

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC EP PETITION NO. E012 OF 2025**

**IN THE MATTER OF ARTICLES 1, 10, 19, 20, 22(1), 23(1),  
70(1), 162(3) AND 232 OF THE CONSTITUTION OF  
KENYA, 2010**

**AND IN THE MATTER OF ONGOING BREACH, VIOLATION  
AND CONTRAVENTION OF ARTICLES 28, 35, 40, 42,  
43(1), (b), 47(1), 69(1), 70 AND 75(1) OF THE  
CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE ACCESS TO INFORMATION ACT,  
2016 NO 31 OF 2016**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT, NO 3  
OF 2012 AND**

**IN THE MATTER OF THE SECTIONAL PROPERTIES ACT  
AND**

**ONGOING BREACH, VIOLATION AND CONTRAVENTION  
AND INTENDED BREACH AND VIOLATION OF SECTIONS  
14, 15, 17, 20, 36, 37, 38, 39, 40, 41, 44, 45, 46, 47, 48, 49,  
50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 65,66, 67, 60,  
69, 70 and 71 OF THE PHYSICAL AND LAND USE**

**PLANNING ACT NO 13 OF 2019**

**AND IN THE MATTER OF ONGOING BREACH, VIOLATION  
AND CONTRAVENTION AND INTENDED BREACH AND**

**CONTRAVENTION OF LEGAL NOTICES NO 238 OF  
2021(INSTITUTIONS):239 OF 2021(BUILDINGS); 240 of  
2021(COUNTY PHYSICAL AND LAND USE DEVELOPMENT  
PLAN):248 OF 2021(LOCAL PHYSICAL AND LAND USE  
DEVELOPMENT PLAN); 249 OF 2021(SPECIAL PLANNING  
AREA); 250 OF 2021(DEVELOPMENT CONTROL  
ENFORCEMENT); AND 253 of 2021(DEVELOPMENT  
PERMISSION AND CONTROL(GENERAL)**

**AND**

**IN THE MATTER OF ONGOING UNAPPROVED, ILLEGAL  
AND IRREGULAR DEVELOPMENTS AND DEVELOPMENT  
ACTIVITIES IN THE PARKLANDS AREA OF NAIROBI CITY  
COUNTY**

**AND**

**IN THE MATTER OF DENIAL, VIOLATION,  
INFRINGEMENT OR THREAT TO THE RIGHT TO HUMAN  
DIGNITY, TO PROPERTY, TO LIFE AND TO A CLEAN AND  
HEALTHY ENVIRONMENT OF THE PETITIONERS, THE  
RESIDENTS/OWNERS/OCCUPIERS OF RESIDENTIAL  
PROPERTIES IN THE PARKLANDS AREA OF NAIROBI  
CITY COUNTY AND THE GENERAL PUBLIC**

**BETWEEN**

**KAMALKUMAR RAJINKANT SANGAHANI ..... 1st  
PETITIONER**

**JAGS KAUR ..... 2nd  
PETITIONER**

**TEDDY OBIERO ..... 3rd  
PETITIONER  
(FOR AND ON BEHALF OF PARKLANDS RESIDENTS  
ASSOCIATION)**

**VERSUS**

**NAIROBI CITY COUNTY GOVERNMENT ..... 1st  
RESPONDENT  
COUNTY EXECUTIVE COMMITTEE MEMBER  
(CECM)BUILT ENVIRONMENT**

**AND URBAN PLANNING SECTOR ..... 2<sup>ND</sup>  
RESPONDENT**

**COUNTY DIRECTOR OF PHYSICAL PLANNING  
AND LAND USE PLANNING,**

**NAIROBI CITY COUNTY ..... 3<sup>RD</sup>  
RESPONDENT**

**PATRICK MBOGO ..... 4<sup>TH</sup>  
RESPONDENT**

**GODFREY AKUMALI ATIEL ..... 5<sup>TH</sup>  
RESPONDENT**

**PATRICK ANALO AKIVAGA ..... 6<sup>TH</sup>  
RESPONDENT**

**AND**

**108 INTERESTED PARTIES**

**RULING**

**A. Background**

1. Before this court for determination is the Petitioners/Applicants' Notice of Motion dated the 9<sup>th</sup> February, 2026 brought pursuant to the provisions of **Section 1A, 1B and 3A of the Civil Procedure Act 2010, Order 16 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules, 2020 and Rule 3 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms (Practice and Procedure Rules) 2013**, seeking the following reliefs:

