

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

**ELRC CAUSE NO. E190 OF 2025**

***(Before Hon. Lady Justice Hellen Wasilwa, J)***

**HON. MATHEW NGOVI VUTHI.....1<sup>ST</sup>**  
**PETITIONER/APPLICANT**

**HON. HUSSEIN MWANDIA.....2<sup>ND</sup>**  
**PETITIONER/APPLICANT**

**VS**

**KITUI COUNTY ASSEMBLY SERVICE BOARD.....1<sup>ST</sup>**  
**RESPONDENT**

**CLERK, COUNTY ASSEMBLY OF KITUI.....2<sup>ND</sup>**  
**RESPONDENT**

**SPEAKER, COUNTY ASSEMBLY OF KITUI.....3<sup>RD</sup>**  
**RESPONDENT**

**RULING**

1 The Petitioners/ Applicants filed a Notice of Motion dated 24<sup>th</sup> October 2025 seeking orders: -

1. *Spent*
2. ***THAT*** pending the hearing and determination of this application, an order do issue suspending any letter of offer of employment, letter of appointment, contract of employment or any assignment of office

*made to any person after 1<sup>st</sup> October, 2025, when the status quo orders of this Honourable Court were issued.*

3. **THAT** *summons to be issued against the 2<sup>nd</sup> Respondent, Mr Chris Mulundi Mwangangi, and the 3<sup>rd</sup> Respondent, Hon. Kevin Kinengo Katisya, Mr Wilson Muange Musyoka and Ms Ruth Nzambi Joseph to appear before this Honourable Court and show cause why they should not be cited and punished for contempt of court for disobeying the orders granted by Hon. Lady Justice H. Wasilwa on 1<sup>st</sup> October, 2025.*
4. **THAT** *this Honourable Court be pleased to cite for contempt the said Hon. Kevin Katisya Kinengo, Mr Chris Mulundi Mwangangi, Mr Wilson Muange Musyoka and Ms Ruth Nzambi Joseph and jail each of them for six months or impose such other additional or alternative heavy punishment or penalty as may be sufficient to atone for the contempt of this Honourable Court's orders.*
5. **THAT** *by way of purging the contempt, the said Hon. Kevin Katisya Kinengo, Mr Chris Mulundi Mwangangi, Mr Wilson Muange Musyoka and Ms Ruth Nzambi Joseph be personally surcharged for any salaries, allowances or emoluments paid to any person employed or put in office after 1<sup>st</sup> of October, 2025, contrary to the orders of the court.*
6. **THAT** *this Honourable Court be pleased to give directions hereof and further orders that it may deem fit to grant.*

7. *THAT the costs of this application be met by the 3<sup>rd</sup> Respondent, the Speaker of the County Assembly of Kitui.*

### **Petitioners/Applicants' Case**

- 2 The Petitioners/Applicants aver that on 1st October, 2025, this issued orders directing that the *status quo* be maintained in respect of the matters in dispute in the Petition. These orders, together with the Petition and application, were served upon the Respondents on the same date, thereby bringing the orders to the Respondents' attention and knowledge.
- 3 The Petitioners contend that despite service, the Respondents willfully and contemptuously disobeyed the court orders. In particular, they aver that immediately after service of the orders, the 3<sup>rd</sup> Respondent suspended them from their roles as Members of the County Assembly for a period of 90 days with the intention of excluding them from the proceedings of the County Assembly Service Board, necessitating intervention by the High Court at Kitui in *Kitui HC Petition E005 of 2025* which reinstated them to office.
- 4 They aver that the Respondents, including Hon. Kevin Katisya Kinengo, Mr Chris Mulundi Mwangangi, Mr Wilson Muange Musyoka and Ms Ruth Nzambi Joseph, proceeded to issue letters of appointment to individuals recruited pursuant to the impugned recruitment process, in direct contravention of the subsisting status quo orders.

- 5 It is the Petitioners' case that on 13<sup>th</sup> October, 2025, the Speaker of the County Assembly of Kitui, Hon. Kevin Kinengo, caused the gazettelement of the appointment of Mr Chris Mulundi Mwangangi as Acting Clerk of the County Assembly. This was after giving the said Chris Mwangangi a letter and contract of employment as Deputy Clerk of Assembly, contrary to the orders of this Court.
  
- 6 The Petitioners state that on 21<sup>st</sup> October, 2025, when the matter came up for hearing, this Court reminded Counsel for the Respondents to advise his clients that the orders of status quo issued on 1<sup>st</sup> October, 2025 must be respected and anything done after 1<sup>st</sup> October, 2025 was in contempt of court. Notwithstanding this caution, on the same day after the court session, the Speaker of the County Assembly of Kitui convened and commissioned individuals recruited through the impugned process to assume their duties, allegedly stating that the court orders had been overtaken by events and that the Court had no role in the affairs of the Assembly.
  
- 7 The Respondents went ahead to broadcast the events of 21<sup>st</sup> October, 2025 on the County Assembly's social media handles, further evidencing the Respondents' disregard of the court orders.
  
