

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

**ELRC PETITION NO. E271 OF 2025**

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

**PASTOR WALTER M BULIMU.....1<sup>ST</sup>**  
**PETITIONER**

**PASTOR FLORENCE OBANDE.....2<sup>ND</sup>**  
**PETITIONER**

**PASTOR SIMON KHAEMBA.....3<sup>RD</sup>**  
**PETITIONER**

**PASTOR FANUEL DEMESI.....4<sup>TH</sup>**  
**PETITIONER**

**PASTOR GILBERT MALOBA WATIMA.....5<sup>TH</sup>**  
**PETITIONER**

**VS**

**FRIENDS CHURCH (QUAKERS)**

**NAIROBI YEARLY MEETING.....1<sup>ST</sup>**  
**RESPONDENT**

**BEN SIMIYU- THE PRESIDING, CLERK FRIENDS**

**CHURCH (QUAKERS) NAIROBI**

**YEARLY MEETING.....2<sup>ND</sup>**  
**RESPONDENT**

**BOARD OF TRUSTEES FRIENDS**

**CHURCH(QUAKERS)NAIROBI**

**YEARLY MEETING.....3<sup>RD</sup>**  
**RESPONDENT**

**RULING**

1 The Petitioners filed a Notice of Motion dated 15<sup>th</sup> January 2026 seeking orders:-

*1. Spent*

*2. The Court be pleased to find and hold the following officers of the Respondents in contempt of the court Orders issued on 24<sup>th</sup> December 2025:*

*a) Ben Makasi Simiyu — the Presiding Clerk, Friends Church Kenya (Quackers), Nairobi Yearly Meeting.*

*b) Charles Ngayua — the Presiding Clerk, Friends Church Kenya (Quackers), Nairobi Monthly Meeting.*

*c) Michael Talitu Misiko — the Presiding Clerk, Friends Church Kenya (Quackers), Friends International Centre Local Church.*

*3. The contemnors be convicted of contempt of court, and property belonging to the contemnors be attached and sold and/or the contemnors be order to pay a fine of not less than Kshs. 1,000,000/ - each for disobeying court orders issued on 24<sup>th</sup> December 2025.*

*4. The contemnors be committed to civil jail for a term not exceeding six (6) months for disobeying court orders issued on 10<sup>th</sup> November 2025.*

*5. A mandatory order do issue directing the Respondents to immediately comply with the court orders issued on 24<sup>th</sup> December 2025.*

*6. The costs of this Application be borne by the Respondents.*

2 Subsequently, the Respondents filed a Notice of Motion dated 15<sup>th</sup> January 2026 seeking orders: -

*1. Spent*

*2. THAT pending the hearing and determination of this Application, this Honourable Court be pleased to set aside and/or stay its orders issued on 24<sup>th</sup> December 2025.*

*3. THAT pending the hearing and determination of all pending Applications and the Petition, this Honourable Court be pleased to issue an injunction restraining the Petitioners from harassing, intimidating the 1<sup>st</sup> Respondent's employees or interfering in any manner with the smooth operations of, and or accessing premises of the 1<sup>st</sup> Respondent.*

*4. THAT the Petitioners herein, be and are hereby barred from instituting any further suits in relation to their employment status with 1<sup>st</sup> Respondents.*

*5. THAT this matter be dismissed on account of being an abuse of the Court process and forum shopping.*

*6. THAT costs of this Application be provided for*

### **Petitioners' Case**

3 The Petitioners aver that on 24<sup>th</sup> December 2025, this Court issued clear and unambiguous orders restraining the

Respondents from dismissing them from employment pending the hearing of the matter.

- 4 They state that the said orders were duly served upon the Respondents on 6<sup>th</sup> January 2026 and service was acknowledged, as evidenced by the affidavit of service annexed.
- 5 It is the Petitioners' case that despite service and knowledge of the orders, the Respondents have willfully disobeyed the same in breach of the authority of this Court. They contend that the Respondents have continued to withhold their salaries notwithstanding reminders, and relied on various letters of complaint addressed to the Presiding Clerk, Nairobi Yearly Meeting.
- 6 The Petitioners avers that the Respondents have locked them out of their offices, thereby preventing them from discharging their duties. Further, the Respondents have attempted to install new persons to replace them in their positions as pastors.
- 7 They aver that the Petitioners' actions constitute deliberate disobedience of court orders issued on 24<sup>th</sup> December 2025 and amount to an affront to the dignity and authority of this Court. They assert that the Respondents' conduct is aimed at frustrating and defeating the interim orders of the Court.