*i. Spent.*

*ii. THAT this Honourable Court do suspend the directions/orders made on 2nd February 2026 that the Applicants herein file and serve their submissions on the 4th Contemnor's motion application dated 29th October 2025, pending hearing and determination of this application.*

*iii. THAT this Honourable Court be pleased to issue witness summonses to (i) Patrick Analo Akivaga (6th Respondent/3rd Contemnor) (ii) Bake Hassan Jamala (Advocate for the 1st to 6th Respondents/Contemnors) (iii) Geoffrey Mosiria (4th Contemnor) and (iv) Collins Githuku (Advocate of the High Court of Kenya) to attend court and give evidence on matters relating to the Notice of Motion application dated 29th*

***October, 2025 on a day and time to be fixed by the court.***

***iv. THAT the court do issue any other consequential orders it deems just and fair in the circumstances.***

2. The motion is premised on the grounds set out on its face and supported by the affidavit of Kamalkumar Rajinkant Sanghani, the 1st Petitioner/Applicant of even date.
3. He deponed that vide the motion dated 23<sup>rd</sup> May, 2025, he and his co- Petitioners/Applicants, instituted contempt of court proceedings against Patrick Mbogo, Godfrey Akumali Atiela, Patrick Analo Akivaga, Geoffrey Mosiria, Michael Muge, Hongbing Liu, Liu Bo, Long Yun and Grandpine Company Limited for disobedience of the court orders made on 5<sup>th</sup> March, 2025.
4. The application was served upon all the parties named therein. In particular, the 6<sup>th</sup> Respondent/3<sup>rd</sup> Contemnor, Patrick Analo Akivaga, and the 4<sup>th</sup> Contemnor, Geoffrey Mosiria, were served personally and through their advocates on record, Messrs. Jamal Bake & Associates Advocates.
5. According to Mr Sanghani, in response to the contempt application, the 6th Respondent/3<sup>rd</sup> Contemnor, Patrick Analo Akivaga, swore a replying affidavit on the 5<sup>th</sup> June, 2025. He expressly stated therein that he swore the same on his own behalf and on behalf of the 4th Contemnor, Geoffrey Mosiria.

- 6.** The application was heard and determined, and in the ruling delivered on 14<sup>th</sup> October, 2025, the court found that Mr. Mosiria was in contempt of the orders issued on 5<sup>th</sup> March, 2025. The court thereafter scheduled mitigation and sentencing for 4<sup>th</sup> November, 2025.
- 7.** Before the scheduled date for mitigation and sentencing, Mr. Mosiria filed a motion dated 29<sup>th</sup> October, 2025 seeking, among other reliefs, a stay of the mitigation and sentencing proceedings. He also sought orders reviewing, rescinding, varying, reversing and/or setting aside the court's finding of 14<sup>th</sup> October, 2025 aforesaid.
- 8.** In the said motion, Mr Mosiria challenges, inter alia, the propriety of service of the pleadings that culminated in the orders issued on 5<sup>th</sup> March, 2025, as well as the alleged service of the contempt application upon him. He further contests the averments contained in the replying affidavit sworn on 5<sup>th</sup> June, 2025, disputing the claim that the 6th Respondent, as the 3<sup>rd</sup> Contemnor, had the requisite authority to swear the affidavit on his behalf. Further, he contests the assertion that the firm of Jamal Bake & Associates Advocates had been instructed to act for him in the contempt proceedings.
- 9.** Mr Sanghani stated that as advised by counsel, in light of the allegations and statements made by Patrick Analo Akivaga and Geoffrey Mosiria, it is necessary to summon both of them as witnesses to attend court, testify, and be cross-examined

on the statements and depositions contained in the replying affidavits sworn on 5<sup>th</sup> June, 2025 and 29<sup>th</sup> October, 2025 respectively.