- 8 The Petitioners contend that the Respondents' actions amount to a grave violation of the Constitution and the rule of law, that demand respect for judicial authority by compliance with court orders. They are in blatant

contempt of the orders of 1<sup>st</sup> October, 2025 and their actions undermine and lower the dignity of the court in the eyes of the community.

- 9 They further aver that it is the duty of the Court to safeguard the rule of law by ensuring compliance with its orders and that contempt proceedings are necessary to uphold the authority and integrity of the judicial process.
- 10 It is therefore their position that the Respondents' conduct was deliberate, willful and contemptuous, warranting the intervention of this Court, and they urge that the application be heard expeditiously to address and deter the continued acts of contempt.

### **1<sup>st</sup> Respondent's Case**

- 11 In opposition to the application, Mr. Chris Mwangangi swore a replying affidavit dated 11<sup>th</sup> November 2025. He stated that he currently employed by the 1<sup>st</sup> Respondent as a Deputy Clerk, and was recently gazette as the Acting Clerk in the office of the 2<sup>nd</sup> Respondent.
- 12 The Affiant avers that he is not a member of the 1<sup>st</sup> Respondent Board but only attended its sittings as part of the secretariat, and that during such attendance, he did not participate in deliberations or decision-making, as decisions of the Board are made through voting by its members.

- 13 He avers that on 1<sup>st</sup> October, 2025, this Court issued orders directing that the status quo be maintained in relation to the recruitment process of candidates shortlisted or interviewed between May 2025 and September 2025. However, he contends that by the time those orders were issued, the recruitment process had already been completed.
- 14 It is his case that he was one of the successful candidates, having received an offer letter dated 25<sup>th</sup> September, 2025 for the position of Deputy Clerk, which he accepted on 26<sup>th</sup> September, 2025 within the stipulated timeline.
- 15 He further avers that upon acceptance, he was issued with an appointment letter on 1<sup>st</sup> October, 2025, prior to the service of the court orders upon the Respondents. He noted that as per the affidavit of service filed with this Court, the Petitioner/Applicants served the Respondents with the court orders on 1<sup>st</sup> October 2025 at around 4.20 pm by which time the appointment letters had already been issued to all the successful candidates.
- 16 The Affiant therefore contends that by the time the orders for status quo were served on the Respondents, the process of recruitment had already been completed as the candidates had already accepted the offer from the 1<sup>st</sup> Respondent and had been given appointment letters to report to work.

- 17 It is the Affiant's case that valid and enforceable contracts of employment had crystallized between the 1<sup>st</sup> Respondent and the successful candidates, and that maintaining the status quo would have entailed the continuation of the parties' respective contractual obligations.
- 18 It is also his position that the status quo orders did not restrain the successful candidates from reporting to work, as the orders did not suspend or invalidate the contracts of employment already in existence.
- 19 The Affiant avers that the Petitioners participated in the Board meetings where the impugned decisions were made and took part in the deliberations and voting processes, and therefore cannot properly allege contempt in respect of decisions in which they were involved.
- 20 He contends that the Petitioners have neither demonstrated how he personally acted in contempt of the court orders nor adduced evidence to support the allegations made against him.
- 21 It is his case that the present application is an afterthought, actuated by malice and intended to exert improper pressure on the Respondents and their officers. He further avers that contempt proceedings, being quasi-criminal in nature, require strict proof, which the Petitioners have failed to meet.

22 He maintains that the application is misconceived, factually incorrect and legally unfounded, and urges the Court to dismiss it with costs.

### **2<sup>nd</sup> Respondent's Case**

23 In response to the application, the 2<sup>nd</sup> respondent filed a replying affidavit dated 29<sup>th</sup> October 2025, sworn by Charles Nyaga, a member of the Clerks Panel and was, at the material time, performing the role of Clerk of the County Assembly of Kitui pursuant to Section 21 of the County Assembly Services Act.

24 The Affiant denies that the impugned recruitment process was irregular or unlawful and asserts that at all material times, the Respondents acted within their constitutional and statutory mandate and in strict compliance with the applicable legal procedures.

25 It is the Affiant's case that the County Assembly Service Board is composed of five members, two of whom are the Petitioners, and avers that the Petitioners have approached the Court with unclean hands by failing to disclose that decisions of the 1<sup>st</sup> Respondent are made by a majority vote in line with rule 10 of the 2<sup>nd</sup> Schedule to the County Assembly Services Act, 2017.

26 The Affiant avers that the Petitioners have failed to acknowledge that they attended all meetings of the 1st Respondent and did not raise the issues highlighted in this Petition and instituting this petition challenging the

decision of the 1st Respondent after completion of the process can only be construed as an afterthought.