- 8 The Petitioners contend that the Respondents do not deny knowledge of the court orders or service thereof. It is not contested that the Respondents were aware of the orders, as their counsel attended court on 19<sup>th</sup> January 2026 pursuant to the same orders and there is an affidavit of service confirming physical service on 6<sup>th</sup> January 2026.
- 9 The Petitioners aver that in Respondents' replying affidavits, they do not deny service or knowledge of the orders, therefore, the disobedience is intentional and deliberate. Instead of complying, the Respondents intensified their actions after issuance of the orders by continuing to withhold salaries, and attempting to install replacement pastors.
- 10 It is the Petitioners' case that the Respondents actions were undertaken in further breach of the court orders and without any justification offered in the replying affidavits.
- 11 The Petitioners aver that they are employees of the Respondents under subsisting contracts of employment which have never been terminated.
- 12 They state that the 1<sup>st</sup> Petitioner was employed as Pastor of Friends International Centre Local Church effective 1<sup>st</sup> March 2014 under a contract dated 26<sup>th</sup> February 2014. Therefore, the alleged resignation dated 31<sup>st</sup> January 2014 relied upon by the Respondents is not applicable to the

current employment, as it relates to a different position and predates the 1<sup>st</sup> Petitioner's current contract.

- 13 They further state that despite the alleged resignation, the Respondents continued to pay the 1st Petitioner's salary, thereby affirming the employment relationship.
- 14 The Petitioners aver that the Respondents are engaged in a scheme to evade their obligations by denying the existence of an employment relationship, yet their own Constitution at Article 8(4)(viii) provides that Local Meetings have a full-time Pastor(s) as employed and posted by Nairobi Yearly Meeting (NYM) through monthly meetings. They further rely on Article 6(3) of the Constitution which vests Nairobi Yearly Meeting with *"complete legislative, judicial, and administrative authority over its constituent meetings and members."*
- 15 It is the Petitioners' case that the Respondents' position that Local Meetings are not legal entities contradicts their own constitutional framework and practice, including continued employment, payment of salaries, and administrative control over pastors.
- 16 The Petitioners further aver that the alleged letters dated 2<sup>nd</sup> December 2025 were not termination letters but part of a continued pattern of frustration of their employment, which had commenced earlier. They rely on evidence showing that as early as September 2025, the

Respondents attempted to coerce them to accept inferior contracts , withheld salaries for up to three months prior to 2<sup>nd</sup> December 2025, and locked them out of their offices.

- 17 It is the Petitioners' case that had there been a lawful termination, such acts would have commenced after, and not before, the alleged termination date of 2<sup>nd</sup> December 2025.
- 18 The Petitioners further rely on a letter dated 30<sup>th</sup> May 2025 from the Presiding Clerk of FIC to Nairobi Yearly Meeting, , which communicated that pastors should exit through natural attrition rather than transfers, showing the institutional position of FIC on pastoral appointments.
- 19 They contend that the letter dated 2<sup>nd</sup> December 2025 purporting to effect termination was issued by bodies that are not the contracting employer, and that no termination has been communicated by FIC, rendering the employment contracts valid and subsisting.
- 20 On allegations of forum shopping, the Petitioners aver that MCELRC No. 2609 of 2025 was dismissed for want of jurisdiction on 2<sup>nd</sup> December 2025, while ELRC Cause No. E964 of 2025 was voluntarily withdrawn on 4th October 2025. They contend that there is no pending suit or judgment capable of invoking res judicata, and that only a court of law can make such a finding.

21 It is the Petitioners' case that the Respondents have a duty to comply with the Court order dated 24<sup>th</sup> December 2025 until set aside by a competent court, and that their continued disobedience undermines the authority of this Court. Therefore, unless the Respondents are sanctioned for contempt, they will continue to undermine the Court's authority and defeat the purpose of the orders issued.

### **Respondents' Case**

22 In support of its application, the Respondent filed replying affidavits dated 15<sup>th</sup> January 2026 sworn by BEN MAKASI SIMIYU, ABISAI AMBENGE, MOSES ADIKA.