- 10.** It is equally necessary to summon Bake Hassan Jamala of Jamal Bake & Associates Advocates to testify on the issue of representation in the contempt proceedings as well as the process server, Collins Githuku. This will assist them in the drawing and filing of submissions in the motion and allow the court arrive at a fair and just determination.
- 11.** The 6th Respondent/3<sup>rd</sup> Contemnor, Patrick Analo Akivaga, swore a replying affidavit on the 4<sup>th</sup> March, 2026. He deponed that **Order 16 Rule 1** of the **Civil Procedure Rules, 2010**, upon which the motion is premised, is intended to facilitate the attendance of witnesses at trial and does not regulate or govern applications seeking leave to cross-examine a deponent on affidavit evidence. This renders the motion incompetent.
- 12.** He explained that he already placed his evidence before this court through the replying affidavit sworn on 5<sup>th</sup> June 2025, which was duly filed, served, and considered by the court. He is therefore not a witness being summoned to give fresh evidence within the meaning of **Order 16 Rule 1** of the **Civil Procedure Rules, 2010**. The proper legal framework governing the cross-examination of a deponent, if at all, is **Order 19 Rule 2** of the **Civil Procedure Rules**.

- 13.** Notwithstanding the above and without prejudice thereto, he averred, the jurisdiction of this court to allow the attendance of a deponent for cross-examination under **Order 19** of the **Civil Procedure Rules, 2010** is not automatic. It may only issue in limited and exceptional circumstances, including but not limited to instances where there are allegations of matters touching on fraud, mala fide, and authenticity of the facts deponed. The foregoing, he noted, also extends to where there is a conflict of affidavits on record or where the evidence deponed to, is conflicting in itself. He urged that no special circumstances have been demonstrated herein.
- 14.** He opined that the Petitioners rely entirely on unsubstantiated assertions by the 4<sup>th</sup> Contemnor, who has not tendered any independent or cogent evidence to support the claims that he acted without authority or instructions. If any party were to be cross-examined on those allegations, it ought to be the 4<sup>th</sup> Contemnor and not himself.
- 15.** He explained that the matters raised by the 4<sup>th</sup> Contemnor concern his own alleged lack of knowledge or instructions and do not arise from any contradiction, inconsistency, or impropriety within his affidavit that would justify cross-examination.
- 16.** He further contended that the motion is misconceived to the extent that it seeks to compel his advocate to testify on matters protected by advocate-client privilege contrary to **Section 134** of the **Evidence Act, Cap 80**. The Applicants

have neither pleaded nor demonstrated the applicability of any of the statutory exceptions under **Section 134(1)(a)** or **(b)** of the **Evidence Act** that would justify lifting that privilege.

17. The cross-examination cannot be used as a fishing expedition or as a means of reopening issues already determined by the court, particularly where the matter is only pending mitigation and sentencing. He therefore urged the court to dismiss the same.
18. The 4<sup>th</sup> Contemnor filed grounds of opposition dated 9<sup>th</sup> March, 2026 contending that the motion is incompetent and amounts to an abuse of the court process. He argued that it seeks to reopen and re-litigate the contempt proceedings, with the effect of delaying and prejudicing the hearing of his review application.
19. Further, it is a regurgitation of the Applicants replying affidavit dated 11<sup>th</sup> November, 2025, which had been filed in response to his review application and seeks to cure a fatal defect in their earlier affidavit, namely the production of electronic evidence without compliance with **Section 106** of the **Evidence Act**.
20. As regards the prayer seeking suspension of the directions and orders made on 2<sup>nd</sup> February 2026, it was contended that the same has no legal basis. The directions in question were proper case management orders requiring the filing of

submissions and have not been shown to be illegal, oppressive, impossible to comply with, or otherwise prejudicial in a manner incapable of being remedied by an award of costs.