- 27 He contends that the Petitioners, being members of the Board, lack *locus standi* to challenge the decision of the Board, where they are members and where they sat in the proceedings and participated in the deliberations and decision making, thereby creating a conflict of interest.
- 28 The Affiant also avers that the Petitioners failed to exhaust alternative dispute resolution mechanisms, particularly the appellate jurisdiction of the Public Service Commission as provided under section 86 of the Public Service Commission Act, Cap 185 and section 12 and 77 of the County Governments Act, 2012 as well as Regulation 9 of the Public Service Commission (County Appeals Procedures) Regulations.
- 29 It is the Affiant's case that the Petitioners are not employees of the County Assembly Service Board, nor did they apply or seek employment under the disputed recruitment process and consequently have no identifiable personal or employment right capable of enforcement under Article 41 of the Constitution or Section 12(1) of the Employment and Labour Relations Court Act, 2011.
- 30 He denies the existence of any alleged prequalification list and challenges the Petitioners to strict proof, stating that no other Board member was aware of such a list, and that the Petitioners have failed to produce any evidence in support thereof. He adds that if such a list existed, the

Petitioners had a duty to raise it during Board proceedings, and their failure to do so demonstrates bad faith.

- 31 The Affiant further avers that upon completion of interviews, the Board convened a retreat on 22<sup>nd</sup> September 2025 to review performance reports, deliberate on arising issues and finalize the recruitment report, which was attended by all Board members and the Secretariat.
- 32 He states that the role of the Secretariat was purely administrative and facilitative, including recording minutes, collecting data and ensuring procedural compliance, and denies that any unauthorized persons participated in recruitment deliberations.
- 33 It is his case that officers alleged by the Petitioners to have improperly participated only attended to present specific agenda items and were excused before recruitment deliberations commenced. He gives the example of Mr. David Manzi, who attended solely to present on land purchase and legality of the e-government procurement system.
- 34 He reiterates that deliberations and decision-making were undertaken exclusively by the five Board members.
- 35 The Affiant avers that the Petitioners' letters alleging non-attendance of meetings and proposing denial of sitting allowances were an afterthought intended to lay a basis

for the present Petition and to discredit colleagues. He contends that the Petitioners signed attendance sheets voluntarily and that any claim of signing without attendance raises serious integrity concerns, including dishonesty and fraud.

36 He avers that the said letters were written in bad faith to create a false narrative of irregularity and support intended litigation.

37 He further states that the Petitioners' conduct demonstrates pursuit of private and personal interest's contrary to Article 73(2)(b) of the Constitution, which obliges State officers to exercise authority objectively, honestly, and free from conflict between personal interests and public duties. Their conduct equally offends Section 38 of the County Assembly Services Act, 2017 and the Leadership and Integrity Act, 2012, both of which require members of the County Assembly Service Board to uphold integrity, impartiality, and collective responsibility in the execution of their functions.

38 The Affiant denies allegations that the Chairman's Personal Assistant participated in Board deliberations, stating that the individual referred to is a duly appointed Second Clerk Assistant, part of the Secretariat, and an authorized alternate signatory to the Principal Finance Officer a position ratified by the Board in its meetings and consistent with established service structure under the County Assembly Services Act, 2017 and the Kitui County Assembly Human Resource Policies and Procedures

Manual (2021). Thus, the Petitioners' assertions were made in bad faith, without due diligence, and with the sole intention of casting aspersions on a legitimate officer of the 1<sup>st</sup> Respondent and the integrity of the recruitment process.

- 39 The Affiant avers that any assertion that the required score for job group 7 and above was 80% and for job groups below 7 was 70% is unfounded and a misrepresentation intended to support the unfounded allegations of irregularity. The marks presented by the Petitioners were selectively extracted and only highlight certain candidates to further their cause, while deliberately omitting other relevant considerations that informed the Board's final decision.
- 40 He states that in accordance with best human resource practices and Paragraph 3(10) Kitui County Assembly Human Resource Policies and Procedures Manual (2021), the Board evaluated candidates based on acting capacity, relevant experience, diversity, and overall suitability for appointment. In conducting the recruitment, the Board was guided by Articles 10, 27(4), 56(c) and 232(1) of the Constitution.
- 41 The Affiant contends that the Board took into account the experience and achievements of each candidate, compliance with prescribed academic and professional qualifications, conduct in relation to the applicable codes of conduct, ethics, and integrity requirements, as well as the constitutional imperative of diversity, ensuring that at

least thirty percent (30%) of appointees were not drawn from the dominant community. The final recommendations were made objectively, based on individual performance, merit, and fair competition, consistent with both the Constitution and the Board's statutory mandate. An example was given of the Principal Legal Counsel position, where experience differences between candidates informed the decision, which fact he states was well known to the Petitioners but deliberately concealed.

