

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

JUDICIAL REVIEW NO. E046 OF 2024 CONSOLIDATED WITH E047 OF
2024

DR. JOSEPH MASINDE WANGILA.....APPLICANT

VERSUS

**THE VICE CHANCELLOR,
MURANG'A UNIVERSITY OF TECHNOLOGY.....1ST RESPONDENT**

MURANG'A UNIVERSITY OF TECHNOLOGY.....2ND RESPONDENT

AND

**UNIVERSITIES ACADEMIC STAFF
UNION NATIONAL OFFICE.....1ST INTERESTED PARTY**

**UNIVERSITIES ACADEMIC STAFF UNION, MURANG'A
UNIVERSITY OF TECHNOLOGY CHAPTER....2ND INTERESTED PARTY**

THE PUBLIC SERVICE COMMISSION.....3RD INTERESTED PARTY

RULING

The Exparte Applicants in JR. E046 and E047 obtained orders of mandamus in the judgment dated 31st of July 2025 as follows: -

- (1)“An order of mandamus directed at the Murang’a University of Technology (MUT) is issued; compelling it to comply with and implement the decision of the Public Service Commission (PSC) in respect of the two Exparte Applicants, being Benson Muchai Irungu and Dr. Joseph Masinde by reinstating them to the position they held from the date of suspension and to pay to the two public officers all

arrear salaries and allowances withheld by the University from the said date to the date of this judgment.

(2)The 2nd Respondent, Murang'a University of Technology (MUT) to meet the costs of the consolidated suit.”

The Notice of Motion application dated 22/9/2025 was brought by the Exparte Applicants seeking an order to cite Prof. Dickson M. Nyariki, the Vice Chancellor of Murang'a University for contempt of court for wilful disobedience of the orders of the court aforesaid and that the said Vice Chancellor be committed to civil jail for a period not exceeding six (6) months or fined such amount as the court may deem fit for deliberate disobedience of the said orders of the court.

The application is premised on grounds '1' to '19' set out on the face of the Notice of Motion and buttressed in the supporting affidavit of the Applicants, which may be summarised that upon issuance of the aforesaid court order, the same was served on the Vice-Chancellor, who is the 1st Respondent in this matter on 26/8/2025 who was duly represented by Advocates in court when the judgment was delivered.

That the Vice-Chancellor has knowledge and proper notice of the judgment and decree of the court and has intentionally, and in contemptuous manner refused to comply with the court order on the basis that they had filed an appeal yet until the date of this application, there was no evidence of any stay orders from the decision of the court.

That the filing of appeal does not operate as an automatic stay of execution of the judgment and decree of the court.

That the 1st Respondent is the Chief Executive Officer of the 2nd Respondent and is the officer responsible for the day-to-day administration of the University and is ultimately responsible for ensuring compliance with lawful orders of the court and is properly cited for contempt in these proceedings.

That the terms of the order are clear and unambiguous and same are binding on the Respondents and their continued non-compliance is illegal, unfair and amounts to contempt of court.

That Respondents have previously ignored to implement the binding directions of the Public Service Commission prompting the filing of the consolidated suit.

That the application be granted. The contention by the Applicants were reiterated in the Supplementary Affidavit dated 14/10/2025.

The Respondents filed a replying affidavit sworn to by Prof. Dickson M. Nyariki on 6/10/2025 in which he deposes that he understands the contents of the application dated 22/9/2025 before court and is aware of the history of the dispute as set out in the application.

That he is aware that on 31/7/2025, the court issued orders of mandamus for reinstatement and payment of arrear salary of the two Exparte Applicants.

That the Respondents noted the judgment and on 6/8/2025 filed and served a Notice of Appeal followed by an application for stay of execution under Rule 5(2)(b) of the Court of Appeal Rules being Civil Application No. E528 of 2025. That the Respondents have also requested for certified copies of the judgment and typed proceedings of the court to prepare the Record of Appeal.

That on 1/10/2025 the Respondents wrote to the Deputy Registrar of the Court of Appeal requesting an expedited hearing for the stay application to avoid any delays.

That all the above steps were duly communicated to the Applicant and his Advocates, who were served with the relevant court document.

That the allegation by the Applicants that the Respondents have blatantly refused to comply with court orders is false and misleading as the Respondents have lawfully exercised their right of appeal and sought a stay of execution.

That although the filing for an appeal does not constitute an automatic stay, the Respondent have taken all necessary legal steps to obtain one and have refrained from enforcement actions solely to avoid jurisdictional

conflict between this court and the Court of Appeal and to preserve the subject matter pending its determination. (Emphasis added).