- 21.** Consequently, that prayer is, in substance, an application for stay of proceedings brought without satisfying the requisite legal threshold and amounts to a collateral attempt to halt the determination of the pending review application.
- 22.** Equally, the plea for witness summons for viva voce evidence, is procedurally improper at this stage. An application for review and/or setting aside, must stand or fall on the established legal thresholds governing such relief, and not on the basis of a fresh evidentiary hearing through the summoning of witnesses.
- 23.** It was asserted that the motion is a backdoor attempt to re-hear and reopen the concluded contempt proceedings through a fishing expedition aimed at filling gaps in the Applicants case through the introduction of fresh evidence by way of witness summons and cross-examination. The 4<sup>th</sup> Contemnor and the process server Collins Githuku already filed their respective affidavits.
- 24.** Further, the review application challenges the contempt finding on the basis of the record as it existed prior to the ruling and only the 4<sup>th</sup> Contemnor can seek to introduce fresh evidence if necessary.

25. The Applicants are now attempting to suspend the filing of submissions because they have realised that contempt may not have been proved to the required standard, which is higher than a balance of probabilities though below proof beyond reasonable doubt.
26. On his part, Bake Jamala Hassan filed grounds of opposition dated the 12<sup>th</sup> February, 2026 premised on the grounds that the motion is misconceived, incompetent and an abuse of the court process as it seeks to compel an advocate to disclose and/or testify on matters protected under advocate-client privilege contrary to **Section 134** of the **Evidence Act, Cap 80** Laws of Kenya.
27. It was stated that the Applicants have neither pleaded nor demonstrated the applicability of any of the statutory exceptions under **Section 134(1)(a)** or **(b)** of the **Evidence Act** herein and have therefore laid no legal basis upon which the protection of advocate-client privilege herein may be displaced.
28. Further, Bake Hassan Jamal is not a party to these proceedings, having not filed any affidavit in these proceedings nor placed any evidence before this court. As a consequence, no substantive orders can lawfully be sought against him and neither is he capable of being subjected to cross-examination pursuant to **Order 19 Rule 2 (1)** of the **Civil Procedure Rules, 2010** as held in *Murgor & Murgor Advocates Kenya Airports Authority [2022] eKLR.*

- 29.** It was asserted that the affidavit forming the basis of the impugned application was sworn by Patrick Analo Akivaga, and accordingly, Bake Hassan Jamal cannot in law be cross-examined on facts contained in an affidavit to which he is not the deponent and in respect of which he has sworn no evidence.
- 30.** Further, **Rule 8** of the **Advocates (Practice) Rules** provides that no advocate may appear before any court or tribunal in a matter in which he has reason to believe that he may be required to give evidence, whether orally, by declaration, or by affidavit. In the present case, Bake Hassan Jamala has complied with that rule, in that he has not sworn any affidavit or otherwise placed himself in a position where he may be required to testify.
- 31.** Any attempt to compel his attendance for purposes of cross-examination would improperly and unjustifiably convert counsel into a witness in proceedings in which he appears solely in his professional capacity.

**B. Submissions**

- 32.** The parties made oral submissions. Learned counsel Mr. Ndambiri, appearing for the Petitioners/Applicants, submitted that they seek witness summons to issue against the officials named in the application so as to compel their attendance in court to give evidence in relation to the motion dated 29<sup>th</sup> October, 2025. He stated that the application is

brought under **Order 16** of the **Civil Procedure Rules** and **Rule 3** of the **Mutunga Rules**.

- 33.** Mr Ndambiri submitted that the summons are necessary because the 4<sup>th</sup> Contemnor, in his application for review of the orders made on 14<sup>th</sup> October 2025, has raised issues touching on whether he had authorised Mr. Akivaga to swear an affidavit on his behalf and whether he had instructed the firm of Jamal Bake & Associates Advocates to act for him.
- 34.** He argued that the court has jurisdiction to direct that viva voce evidence be taken in addition to affidavit evidence where necessary to assist the court in arriving at a fair and just determination. In support of that proposition, he relied on the case of **MHM vs KNM. Civil Case 23A/2018(HC)**.
- 35.** He further submitted that the proposed witnesses are required to attend court to testify and be cross-examined, and that none of them has sworn an affidavit for purposes of cross-examination. According to counsel, **Order 16** of the **Civil Procedure Rules** grants the court power to summon such witnesses. In support of that submission, he cited **Central Bank of Kenya vs Attorney General Appeal No 3 of 2020-EACJ**.
- 36.** On the issue of advocate-client privilege, counsel submitted that the objections raised under **Section 134** of the **Evidence Act** were misconceived because Mr. Bake had not considered the entirety of that provision. He argued that the

applicability of privilege depends on whether the communications in question relate to unlawful purposes.

