No. ZS-GAC:A20N-A 320 NEO GBB901 operated by Global Airways via Corporate Aviation Limited, the Applicant herein. As such, the deactivation was not in any way done out of malice or ill intention but to allow for investigations with other agencies under **Section 7 of the Act** to ensure the safety and security of Kenya's Airspace and the Airports.

13. It is averred that at present, the Applications have been rendered moot by virtue of reactivation of the Applicant's AATIS account and ought to be struck out or dismissed with costs. Mr. Nguza reiterates that the 1<sup>st</sup> Respondent has a fiduciary duty to economically and efficiently plan, develop and manage civil aviation, to regulate and operate a safe civil aviation system in Kenya in accordance with **Section 6 of the Act** and that should not in any way be interpreted to mean that they are unreasonable, high-handed or unfair to frustrate the Applicant's business.
14. The 2<sup>nd</sup> Respondent opposed the Application vide Replying Affidavit **dated 18<sup>th</sup> February 2026** and sworn by **MOHAMUD GEDI**, its Acting Managing Director which is a response to both the Chamber Summon Application dated 28<sup>th</sup> November 2025 and this Application for contempt.
15. Sieving the relevant averments to this contempt Application, Mr. Gedi deposes that the directive to deactivate the Applicant's Advanced Air Transport Information System (AATIS) stemmed from the Applicant's operations of grave security concerns in conjunction with Tradewinds Aviation Services Limited on 12<sup>th</sup> and 13<sup>th</sup> November 2025, and was done

in compliance with **Section 5 of the Act** requiring the 1<sup>st</sup> Respondent to coordinate its activities with other government agencies.

16. It is contended that the temporary deactivation was a precautionary, proportionate and necessary regulatory measure, pending conclusion of the investigations and was not in any way meant to be punitive. He states that they had no discretion in the matter and merely complied with the directive of the Regulator but that the same has since been rescinded and the Applicant's operational status restored under the relevant Licence Agreement and associated airport access passes reinstated.
17. It is their case that in view of the forgoing, the substratum of the two Applications have been overtaken by events as there is currently no subsisting adverse decision of the 2<sup>nd</sup> Respondent affecting the Applicant's Licence Agreement, capable of being stayed, quashed or compelled under Judicial Review.
18. When the parties appeared before this Court on 28<sup>th</sup> January 2026, the Court directed that they consider an amicable out-of-court settlement of the dispute and enter a negotiated settlement. However, at the scheduled hearing on 9<sup>th</sup> February 2026, Mr. Wangalwa holding brief for Ms. Githaiga for the Applicant informed the Court that they had instructions from their client to have the matter proceed on merit, whilst acknowledging the orders allegedly breached had been complied with.

Subsequently, this Court issued directions to have the Application for contempt canvassed by oral submissions on 2<sup>nd</sup> March 2026.

### **Submissions**

19. Mr. Tindi holding brief for Ms. Githaiga submitted told the Court that on 8<sup>th</sup> December 2025, this Court issued Orders in the presence of counsel for the 1<sup>st</sup> Respondent and that they also served the said orders on 11<sup>th</sup> December 2025 as demonstrated by the Affidavit of Service sworn by Leonard Ngasia Nyongesa on the said date. He submitted that the 1<sup>st</sup> Respondent blatantly disobeyed the orders of the court which they were well aware of and only complied with them much later on 15<sup>th</sup> January 2026.
20. It is their contention that the 1<sup>st</sup> Respondent violated the court orders despite service being effected and them being aware of the same through their legal counsel. That as a consequence, the 1<sup>st</sup> Respondent should be cited and punished for contempt of court since there is also no lawful explanation or reasons adduced in their affidavits in response for failure to comply.
21. Counsel further submitted that court orders must be obeyed until or unless discharged and that while they did not dispute the 1<sup>st</sup> Respondent's powers and authority under the Act to suspend licences, they were concerned with the question of contempt of lawful court orders. On the contention by the

1<sup>st</sup> Respondent that they had purged their contempt by complying with the orders on 15<sup>th</sup> January 2026 and so the Application was overtaken by events, it was submitted that a party could not choose when to comply with court orders.

22. On their part, Miss. Mokeira holding brief for Mr. Mogaka submitted on behalf of the 1<sup>st</sup> Respondent that the account was deactivated on reasonable belief that there was breach of security undertaken by the Applicant pursuant to the law. She stated that investigations were being carried out by the 1<sup>st</sup> Respondent and the Directorate of Criminal Investigations and upon conclusion of the same, the Applicant's account was reactivated on 14<sup>th</sup> January 2026.
23. It was her submission that both the contempt Application of 30<sup>th</sup> December 2025 and the Chamber Summons of 1<sup>st</sup> December 2025 be dismissed since they were now moot and stated further that the 1<sup>st</sup> Respondent's duty was to ensure the safety and security of the Kenyan airspace. It is their case that the deactivation was only done in good faith and in collaboration with other agencies as stated in their responses.
24. In a rejoinder, Mr. Tindi counsel for the applicant submitted that the 1<sup>st</sup> Respondent had conceded that they disobeyed the Court's orders and that the same cannot be allowed in the guise of ensuring safety and security of the airspace. He submitted that the 1<sup>st</sup> Respondent is a creature of the law and that it must comply with the law.