23 It is the Respondents' submitted that the Petitioners misled this Court into believing that they were still in employment, whereas in actual fact they had already been terminated by their employer, Friends International Centre, through letters dated 2<sup>nd</sup> December 2025.

24 They aver that having been disengaged on 2<sup>nd</sup> December 2025, the *ex parte* orders issued on 24<sup>th</sup> December 2025 may be interpreted as amounting to reinstatement into employment, thereby creating an expectation of salary payment. They assert that this would occasion injustice to the Respondents who were not heard prior to the issuance of the said orders.

- 25 The Respondents state that the Petitioners have never been employees of any of the Respondents. However, the 1<sup>st</sup> Petitioner was initially employed by the 1<sup>st</sup> Respondent but later resigned in order to take up employment with Friends International Centre.
- 26 The Respondents aver that they were not served with the Chamber Summons dated 17<sup>th</sup> December 2025, the pleadings in the Petition, or the Court Order dated 19<sup>th</sup> December 2025. They only became aware of the existence of this suit upon seeing the Court Order dated 24<sup>th</sup> December 2025 circulating on social media on the evening of the same date.
- 27 It is their contention that following the said circulation, the Petitioners began demanding access to the pulpit and former offices, and even attempted to take over and disrupt Sunday services on 4<sup>th</sup> January 2026 on the basis of the Court Order dated 24<sup>th</sup> December 2025.
- 28 The Respondents further contend that the Petitioners failed to disclose material facts to this Court, including the existence of an order of status quo issued on 22<sup>nd</sup> September 2025 by Hon. Justice Mugambi in Petition No. E594 of 2025 relating to Friends International Centre, under which the 1<sup>st</sup> Petitioner continues to run church operations in accordance with its Constitution.

- 29 The Respondents state that the Petitioners failed to disclose that they had filed ELRC Cause No. E964 of 2025 seeking similar orders, which matter is scheduled for hearing before Hon. Justice Stephen Radido on 16<sup>th</sup> February 2026.
- 30 It is the Respondents' case that the present Petition and the Notice of Motion dated 18<sup>th</sup> December 2025 are an abuse of the court process, vexatious and scandalous.
- 31 The Respondents further assert that the Petitioners are using the Court Order dated 24<sup>th</sup> December 2025 to harass and intimidate the Respondents' employees and agents, thereby interfering with the provision of services at Friends International Centre.
- 32 They contend that in the interests of justice, fairness, and the need to preserve orderliness within the church, the ex parte orders issued on 24<sup>th</sup> December 2025 ought to be vacated and/or stayed pending inter partes hearing and determination of the matter.
- 33 It is the Respondents' case that the Petitioners have approached this Court with unclean hands by concealing material facts regarding their employment status and the existence of other pending suits, and therefore, on the basis of equity and justice, the application to set aside the orders should be allowed as prayed.

- 34 In opposition to the Petitioners' application, the Respondents filed replying affidavits dated 23<sup>rd</sup> January 2026 sworn by BEN MAKASI SIMIYU, ABISAI AMBENGE, MOSES ADIKA.
- 35 The Respondents aver that the Petitioners' application is incompetent and improperly before this Court for want of proper service.
- 36 They state that, as confirmed by the affidavit of service sworn by Gideon M. Nguli, no personal service was effected upon them, and that they only became aware of the application through their advocates who retrieved it from the Judiciary online portal. Despite the Petitioners having their full contacts and residence details, no effort was made to effect personal service.
- 37 The Respondents state that the 1<sup>st</sup> Respondent is a church registered under the Societies Act and operates under its registered Constitution. The 3<sup>rd</sup> Respondent is a registered entity incorporated to hold and manage the 1<sup>st</sup> Respondent's properties, including the property known as Friends International Centre situated along Ngong Road.
- 38 It is the Respondents' case that pursuant to Article 8(3) of the 1<sup>st</sup> Respondent's Constitution, Friends International Centre (FIC) is a constituent local meeting and not an independent legal entity.