- 42 The Affiant further avers that the Petitioners unlawfully obtained and relied on confidential and privileged Board records, including internal minutes, deliberation notes, evaluation sheets, and correspondence which were accessible to them solely by virtue of their official positions as members of the Board. The use of such material in these proceedings, without the authority of the Board, constitutes a gross breach of confidentiality and official privilege under Sections 38, 41 and 43(1)(b) and (c) of the County Assembly Services Act, 2017, the Oath of a Member of the Board prescribed in the Third Schedule thereto, and Sections 13 and 16(1) of the Leadership and Integrity Act, 2012.
- 43 On the issue of alleged forced leave, he avers that under the Kitui County Assembly Human Resource Manual (2021), accumulated leave days cannot be carried forward beyond the stipulated leave year, and any unutilized leave is deemed forfeited. The implementation of this policy affected not only the Deputy Clerk but more than ten (10)

other officers across different departments who were similarly required to apply for their accrued leave in compliance with the Human Resource Manual and the established leave schedule.

44 The Affiant contends that under the established administrative structure of the County Assembly, the Human Resource Department has no mandate to issue leave or administrative memos directly to the Clerk. Any such communication must emanate from the Speaker of the County Assembly, who, serves as the Chairperson of the County Assembly Service Board and the lawful appointing authority

45 He explains that the memo referred to by the Petitioners was therefore not issued with any ulterior motive, but was a lawful administrative communication issued by the Speaker in his capacity as the Chairperson of the Board to implement the HR Manual's requirement on accrued leave. The directive was uniform, policy-based, and affected all officers with outstanding leave days, including the Deputy Clerk, without discrimination or malice and any allegation to the contrary is therefore false, misleading, and made in bad faith

46 He further avers that the directive did not force leave but advised officers to apply, and that the officers themselves made the applications.

47 He states that at the time the Board discussed the issue of staff leave during its meeting of 8<sup>th</sup> September 2025, the

Deputy Clerk was not present and her tenure as Acting Clerk had lapsed, and the Board lawfully designated another officer to perform the Clerk's role for that meeting.

48 The Affiant avers that by the time of that meeting, the tenure of the Acting Clerk had lapsed, and in accordance with the provisions of Section 21 of the County Assembly Services Act, 2017, the Board lawfully resolved by majority vote to appoint him to perform the roles of the Clerk of the County Assembly. The Petitioners, having been part of the quorum in that meeting, participated fully in the deliberations but did not form part of the majority.

49 It is therefore his case that the Petition is a collateral attack on lawful Board decisions, demonstrates bad faith, and is frivolous, vexatious and an abuse of the court process, and should be dismissed with costs.

### **3<sup>rd</sup> Respondent's Case**

50 In opposition to the application, the 3<sup>rd</sup> Respondent filed a replying affidavit dated, sworn by Kevin Kinengo Katisya, the 3<sup>rd</sup> Respondent herein and the Chairperson of the 1<sup>st</sup> Respondent.

51 The 3<sup>rd</sup> Respondent's case is that on 1<sup>st</sup> October, 2025, this Court issued orders directing that the status quo be maintained in relation to the recruitment process for candidates shortlisted or interviewed between May and September 2025.

- 52 He avers that as at the date of the orders, the recruitment process had already been completed in that on 24<sup>th</sup> and 25<sup>th</sup> September 2025, offer letters were issued to all successful candidates.
- 53 He states that the candidates were required to communicate acceptance within a short time, and all candidates accepted within the same week, thereafter, appointment letters were issued on 1<sup>st</sup> October 2025, and that according to the Affidavit of Service, the court orders were served at around 4:20 pm on the same day, by which time all appointment letters had already been issued.
- 54 The 3<sup>rd</sup> Respondent contends that no appointment letters were issued after the court order of 1<sup>st</sup> October 2025 as the letters referenced by the Petitioners had been prepared prior to the filing of the Petition and fall within the state of affairs preserved by the Court. Therefore, by the time the orders were served on the Respondents, the process of recruitment had already been completed as the candidates had already accepted the offer from the 1<sup>st</sup> Respondent and had been given appointment letters to report to work.
- 55 The 3<sup>rd</sup> Respondent therefore maintains that by the time the orders were served, the recruitment process had been completed and binding contracts had crystallized between the Board and the successful candidates, and that

maintaining the status quo required continuation of those contractual obligations.

- 56 He further avers that the status quo orders did not restrain candidates from reporting to work, as the orders did not suspend the contracts of employment or any obligations under those contracts.
- 57 It is the 3<sup>rd</sup> Respondent's case that the suspension of the Petitioners as Members of the County Assembly was not a decision of the County Assembly Service Board, but an administrative decision made by the 3<sup>rd</sup> Respondent as the Speaker of the County Assembly of Kitui in line with Standing Order 103(A)(10(f) for causing disorder and disrupting the Governors Speech at the County Assembly of Kitui precincts on 8<sup>th</sup> July 2025 and had nothing to do with the recruitment process that is the subject of this Petition.
- 58 He further states that the suspension was communicated during the afternoon sitting of 1<sup>st</sup> October 2025 before the Respondents were served with the Petition herein as well as the orders for status quo, and that the Petitioners' attempt to link it to contempt is misleading.
- 59 He adds that the Petitioners subsequently obtained orders in Kitui HCCRPET E005 of 2025 and proceeded to attend all meetings of the 1<sup>st</sup> Respondent, contrary to the assertions in their application for contempt.