## **Analysis and determination**

25. From the totality of the pleadings and the evidence before me together with the submissions for and against the contempt application, the sole issue for my determination is ***whether the 1<sup>st</sup> Respondent is in brazen contempt of the Court's orders and whether the prayers sought ought to issue.***
26. The law on contempt of court is premised on **Section 5 (1) of the Judicature Act** which provides that:
- (1) 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.***
27. One of the tenets of the rule of law is that court orders must be obeyed. Courts are replete with decisions shunning disobedience of court orders and emphasising compliance with its orders.
28. In **Hadkinson vs. Hadkinson (1952) 2 All ER. 567**, it was held that:
- “It is plain and unqualified obligation of every person against or in respect of, who an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”***

29. In **Gulabchand Popatlal Shah & Another**, Civil Application No. 39 of 1990, (unreported), the Court of Appeal stated:

*“... It is essential for the maintenance of the Rule of Law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors .....*”

30. In **Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another** (2005) 1 KLR 828, Ibrahim J (as he then was) stated as follows:-

*“It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect of whom, an order is made by Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”*

31. Further, in **Shimmers Plaza Limited vs. National Bank of Kenya Limited [2015] KECA 945 (KLR)** the Court of Appeal cited its own decision in

**Justus Kariuki Mate & Another vs. Hon. Martin Nyaga Wambora & Another, Civil Appeal No. 24 of 2014 (Wambora case)** and explained the import of Section 5 of the Judicature Act cited above and outlined the applicable laws in contempt proceedings. The learned judges held as follows: -

*This Court has interpreted and applied the said law locally in many important decisions. In the recent Wambora case (supra), the court had opportunity to interpret and apply Section 5 of the Judicature Act and made the following observation:*

*“It is imperative in considering this issue to take into account the applicable law and the governing principles in contempt proceedings. As correctly pointed out by this Court in Christine Wangari Gachege - vs- Elizabeth Wanjiru Evans & 11 Others, - Civil Application No. 233 of 2007 the statutory basis of contempt of court in so far as the Court of Appeal and the High Court are concerned is Section 5 of the Judicature Act and Section 63(c) of the Civil Procedure Act. Of relevance to this case is Section 5 of the Judicature Act which provides:*

*“ 5 (1) 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.*

*(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 original criminal jurisdiction of the High Court.”*

*Based on the foregoing provision, the applicable law in contempt proceedings in Kenya is the law applicable in the High Court of Justice in England at the time the application for contempt was filed.”*

32. It is also trite that contempt of court proceedings are quasi-criminal in nature and therefore the elements of contempt must be established before a finding of guilt is made. Mativo J. (*as he then was*) in **Katsuri Limited vs. Kapurchand Depar Shah** [2016] KEHC 6447 (KLR) referred to the book ‘*Contempt in Modern New Zealand*’ (available at [p36.publications.lawcom.govt.nz](http://p36.publications.lawcom.govt.nz)) and outlined the elements of contempt as follows:

*“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:*

**(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**

**(d) the defendant's conduct was deliberate.”**

33. Applying the above principles to the instant case, I note that it was not a matter of contestation that there was this court's order issued on 8<sup>th</sup> December 2025 which read in part as follows: -

**“(2) THAT in the interim, I grant prayers 2 and 3 of the Chamber Summons pending inter partes hearing of the chamber summons dated 1<sup>st</sup> December 2025.**

**(3) THAT the parties are reminded that this a temporary reprieve for the Applicant and not a final order of this Court on the subsisting chamber summons which only deals with prima facie issues and not the merits of the intended substantive Notice of Motion. ....”**

34. Prayer (2) of the said chamber summons reads as follows: -

**“(2) THAT ex-parte and at first instance, this Honourable Court be pleased to grant an immediate temporary stay of the 1<sup>st</sup> Respondents' decision contained in the 1<sup>st</sup> Respondent's letter dated 20<sup>th</sup> November 2025 under reference No. KCAA/ASL/125/ Vol.17(79) addressed to**

***the Applicant and copied to the 2<sup>nd</sup> Respondent, so as to particularly restore and reactivate the Applicant's AATIS account to avert further business losses and ensure the Applicant's operational continuity pending the hearing and determination of this Application.***

35. Based on the forEgoing, the above orders not only existed from 8<sup>th</sup> December 2025, but were equally clear and unambiguous. I also note that Counsel for the 1<sup>st</sup> Respondent was present as pointed out by the Applicant, which fact was never controverted in Court. In line with this, is the fact that there was adequate and proper service as evidenced by the affidavit of service sworn by Leonard Ngasia Nyongesa on 11<sup>th</sup> December 2025. It is therefore properly established that the 1<sup>st</sup> Respondent was aware or knowledgeable of the existence of the said court orders.
36. The next issue is whether the 1<sup>st</sup> Respondent acted in breach of the said orders. It is trite that once an order has been issued by the courts, parties to whom it is directed against are obliged as a matter of law and of utmost importance to obey the same to the latter. This entails not only carrying out the said terms of the orders but doing so at the time or within the timelines specified.
37. In this case, this Court's Orders were succinct in terms of prayer (2) of the Chamber Summons and called for an immediate suspension/stay of the terms of the 1<sup>st</sup> Respondent's letter of 20<sup>th</sup> November 2025 whose effect was to deactivate the Applicant's operating license and their AATIS

account. In other words, the said order had the effect of staying the implementation of that directive to deactivate or in other terms, it directed the Respondent temporarily until the matter is heard and determined, to reactivate the Applicant's AATIS account. I note that this was not done until 15<sup>th</sup> January 2026, almost a month after the said order was issued.