- 39 They contend that FIC lacks legal capacity to employ, has no Kenya Revenue Authority PIN, cannot hold property, and all operations being controlled by the 1<sup>st</sup> Respondent.
- 40 The Respondents relied on Articles 18, 19 and 20 of the Constitution to assert that leadership, administration, and employment of pastors across the 93 local meetings are centrally managed by the 1<sup>st</sup> Respondent, under the authority of the Presiding Clerk and the General Superintendent.
- 41 The Respondents aver that the Petitioners were irregularly engaged by FIC in contravention of the 1<sup>st</sup> Respondent's Constitution and human resource policies. Efforts were made to regularize the Petitioners' employment through a Memorandum of Understanding forwarded on 2<sup>nd</sup> May 2025, but the Petitioners declined to execute the same, as confirmed by their responses dated 14<sup>th</sup> May 2025 and 30<sup>th</sup> May 2025.
- 42 The Respondents contend that the Petitioners were formally offered employment by the 1<sup>st</sup> Respondent through letters dated 31<sup>st</sup> May 2025 to facilitate their absorption into the 1<sup>st</sup> Respondent's human resource system, but they declined the offer, as confirmed by the the Presiding Clerk Ngong Road Monthly meeting's letter dated 19<sup>th</sup> June 2025 . They state that by letters dated 19<sup>th</sup> September 2025, the time issued for accepting

employment to the 1<sup>st</sup> Respondent had expired, therefore, it would not engage them anymore.

- 43 They stated that the Presiding Clerk issued letters dated 27<sup>th</sup> September 2025 and 1<sup>st</sup> October 2025 requiring the Petitioners to regularize their employment status, but the Petitioners failed to comply. They also rely on a letter dated 12<sup>th</sup> September 2025 withdrawing use of the 1<sup>st</sup> Respondent's KRA PIN by constituent meetings, thereby necessitating centralized employment.
- 44 The Respondents contend that following a lengthy process and the Petitioners' refusal to regularize their employment, Friends International Centre disengaged the Petitioners through letters dated 2<sup>nd</sup> December 2025. This disengagement is not disputed, as the Petitioners acknowledged the same in an affidavit sworn on 3<sup>rd</sup> December 2025 in ELRC Cause No. E964 of 2025, where they expressly deponed that their engagement had been terminated on 2<sup>nd</sup> December 2025.
- 45 The Respondents therefore state that the Petitioners misled this Court by failing to disclose that they had already been disengaged as at 2<sup>nd</sup> December 2025 prior to obtaining the *ex parte* orders issued on 24<sup>th</sup> December 2025. They contend that the said orders were obtained through material non-disclosure, including failure to disclose that the Petitioners were not employees of the Respondents, had declined employment offers, and had

already challenged their termination in ELRC Cause No. E964 of 2025 which is pending hearing on 16<sup>th</sup> February 2026.

46 The Respondents further aver that the Petitioners failed to disclose other proceedings including MCELRC No. E2609 of 2025, wherein they had acknowledged being employees of Friends International Centre and not the Respondents, thus, the present proceedings amount to forum shopping and an abuse of the court process.

47 It is the Respondents' case that the orders issued on 24<sup>th</sup> December 2025 were overtaken by events, as the Petitioners had already been disengaged on 2<sup>nd</sup> December 2025, and the said orders were only served on 6<sup>th</sup> January 2026. They contend that the orders have the effect of imposing an employment relationship contrary to the Constitution and human resource policies of the 1st Respondent.

48 The Respondents assert that the Petitioners have used the Court orders dated 24<sup>th</sup> December 2025 to disrupt church operations, including interfering with Sunday services, demanding access to the pulpit and offices, and preventing duly appointed pastors from conducting services. In December 2025, during a fact-finding mission at the Bissil mission station, the 5<sup>th</sup> Petitioner attempted to incite disruption, and concerns had been raised by donors, Friends United Meeting, regarding accountability of funds.

- 49 The Respondents reiterate that the Petitioners are not employees of the 1<sup>st</sup> Respondent, and that none of the 93 local meetings, including FIC, has legal capacity to employ. They contend that the application cannot be enforced against them in the absence of an employment relationship.
- 50 The Respondents further state that they have filed an application dated 16<sup>th</sup> January 2026 seeking to vacate and/or set aside the orders issued on 24<sup>th</sup> December 2025 on grounds including lack of service, material non-disclosure, and abuse of the court process.
- 51 The Respondents contend that in light of the provisions of the Societies Act, the 1<sup>st</sup> Respondent's Constitution, the letters dated 2<sup>nd</sup> May 2025, 14<sup>th</sup> May 2025, 30<sup>th</sup> May 2025, 31<sup>st</sup> May 2025, 19<sup>th</sup> June 2025, 19<sup>th</sup> September 2025, 27<sup>th</sup> September 2025, 1<sup>st</sup> October 2025, and 2<sup>nd</sup> December 2025, as well as the pending proceedings in ELRC Cause No. E964 of 2025 scheduled for 16<sup>th</sup> February 2026, the Petitioners' application is devoid of merit, and ought to be dismissed with costs, with the orders issued on 24<sup>th</sup> December 2025 being vacated and/or set aside.