- 60 The 3<sup>rd</sup> Respondent avers that the gazettelement of Mr. Chris Mulundi Mwangangi did not violate court orders as it was made pursuant to a discussion of the Board where the Petitioners fully participated and gave their contribution in the meeting as evident in the attendance sheets signed on the said date.
- 61 He further states that the publication of the Gazette Notice is an administrative act processed through the Government Printer, and the timing thereof is not within the control of the Respondents.
- 62 It was stated that the County Assembly of Kitui does not have a substantive office holder in the office of the 2<sup>nd</sup> Respondent and the gazettelement was mandatory to avoid creating a vacuum. The 1<sup>st</sup> Respondent is required by law to appoint a qualified person to hold the office in acting capacity for a period not exceeding 6 months where a vacancy falls in the office of the 2<sup>nd</sup> Respondent.
- 63 He avers that since the recruitment of Mr. Chris Mwangangi was not suspended by the orders of the court, the Board passed a resolution to appoint him in acting capacity for a period of six months pending recruitment of a substantive clerk by the 1<sup>st</sup> Respondent. Further, at the time of appointment, Mr. Chris was the only eligible candidate since all the other deputy clerks had held that position in acting capacity for the specified period
- 64 The 3<sup>rd</sup> Respondent denied the allegation that Mr. Chris Mwangangi participated in the decision-making process by

the 1<sup>st</sup> Respondent and states that the decisions of the 1<sup>st</sup> Respondent are made by way of voting in line with the County Assembly Service Act.

- 65 The 3<sup>rd</sup> Respondent contends that the Petitioners have not produced credible evidence of contempt and have misrepresented the events of 21<sup>st</sup> October 2025, stating that no commissioning occurred that altered or created legal rights.
- 66 He further challenges the admissibility of the evidence in the form of social media extract and screenshot relied upon by the Petitioners asserting that it does not conform to the rules of admissibility of electronic evidence under Section 106B of the Law of Evidence Act as it is not accompanied by a certificate of electronic.
- 67 He avers that the Petitioners improperly relied on internal Board materials and deliberations that are confidential and privileged, contrary to the Third Schedule (Oath of Member of the Board) of the County Assembly Services Act, 2017, Section 12(7) of the said Act, and Sections 13(2) and 16(1) of the Leadership and Integrity Act, 2012.
- 68 It is the 3<sup>rd</sup> Respondent's case that the application is an afterthought, driven by malice and intended to exert improper pressure on the Board and its officers, and that the threshold for contempt, being quasi-criminal, has not been met.

69 He therefore maintains that the application is misconceived, factually inaccurate and legally unfounded, and urges that it be dismissed with costs.

### **Petitioners/Applicants' Submissions**

70 The Petitioners/Applicants submitted that in contempt proceedings, the requirement of knowledge and proper notice of the terms of the court order is a well-settled principle, which must be established to warrant a finding of contempt. They cited ***Wanjala Mining Company Limited v National Land Commission & 3 Others [2017] eKLR***, the Court held that: *"...For a person to be held that he is in contempt of Court there must be proof that he was personally served with the order or that he became personally aware of the existence/contents of this Order. The issue of service and or knowledge must be on the balance of beyond reasonable doubt as contempt proceedings are quasi-criminal in nature..."*

71 It was the Petitioners/Applicants' submission that the orders of this Court issued on 1<sup>st</sup> October, 2025 directing maintenance of the status quo were duly served upon the Respondents on the same date, and brought to their attention and knowledge immediately upon issuance, as evidenced by the Affidavit of Service. They argued that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents expressly acknowledged service and knowledge of the said orders in their respective Replying Affidavits, therefore, there is no dispute that the Respondents were well aware of the orders issued by the Court.

- 72 The Petitioners/Applicants further submitted that the terms of the order were clear, unambiguous and binding on the Respondents. The Order was for maintenance of the status quo as at 1<sup>st</sup> October, 2025. That was as clear as could be since that order was aimed at “freezing” the position or activities obtaining at the time of issuing the order so that neither party was to take one more step without the permission of the Court.
- 73 They submitted that the subject matter of the Petition is the recruitment exercise conducted between May 2025 and September 2025, therefore, the status quo order was specifically intended to halt or stall that process pending the hearing and determination of the Petition, failing which the Petition would be rendered nugatory.
- 74 It is the Petitioners/Applicants’ submission that the order remained binding upon the Respondents at all material times, and if the Respondents had any difficulty in interpreting the order, they ought to have sought clarification from the Court, which they failed to do, thereby demonstrating that the order was clear to them.
- 75 The Petitioners/Applicants argued that despite knowledge and clarity of the order, the Respondents jointly and severally, deliberately disobeyed the order and blatantly acted in breach. The Respondents wilfully chose to disregard the order of this Court as they did not stated in

their response that they were mistaken as to the meaning of the order.