38. The delay in the reactivation was no doubt disruptive and prejudicial to the Applicant's business, rendering it un-operational at the time which was the Christmas season. It was also in breach of the order of the court which directed immediate reactivation of the system.

39. The 1<sup>st</sup> Respondent's explanation for the delay in implementing the order of this Court is that there were alleged airport passenger security breaches which were being investigated by the DCI and that upon completion of the investigations is when the system was activated and the said accounts restored.

40. I find and hold that obeying and implementing court orders at a much later period way after compliance is expected does not dissipate the contempt.

41. However, the question is whether there was blatant or deliberate wilful disobedience of the orders of this court as alleged by the applicant.

42. As stated above, the 1<sup>st</sup> respondent has explained on oath the reason for noncompliance of the court orders immediately upon being served with the same. That the matter involved airport and passenger security breach, from the reports received and that they had to involve the DCI to investigate the

alleged breach and only after being sure of the safety of the airport passengers were they able to implement the orders of the court. It is important to note that the orders were issued before hearing the other party and this court learning of the reasons for the deactivation of the system.

43. From the explanation given by the 1<sup>st</sup> respondent, the matter involved alleged security breaches by the employees of the applicant and this required investigations which involved the Directorate of Criminal Investigations- DCI.
44. In the view of this Court, security of airports, aircrafts and passengers is not a mere domestic affair. It is governed by international standards and anything less, can easily lead to cancellation of all flights in and out of the jurisdiction of this Country with heavy financial losses. Where there is any security alert, the respondents herein must be seen to act on that alert, investigate and only after they are sure that the situation is under control that they should rest.
45. This court is aware that the applicant may have suffered commercially but security and safety of aircrafts and passengers at airports cannot be sacrificed at the altar of commercial enterprise and gains.
46. In this regard, the view of this Court is that the facts of this case demonstrate that security of aircrafts and passengers at airports is paramount. It is not lost to this court that the order allegedly breached was issued *exparte* in the first instance and that this court had not had occasion

to hear all the parties on the reasons for deactivation of the system. More often than not, parties who come to court only state their side of the story. By the time the other party appears to state their position, the breach would have occurred and therefore the only issue is whether the breach is contumacious, since not every breach is considered impudent.

47. As such, while court orders must be obeyed, the court is also enjoined to consider the circumstances surrounding any alleged non-compliance before drawing the serious conclusion that a party acted in deliberate defiance of its authority.
48. Where the evidence shows that the failure to comply was influenced by legitimate and practical considerations, such as the need to ensure the safety and security of passengers and aircraft within an airport setting, the element of wilful and intentional disobedience may be absent. In such a situation, the conduct, though not in strict compliance at the material time, cannot fairly be described as contumacious.
49. Moreover, where the respondent ultimately complies with the court's orders after satisfying itself that the conditions are safe and appropriate for such compliance, as was the case in this case, this is a relevant factor. It demonstrates that the delay to comply with the court orders was not driven by disregard of the court's authority, but by a cautious and responsible approach to a sensitive operational environment. In those circumstances, this

court properly and safely concludes that the threshold for a finding of contempt has not been met.

50. Therefore, whereas court orders are sacrosanct and must be obeyed by all parties in preservation of the rule of law and proper administration of justice, in the instant case, there is a plausible explanation given by the 1<sup>st</sup> Respondent regarding the noncompliance with this Court's orders for the period as previously highlighted in this Ruling.

51. For the above reasons, I am unable to find that the 1<sup>st</sup> respondent deliberately and wilfully violated orders of this court issued on 8<sup>th</sup> December, 2025. I find that the applicant has not established all the elements of contempt of court. I decline to grant the orders sought and dismiss the prayer for contempt of court.

52. On whether the chamber summons should be struck out for being overtaken by events, I find no merit in the prayer by the respondents. I decline to strike out the chamber summons but implore the parties to negotiate for an amicable settlement of the issues involved for a lasting solution, considering the contractual relationship that they hold for the benefit of the larger public.

53. The court hearing the application will determine whether the application raises arguable prima facie case for leave to apply to be granted.

54. I make no orders as to costs of the application for contempt of court as dismissed.

55. Orders accordingly.

**Dated, Signed and Delivered virtually at Nairobi this 15<sup>th</sup> Day of April,  
2026**

**R.E. ABURILI  
JUDGE**

ORIGINAL