- 37.** Counsel maintained that Mr. Bake could not claim privilege in relation to the question of whether he had been instructed to act for Mr. Mosiria. He added that Mr. Bake had not filed any affidavit in the matter, but could do so if summoned by the court. Counsel therefore urged that the application be allowed, emphasizing that where a party seeks to assist the court in arriving at a just determination, witness summons ought to issue readily.
- 38.** On his part, learned counsel Mr. Munguti, appearing for Bake Hassan Jamala on behalf of the 1st to 5<sup>th</sup> Respondents, submitted that the application is frivolous and incompetent because it has been brought under **Order 16** of the **Civil Procedure Rules**, which is inapplicable to the relief sought. Counsel argued that Mr. Akivaga had already filed his affidavit, which was considered by the court, and could not now be summoned to give fresh evidence on matters that had already been addressed.
- 39.** Counsel further submitted that the proper provision should have been **Order 19** of the **Civil Procedure Rules**, under which the power to order cross-examination of a deponent is discretionary and may only be exercised where sufficient grounds and special circumstances have been demonstrated in the interests of justice.

- 40.** According to him, no such special circumstances had been shown in the present case. He contended that the allegations made do not justify the summoning of witnesses and that the 4<sup>th</sup> Contemnor has not placed before the court any material to demonstrate that he did not give instructions. He also pointed out that the issue of contempt had already been determined by the court.
- 41.** On the issue of Bake Hassan Jamala, counsel submitted that he is protected by **Section 134** of the **Evidence Act** and that the Applicants have neither pleaded nor established any of the statutory exceptions to advocate-client privilege. He further argued that Mr. Bake is not a party to the proceedings and has not sworn any affidavit upon which he could be cross-examined. In that regard, counsel relied on the decision in **Murgor & Murgor Advocates vs Kenya Airports Authority[2022]eKLR**
- 42.** He also invoked **Rule 8** of the Advocates (Practice) Rules, arguing that since Mr. Bake has not sworn any affidavit, he cannot properly be summoned in his professional capacity.
- 43.** Mr. Ongiti, appearing for the 4<sup>th</sup> Contemnor, submitted that the motion was filed primarily to halt the directions previously issued by the court. According to counsel, the application is founded on only two issues, both of which have already been raised in the pending review application.
- 44.** He argued that the Applicants are seeking to re-litigate matters arising from the contempt proceedings, yet those

matters have already been addressed in their replying affidavit. In his view, the Applicants are now attempting to introduce new issues after judgment without any proper basis for doing so. He therefore urged the court to confine itself to the review application as filed.

### **C. Analysis and Determination**

**45.** Having considered the pleadings and submissions, the issues that arise for determination are:

- i. Whether the motion is competent? And if so,*
- ii. Whether it is merited?*

#### **I. Whether the motion is competent?**

**46.** Vide the present motion, the Applicants seek, inter alia, an order suspending the directions issued on 2<sup>nd</sup> February, 2026 requiring them to file submissions in respect of the 4<sup>th</sup> Contemnor's Motion dated 29<sup>th</sup> October, 2025, together with orders for issuance of witness summons to Patrick Analo Akivaga, Geoffrey Mosiria, Bake Hassan Jamala and Collins Githuku to attend court and give evidence in relation to the said review application.

**47.** The Respondents to the motion assert that not only is it unmerited, it is incompetent. In this regard they assert that **Order 16 Rule 1** of the **Civil Procedure Rules** upon which the motion is premised is wrong.

**48.** **Order 16 Rule 1** of the **Civil Procedure Rules** provides as follows:

***“1. Summons to attend to give evidence or produce documents***

***(1) At any time before the trial conference under Order 11 the parties may obtain, on application to the court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.”***

**49.** It is clear that this provision addresses the process by which parties, prior to the trial conference, may apply for and obtain summonses to secure the attendance of witnesses either to give evidence or to produce documents.