- 76 They submitted that the Respondents undertook actions including gazettelement and continued implementation of the recruitment process, and that these actions occurred after 1<sup>st</sup> October, 2025, in direct contravention of the Court's orders. The Respondents did not deny undertaking these actions in their Replying Affidavits, nor did they claim any mistake as to the meaning or scope of the orders.
- 77 They argued that the Respondents' contention that the recruitment process had been completed prior to service of the orders is unsupported by evidence, as no letters of offer, no letters of acceptance and no appointment letters regarding the many would be successful candidates. In any event, there is no proof that any of them had begun working by the time of the issuing of the order. Even the 2<sup>nd</sup> Respondent was gazetted on 13<sup>th</sup> October, 2025, after the order of status quo.
- 78 They further submitted that during cross-examination, the 3<sup>rd</sup> Respondent, while deponing that the appointment letters had been written and served, he could not tell the court how such letters were disseminated and did not have any sample letter to show that indeed the successful candidates had been served with such appointment letters as alleged in his Replying Affidavit.

- 79 It was therefore their submission that the Respondents have wilfully disobeyed the order and are now merely looking for excuses for their disobedience.
- 80 The Petitioners/Applicants submitted that having established the three essential elements of contempt namely: existence of a valid court order, knowledge of that order by the Respondents on the same date, and willful disobedience through actions undertaken thereafter, it is without doubt that the Respondents' conduct amounted Contempt of Court. They chose to act contrary to the court's orders despite understanding the consequences.
- 81 They argued that the Respondents acted in bad faith and deliberately disregarded the authority of the Court without any plausible justification.
- 82 The Petitioners/Applicants further submitted that it is the duty of the Court to safeguard the rule of law by ensuring compliance with its orders, and that parties to court proceedings must obey court orders as a fundamental constitutional obligation. They argued that contempt proceedings serve to protect the dignity and authority of the Court and to maintain public confidence in the administration of justice.
- 83 The Petitioners/Applicants submitted that the Respondents, particularly Hon. Kevin Katisya Kinengo, Mr Chris Mulundi Mwangangi, Mr Wilson Muange Musyoka and Ms Ruth Nzambi Joseph, by their deliberate and willful

conduct, have denigrated the dignity of the Court and must be held accountable. They cited ***The Local Authorities Provident Fund Board v County Government of Mombasa & another [2023] KEELRC 2303 (KLR)*** “The Court does not, and ought not to be seen to make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people the principle of law is that the whole essence of litigation as a process of judicial administration is lost if orders issued by court through the set judicial process in the normal functioning of courts are not enforceable against the parties cited as respondent. The claimant as a statutory body or person is legally and duty bound to give due compliance in this regard. Court orders cannot be issued in vain.”

### **Respondents’ Submissions**

- 84 The Respondents submitted that the following issues arise for determination: whether the status quo order issued on 1<sup>st</sup> October, 2025 was clear, precise and capable of being disobeyed; whether the Respondents had proper notice of the terms of the order; whether the Applicants have proved disobedience of the order to the requisite standard; and whether there was deliberate and willful breach.
- 85 On whether the status quo order was clear and capable of being disobeyed, the Respondents submitted that whereas

the Court directed that the status quo be maintained, the order did not elaborate on the exact state of affairs as at the time of issuing the order.

86 They submitted that the court order could be said to be ambiguous, as it does not clearly specify the precise state of affairs that the Court intended to preserve. Further, as at the time the order was issued, the recruitment process had already been concluded and the contracts of employment executed, to maintain the status quo would then be to 'proceed as is' with the employed staff undertaking their duties pending the outcome of the present matter

87 The Respondents submitted that in ***Republic v National Environment Tribunal Ex parte Palm Homes Ltd & Another [2013] eKLR*** the court defined status quo as: *"when a Court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve existing state of affairs."*

88 It is therefore the Respondents submission that as at 1<sup>st</sup> October, 2025, the prevailing state of affairs was that the recruitment process had already been completed, in that offer letters had been issued on 24<sup>th</sup> and 25<sup>th</sup> September, 2025, accepted between 24<sup>th</sup> September, 2025 and 26<sup>th</sup> September, 2025, and appointment letters issued on 1<sup>st</sup> October, 2025 prior to service of the court orders.