### **Petitioners' Submissions**

- 52 The Petitioners submitted on three issues: Whether the Respondents are in contempt of the Court Orders issued

on 24<sup>th</sup> December 2025; Whether the Respondents are shielded from being held in contempt by their claim that the suit herein is res - judicata; Whether the Respondents are shielded from contempt by their claim that the employment of the Applicants were already terminated.

53 On the first issue, it was submitted that the Court Orders issued on 24<sup>th</sup> December 2025 are clear and unambiguous, and the Respondents have not alleged otherwise. The said orders were physically served upon the Respondents as evidenced by the Affidavit of Service sworn by Gideon M. Nguli on 6<sup>th</sup> January 2026, which is on record. They further submitted that pursuant to the said orders, the Respondents attended Court on 19<sup>th</sup> January 2026, as reflected in Order No. 3.

54 The Petitioners submitted that the Respondents had full knowledge of the Court Orders and they understood the orders. They cited ***Basil Criticos v Attorney General & 8 others & 4 others [2012] eKLR***; “...the law has changed and as it stands today, knowledge supersedes personal service----where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary.”

55 It was submitted that the applicable principles in contempt proceedings were set out in ***Samuel M. N. Mweru &***

***Others v National Land Commission & 2 others [2020] eKLR***: “. It is an established principle of law that<sup>[45]</sup> in order to succeed in civil contempt proceedings, the applicant has to prove **(i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order.**”

- 56 The Petitioners submitted that despite the said orders being clear and unambiguous and knowledge thereof, the Respondents deliberately disobeyed the same by continuing to withhold the Petitioners’ salaries, locking them out of their offices, and installing new pastors to replace them.
- 57 They argued that the Respondents’ disobedience was deliberate and in bad faith as these are by themselves concrete, deliberate and positive steps that were taken by the Respondents in clear violation of the court’s dignity, repute and authority. None was done in good faith. In fact, the Respondents do not allege that any of these was done in good faith nor are they remorseful for their actions. They relied on ***Maigwa v Magige & another [2025] KEELC 7959 (KLR)*** “In the circumstances, I find and hold that his actions are deliberate and cannot be excused. As earlier noted, there is no excuse whatsoever for failing to obey a clear and unambiguous order of the court.”

- 58 It is the Petitioners' case that the Respondents are in deliberately in contempt. They were aware of the Court Orders as the terms of the Order are clear and unambiguous. The Respondents have literally gone out of their way to disobey the said court orders, their actions cannot be said to be in good faith neither do they show any form of remorse.
- 59 On the second issue, the Petitioners submitted that the Respondents' allegation that the suit is *res judicata* does not justify disobedience of Court orders. They argued that the issue of *res judicata* is a matter for determination by the Court and cannot be unilaterally invoked by a party as a basis for non-compliance. They cited ***Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] eKLR*** "*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.*"
- 60 They further submitted that Section 7 of the Civil Procedure Act, Cap. 21 defines the doctrine of *res judicata* as a matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or

any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by court.

61 The Petitioners submitted that that the elements of res judicata was set out by the Supreme Court decision in ***John Florence Maritime Services Limited & another v Cabinet Secretary, Transport and Infrastructure & 3 others [2021] eKLR*** as follows: “*For res judicata to be invoked in a civil matter the following elements had to be demonstrated: (a) there was a former judgment or order which was final; (b) the judgment or order was on merit; (c) the judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and (d) there had to be between the first and the second action identical parties, subject matter and cause of action.*”

62 It was submitted that no evidence has been laid before Court to demonstrate that the elements of *res judicata* have been met, and in any event, the issue is immaterial to the determination of contempt.