**50.** Having considered the nature of the reliefs sought, this court agrees with the Respondents that the present application is not, strictly speaking, one for summoning witnesses to attend trial within the meaning of **Order 16 Rule 1**.

**51.** Rather, what the Applicants seek is to compel attendance of persons to be cross-examined on their averments in affidavits sworn as regards the review motion dated 29<sup>th</sup> October, 2025. The more appropriate legal framework is therefore **Order 19 Rule 2** of the **Civil Procedure Rules**, which provides:

***“(1) Upon any application, evidence may be given by affidavit, but the court may, at the instance of either party, order the attendance for cross-examination of the deponent.***

***(2) Such attendance shall be in court, unless the deponent is exempted from personal appearance in court, or the Court otherwise directs.”  
in court, or the Court otherwise directs.”***

**52.** So does the invocation of the wrong provision render the motion incompetent, the court thinks not. The law is now settled that a failure to cite the correct provision of law, or the citation of an incorrect provision, is not in itself fatal where the court is otherwise seized of jurisdiction and where the substance of the application is clear. As expressed by the Supreme Court in the case of ***Hermanus Phillipus Steyn vs Giovanni Gnechi-Ruscione [2013]eKLR:***

***“The question then is, whether this omission is fatal to the applicant’s case. It is trite law that a Court of law has to be moved under the correct provisions of the law. We note that this Court is the highest Court of the land. The Court, on this account, will in the interest of justice, not interpret procedural provisions as being cast in stone. The Court is alive to the principles to be adhered to in the interpretation of the Constitution, as stipulated in Article 259 of the Constitution. Consequently, the failure to cite [the relevant provision] will not be fatal to the applicant’s cause.”***

- 53.** Indeed, courts are obligated under **Article 159(2)(d)** of the **Constitution** to administer justice without undue regard to procedural technicalities. Further, the motion is also expressed to be brought under **Sections 1A, 1B** and **3A** of the **Civil Procedure Act** as well as **Rule 3** of the **Mutunga Rules**, all of which donate to the court broad procedural authority to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the court.
- 54.** In the circumstances, and guided by the constitutional imperative to determine disputes on their merits rather than on procedural lapses, the court declines to find that the motion is incompetent solely because it invokes **Order 16 Rule 1** instead of **Order 19 Rule 2**. The objection to competence therefore fails.
- 55.** Moving to the merits, as aforesaid, **Order 19 Rule 2** of the **Civil Procedure Rules** grants the court power, at the instance of either party, to order the attendance of a deponent for purposes of cross-examination. A reading of that provision makes it clear that the power is discretionary in nature. As with all judicial discretions, it must be exercised judiciously, on the basis of sound reasons and in furtherance of the interests of justice.
- 56.** Speaking to this, the court in **G G R vs H-P S [2012] eKLR**, expressed thus:

***“The law has allowed evidence to be proved by way of affidavits under Order 19. But under Rule 2 of the said Order, the Court may order a deponent of an Affidavit to attend court to be cross-examined. It would appear that where allegations of matters touching on fraud, mala fides, authenticity of the facts deponed (sic), bad motive among others are raised, cross-examination of a deponent of an Affidavit may be ordered. This also extends to where there is a conflict of Affidavits on record or where the evidence deponed (sic) to is conflicting in itself. Further, the order for cross examination is a discretionary order but as is in all discretions, the same must be exercised judiciously and not whimsically. There should be special circumstances before ordering a cross examination of a deponent on an Affidavit. The court must feel that adequate material has been placed before it that show that in the interest of justice and to arrive at the truth, it is just and fair to order cross examination.”***

57. In the circumstances of this case, the Applicants seek to summon Patrick Analo Akivaga, Geoffrey Mosiria, Bake Hassan Jamala and Collins Githuku for purposes of viva voce evidence and cross-examination in relation to the motion dated 29<sup>th</sup> October, 2025.