That it is incorrect that the Respondents are in contempt of the court order. That the 1st Respondent has at all material times acted in good faith and should not be unfairly singled out for contempt of court where no deliberate disobedience has occurred.

That it is unjustified and prejudicial for the Applicant to seek punitive orders against the Respondents for merely exercise their appellate rights.

The Respondents reiterate their commitment to abide by the court's orders and humbly urge the court to dismiss this application as it is premature due to the pending application before the Court of Appeal.

DETERMINATION

In this matter, it is clear that the 1st Respondent herein the Vice Chancellor of the 2nd Respondent is as was stated in ***Samuel M. N. Mweru & others versus National Land Commission & others [2020] KEHC 9233 (KLR)***

- (i) Aware of the judgment and decree of the court issued on 31/7/2025
- (ii) Fully understands the terms of the order.
- (iii) Has failed to comply with the terms of the orders on the basis that on 6/8/2025 filed and served a Notice of Appeal to the Court of Appeal.

- (iv) Has admittedly, stated that he is aware that filing a Notice of Appeal by itself does not lead to automatic stay of execution.
- (v) Has despite the above knowledge failed to comply with the terms of the order.

These facts have been proved by the Applicants and have not been contested by the Respondents, who only make excuse for failing to comply with the orders of the court.

The Court of Appeal in ***Ahmed Noorani versus Joyce Akinyi Ochieng [2017] KECA 351 (KLR)*** cited the celebrated case in ***Hakdinson versus Hadkinson*** as follows: -

“16. It cannot be gainsaid that the duty to obey the law by all individuals and institutions is paramount in the maintenance of the rule of law, good order and the due administration of justice. As stated by Romer, LJ. In *Hadkison vs Hadkinson* (1952) ALL ER 567,

“It is the plain and unqualified obligation of every person against, or in respect of, whom 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, Lord Cottenham, L. C. said in ***Chuck vs Cremer (1) (Coop. temp. Cott 342)***.

“A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it...It would be most

dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid, whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.”

It is clear that the defiance of the court orders by the 1st Respondent is deliberate, having also prior to the filing of the suit disregarded the directive by the Public Service Commission to reinstate the two Exparte Applicants and pay their arrear salaries, the same directives which were confirmed and sought to be enforced by the judgment of this court issued on 31/7/2025 which to the best of the knowledge of this court has not been complied with to date, despite there being no stay orders from the Appellate court.

The conduct by the 1st Respondent constitutes blatant contempt of court orders and a cancerous affront to the rule of law, which path if followed to its logical conclusion will not only bring the courts of law to disrepute but will set administration of law into disorder, with possibility of chaos and consequences which are too dire to contemplate.

An institution of higher learning led by the 1st Respondent ought to know better than to knowingly, and intentionally defying a court order that

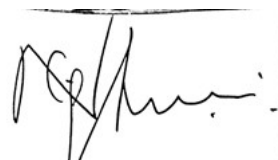
remains in force and has not been set aside and/or stayed by a higher court.

Accordingly, the court finds that the 1st and 2nd Respondents are in contempt of the judgment and orders of the court dated 31st July 2025 and finds the 1st and 2nd Respondents guilty accordingly.

The court therefore grants the application dated 23/9/2025 as prayed and makes the following orders: -

- (a) The Vice Chancellor of Murang'a University of Technology Prof. Dickson M. Nyariki is guilty of contempt of court for wilful disobedience of the orders of this court issued on the 31st July 2025.
- (b) That the said Prof. Dickson M. Nyariki be committed to civil jail for a period not exceeding six (6) months and in the alternative pay a fine of Kshs. 500,000.00 for deliberate disobedience of the said orders of the court.
- (c) The conviction and sentence above are suspended for a period of 10 days to allow the 1st Respondent to purge the contempt by complying with the judgment and orders of the court aforesaid failing which the conviction and sentence to take effect upon expiry of the 10 days period from the date of this Ruling
- (d) Costs of the application.

Dated at Nairobi this 14th day of April 2026



Mathews Nduma
JUDGE

**Dated, signed and delivered in open court at Nairobi this 22nd day of
April 2026**

Dr. Gakeri J.
JUDGE

Appearances:

Mr. Odhiambo for Exparte Applicants

M/s. Kinuthia for Respondents

Mr. Kemboi – Court Assistant

ORIGINAL