- 89 They argued that in those circumstances, maintaining the status quo meant allowing the already employed staff to continue discharging their duties pending determination of the Petition, and that the order could not operate retrospectively to reverse completed acts.
- 90 The Respondents further submitted that these facts were supported by the affidavit evidence of Mr. Chris Mwangangi, who annexed the offer letter, acceptance letter and appointment letter marked CM-1, CM-2 and CM-3 respectively, and that the Applicants failed to rebut this evidence.
- 91 On whether the Respondents had proper notice of the order, the Respondents submitted that there was no proper personal service upon the alleged contemnors, namely Hon. Kevin Katisya Kinengo, Mr. Chris Mwangangi, Mr. Wilson Muange Musyoka and Ms. Ruth Nzambi Joseph. The Affidavit of Service shows that service was only effected at the office of the Clerk of the County Assembly of Kitui on 1st October, 2025 at approximately 4:20 pm, and no direct or personal service was effected upon the cited individuals.
- 92 The Respondents submitted that in the absence of proper personal service, knowledge cannot be inferred, and relied on **Patrick L Otieno Oyoo t/a Otieno Oyoo & Company Advocates v Africa Merchant Assurance Company Limited & another; Diamond Trust Bank**

**Kenya Limited (Garnishee/Applicant) [2021] eKLR,**  
where the Court held: *“In my view, Personal Service or other direct mode of service like through WhatsApp should have been utilized and only be relaxed when it is shown to the satisfaction of the court that a party has made attempts to effect personal service but for some reason, such service was not possible. I am aware that knowledge supersedes personal service but it must be demonstrated to the satisfaction of the court that indeed the alleged contemnor had knowledge of the court order and brazenly disobeyed it. This view is informed by the fact that contempt proceedings are akin to criminal proceedings. A person may be sent to prison and thereby lose his liberty for that offence. For that reason, it is very important that he is shown to have had notice of the order and had the opportunity to obey the same but failed to do so.”*

- 93 They submitted that service was only effected in the office of the Clerk, County Assembly of Kitui and there was no other service effected. Therefore, there being no proper personal service on the alleged Contemnors, there cannot arise a case of contempt.
- 94 On whether the Applicants proved disobedience of the order, the Respondents submitted that save for the allegations in the application and supporting affidavit, the Petitioners/Applicants have not adduced any iota of evidence of breach or violation of the court orders.

- 95 On the allegation that appointment letters were issued after the order, the Respondents reiterated that the letters were issued on 1<sup>st</sup> October 2025, before service of the court orders was affected upon the 2<sup>nd</sup> Respondent; and that no evidence was produced to the contrary.
- 96 On the allegation that the 3<sup>rd</sup> Respondent commissioned newly recruited employees, the Respondents submitted that there is no recognized stage in recruitment known as “commissioning,” and that the Applicants failed to adduce any admissible evidence in support of the alleged commissioning by the Speaker of the County Assembly of Kitui.
- 97 They further submitted that the alleged social media evidence is inadmissible for failure to comply with Section 106B of the Evidence Act, as it was not accompanied by a certificate of electronic evidence. Reliance was placed on ***County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] eKLR***: “Section 106B of the Evidence Act states that electronic evidence of a computer recording or output is admissible in evidence as an original document “if the conditions mentioned in this section are satisfied in relation to the information and computer.” In our view, this is a mandatory requirement which was enacted for good reason. The court should not admit into evidence or rely on manipulated (and we all know this is possible) electronic evidence or record hence the stringent conditions in sub-section 106B(2) of that Act to vouchsafe

*the authenticity and integrity of the electronic record sought to be produced.”*

- 98 They argued that the alleged social media excerpt/image has not been accompanied by the mandatory Certificate of Electronic Evidence to prove its source, the device used to record, or the integrity of the chain of custody. There is no proof of who recorded it or took screenshot, when or where it was recorded, or whether it has been altered. Without authentication, the image/excerpt is unreliable and has no probative value. In the contemporary digital age, images and recordings can be edited, manipulated, or even generated through artificial intelligence, making strict safeguards essential before such material can be relied upon.
- 99 On the allegation relating to the gazettelement of Mr. Chris Mwangangi as Acting Clerk on 13<sup>th</sup> October, 2025, the Respondents submitted that the same was unrelated to the recruitment process under challenge, as the position of Clerk was not among the positions listed in the Petition.
- 100 They further submitted that the Petitioners themselves participated in the decision to appoint Mr. Mwangangi in acting capacity, and that gazettelement is merely an administrative process undertaken by the Government Printer, whose timelines are beyond the Respondents' control.

- 101 The Respondents emphasized that contempt proceedings are quasi-criminal in nature and require a higher standard of proof, relying on **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR)**. They further relied on **Nyamari & 2 others v Kisii County Government [2024] KEELC 4847 (KLR)**, where the Court held: “A court cannot hold somebody to be in contempt of a decree based on mere allegations and casual averments. There must be concrete proof that supports the claims of disobedience. Such proof as pointed out in the above authority, needs to be higher than a balance of probabilities.”
- 102 The Respondents submitted that the failure to establish standard of proof in contempt proceedings is fatal to an application for contempt. In the present case, the Court directed that the status quo be maintained in respect of the recruitment process that is the state of affairs existing at the time the order took effect.
- 103 They argued that by the time the order was served on 1<sup>st</sup> October, 2025 at 4:20 pm, binding employment contracts had already crystallized upon issuance and acceptance of offer letters, and were later formalized by appointment letters issued the same day. The court did not direct suspension or variation of the terms of those contracts and they remain valid until such a time as the court may direct.