- 58.** The basis of that request is that the 4<sup>th</sup> Contemnor has expressly denied authorising Patrick Analo Akivaga to swear the replying affidavit dated 5<sup>th</sup> June 2025 on his behalf, denied instructing the firm of Jamal Bake & Associates Advocates to act for him, and disputed the question of service of the contempt proceedings.
- 59.** The Respondents contend that the pleas are untenable because, among other things, they amount to an attempt to reopen the concluded contempt proceedings, fill gaps in the Applicants' case, introduce fresh evidence after judgment and delay the determination of the pending review Motion.
- 60.** They further contend that the application is procedurally improper because the review Motion dated 29<sup>th</sup> October, 2025 ought to stand or fall on the material already placed before the court through affidavits and submissions. Further that Bake Hassan Jamala cannot be summoned as he has not sworn any affidavit and is protected by advocate-client privilege.
- 61.** As to whether the present application amounts to an attempt to reopen the contempt proceedings, the court is not persuaded that it does. The Applicants do not seek to revisit the merits of the contempt finding or to adduce fresh evidence on the alleged breach of the orders of 5<sup>th</sup> March, 2025. Rather, the application is confined to issues arising directly from the 4<sup>th</sup> Contemnor's review motion.

- 62.** In particular, the 4<sup>th</sup> Contemnor has denied authorising Patrick Analo Akivaga to swear an affidavit on his behalf, disclaimed instructing the firm of Jamal Bake & Associates Advocates, and disputed service of the pleadings as deponed by Collins Githuku. These assertions go to the core of the impugned proceedings, as they bear directly on questions of representation, participation, and service.
- 63.** In those circumstances, the individuals implicated in those assertions are best placed to clarify them. Patrick Analo Akivaga can explain the basis upon which he swore the affidavit, while Collins Githuku, as the process server, can speak to the issue of service. Their evidence will not reopen the contempt proceedings but will instead assist the court to interrogate the matters raised in the review motion and arrive at a fair and informed determination.
- 64.** As regards Bake Hassan Jamala, **Section 134 of the Evidence Act** does not provide an absolute bar to his attendance. The provision states thus:

***“No advocate shall at any time be permitted unless with his client’s express consent, to disclose any communication made to him in the course and for the purpose of his employment as such advocate, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to***

***disclose any advice given by him to his client in the course and for the purpose of such employment:***

***Provided that nothing in this section shall protect from disclosure—***

***(a)any communication made in furtherance of any illegal purpose;***

***(b)any fact observed by any advocate in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment, whether the attention of such advocate was or was not directed to the fact by or on behalf of his client.”***

**65.** The Applicants herein do not seek disclosure of privileged communications or legal advice exchanged between advocate and client. Rather, they seek clarification on the anterior question of whether Geoffrey Mosiria instructed the firm to act for him at all. That question does not necessarily attract privilege under **Section 134** of the **Evidence Act**. Similarly, **Rule 8** of the Advocates (Practice) Rules does not immunize an advocate from attendance where the issue to be determined is whether a retainer existed in the first place.

**66.** Notwithstanding the foregoing, the court finds no proper basis for summoning Bake Hassan Jamala for cross-examination. He participated in these proceedings purely in his capacity as counsel and did not depone to any affidavit or

place evidence before the court upon which he can be examined.

**67.** In those circumstances, and bearing in mind the need to avoid converting counsel into a witness in matters where they act professionally, the issues raised can be adequately determined on the basis of the pleadings and the evidence of the actual deponents. Consequently, the request to summon him for cross-examination is declined.

**68.** In the end, the motion dated 9<sup>th</sup> February, 2026 partly succeeds and the court directs as follows:

- i. Witness summons do hereby issue compelling the attendance of Patrick Analo Akivaga (6th Respondent/3rd Contemnor), Geoffrey Mosiria (4th Contemnor) and Collins Githuku (Advocate of the High Court of Kenya) to attend court for purposes of cross-examination on matters arising from the motion dated 29th October, 2025.**
- ii. Each party shall bear their own costs.**

**Dated, signed and delivered in Nairobi this 30<sup>th</sup> day of April, 2026.**

.....

**O. A. Angote**

## Principal Judge

.....  
**A. Omollo**  
**Judge**

.....  
**C. G. Mbogo**  
**Judge**

**In the presence of;**

No appearance for Petitioner

Ms Munguli for Baka for 6<sup>th</sup> Respondent

Mr. Ateka holding brief for Owiti for 4<sup>th</sup> Contemnor

Court Assistant: Tracy