- 104 Reliance was placed on **Thomas Ogunde Mboya v Grand Royal Swiss Hotel [2022] KEELRC 314 (KLR)**: *“It seems clear to this Court that an offer of employment, even if accepted verbally, constitutes a legally binding employment contract. The Respondent herein made an offer to the Claimant, which the Claimant accepted. The Claimant’s testimony that he signed and returned the original contract was not controverted. The Court finds that a binding and valid employment relationship had commenced between the parties herein.”*
- 105 The Respondents submitted that the elements of offer and acceptance, which are fundamental elements of a valid contract, and create binding legal obligations on both parties which as per the oral evidence on cross examination of the 3<sup>rd</sup> Respondent, offer letters had already been sent out and accepted at the time the status quo order was served. In fact, even the appointment letters had also been issued to the successful candidates and this meant that the process had been completed.
- 106 It is therefore their submission that the status quo order preserved an already completed recruitment process and existing contractual relationships, and could not be applied retrospectively to undo actions undertaken prior to service.
- 107 On whether there was willful and deliberate breach, the Respondents submitted that no such violation of the Court orders has been done or been demonstrated by the Petitioners in this Petition. They cited **Sheila Cassatt**

**Issenberg & another v Antony Machatha Kinyanjui [2021] KEHC 5692 (KLR)** *“As was again stated by the Supreme Court of India in Mahinderjit Singh Bitta v Union of India & Others 1 A NO. 10 of 2010 (13th October, 2011): In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is is before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. (Emphasis). 58. The emphasis as shown in the above cases is that there must be “willful and deliberate disobedience of court orders.” There cannot be deliberate and willful disobedience, unless the contemnor had knowledge of the existence of that order. And because contempt is of a criminal nature, it is always important that breach of the order be proved to the required standard; first, that the contemnor was aware of the order having been served or having personal knowledge of it, and second; that he deliberately and willfully disobeyed it.”*

108 The Respondents further submitted that the Petitioners improperly relied on matters unrelated to the recruitment process, including their suspension from the County Assembly, which arose from disciplinary proceedings under Standing Order 103(A)(10)(f) following events of 8<sup>th</sup> July, 2025, and was communicated before service of the

court order on 1<sup>st</sup> October, 2025, and therefore had no nexus to the alleged contempt.

109 It is therefore the Respondents' submission that the Applicants have failed to establish any of the requisite elements of contempt, and that the application is unmeritorious and ought to be dismissed.

110 I have examined all the averments and submissions of the parties herein. The main contention by the applicants is that the respondents herein are in contempt of this court's orders made on 1/10/25 when this court ordered status quo orders to be maintained. The orders of 1/10/25 were to the effect that the orders sought had been overtaken by events. The court however indicated that status quo be maintained.

111 What was the position on 1/10/25? From the pleadings herein, the applicants informed court that the recruitment process that had been carried out by the County Assembly was marred with corruption.

112 The applicants had wanted this court to stop the flawed process but also informed court that the County Assembly Service Board was set to meet on 25<sup>th</sup> September 2025 to adopt the names fronted by the 3<sup>rd</sup> respondent.

113 The orders of this court allowing status quo were made taking into consideration the fact that the orders sought had been overtaken by events. In this application, the applicant wants the 2<sup>nd</sup> respondent Chris Mulundi Mwangangi and 3<sup>rd</sup> respondent Kevin Katisya Kinengo, Mr.

Wilson Muange Musyoka and Ms. Ruth Nzambi found in contempt of this court's orders made on 1/10/25 on the grounds that the 3<sup>rd</sup> respondent suspended them from their roles as members of the County Assembly and proceeded to issue appointment letters to individuals recruited pursuant to the impugned recruitment process in contravention of the subsisting status quo orders.

114 The applicant further avers that on 13<sup>th</sup> October 2025, the Speaker of the Assembly further caused the gazettelement of the appointment of Mr Chris Mulundi Mwangangi as Acting clerk of the County Assembly.

115 In determining whether the respondents acted in contempt or not, I note that the recruitment process was completed by the meeting of 25<sup>th</sup> September 2025 which adopted the names of the recruited staff.

116 The applicant has not produced before this court any appointment letters issued after 1/10/25. It is true that the speaker of the Assembly however did issue a gazette notice appointing one Chris Mulundi as acting clerk of the Assembly on 13/10/25 after 1/10/25. From the return of service filed, the orders of the court were however served upon the Secretary of the Clerk's office and not upon the Speaker's office which office did the gazettelement. No other evidence is before this court to show that the Speaker had been served with the orders of this court.

117 In the circumstances, there is no evidence before court of willful disobedience of this court's orders as submitted by

the applicants and therefore the application for contempt and prayers therein must fail.

118 As to the other prayer sought to suspend the appointment letters made after 1/10/25 they are substantive matters to be determined in the main petition. Costs shall be in the petition.

**Dated, Signed and Delivered Virtually at Nairobi  
this 16<sup>th</sup> Day of April, 2026.**

**HELLEN WASILWA  
JUDGE**