63 On the final issue, the Petitioners submitted that even assuming that the Applicants’ employment was already terminated by the time the Court Orders were being issued, the Respondents were still bound to comply with the Court Orders issued on 24<sup>th</sup> December 2025. In ***Sheila***

***Cassatt Issenberg & another v Antony Machatha Kinyanjui [2021] eKLR*** the court held: “Every party is who is before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance.”

64 The Petitioners argued that the Respondents’ position is contradictory and demonstrates bad faith. They submitted that the alleged frustrations of their employment began long before 2<sup>nd</sup> December 2025; they did not begin after the alleged termination

65 It is the Petitioners’ submission that a party to a suit acting in good faith and having due regard to the authority of the court would not intensify and/or continue an act that the Court has stopped or prevented. However, in the instant suit, it is uncontroverted that the Respondents did in fact install new pastors to replace the Applicants and forcefully locked them out of their offices after the Court Order was issued.

66 They reiterated, relying on ***Jacinta Njeru Kaitha v David K. Kanyiri [2015] eKLR***, that disagreement with a court order is not a ground for disobedience.

67 The Petitioners further submitted that the alleged termination is invalid as the contracts of employment were issued by a different entity; the issue of termination is pending before this Court; and the Respondents, having

denied being the employer, cannot purport to terminate the Petitioners.

- 68 It is the Petitioners' submission that it is immaterial that the Respondents thought they had terminated the Applicants employment. Upon being aware of the Court Order, they ought to stop any further implementation of the actions stopped by the Court.

### **Respondents' Submissions**

- 69 On whether the Court order was overtaken by events, the Respondents submitted that it is not in dispute that the Petitioners' services were terminated on 2<sup>nd</sup> December 2025, whereas the Court order restraining termination was issued on 24<sup>th</sup> December 2025. It was therefore submitted that the said order had been overtaken by events due to the Petitioners' material non-disclosure.
- 70 The Respondents argued that the orders could not operate retrospectively to reverse an already concluded termination. They relied on [Jihan Freighters Limited v Hardware & General Stores Limited \[2015\] eKLR](#) where the Court of Appeal held: *"when the court therefore issued an injunction restraining the appellant from encroaching or trespassing on the suit property, exactly what was the appellant who was in occupation expected to do?"* They contended that similarly, the Respondents could not be expected to undo a completed act absent a specific

reinstatement order. It was thus submitted that no breach of Court orders could arise in respect of orders already overtaken by events.

- 71 On whether the three cited incidences constituted breach of Court orders, the Respondents submitted on withholding of salaries, that the alleged non-payment had been ongoing since September 2025 due to legal constraints affecting Friends International Centre, therefore, predated the Court orders of 24<sup>th</sup> December 2025.
- 72 It was further submitted that upon termination on 2<sup>nd</sup> December 2025, there was no legal basis upon which salaries could be paid unless the Petitioners were first re-employed. The Respondents argued that this allegation was misleading and incapable of constituting contempt.
- 73 On the alleged locking out of the Petitioners/Applicants from their offices, the Respondents submitted that the Petitioners had already been terminated prior to the Court order, and that their offices had been taken over by other pastors as admitted in their own affidavits. It was submitted that the offices were not “locked” as alleged, but occupied by other persons, and the alleged acts complained of occurred prior to the issuance of the Court orders.

- 74 On the alleged installation of new pastors, the Respondents submitted that the Petitioners themselves confirmed that the installation had already taken place before the Court orders were issued. It was argued that the installation was necessitated by the need to fill vacant positions following the termination of the Petitioners' services so as not to leave congregants unattended.
- 75 They relied on the reasoning in ***Jihan Freighters Limited v Hardware & General Stores Limited [2015] eKLR*** and submitted that amount to replacement of the Petitioners but filling void offices did not amount to replacement of the Petitioners but filling void offices.
- 76 On whether the alleged contemnors were personally served with the Court orders, the Respondents submitted that personal service, which is a mandatory requirement in contempt proceedings, was not effected. They argued that each of the alleged contemnors expressly deponed that they were never personally served with the orders, despite their physical addresses being known to the Petitioners.
- 77 It was submitted that the affidavit of service sworn by the Petitioners' process server Gideon M. Nguli on 6<sup>th</sup> January 2026 merely alleged service upon an unnamed secretary at 'Friends Church along Ngong Road without proof of delivery or acknowledgment, and no stamped copy was produced in Court. The Respondents further submitted

that the integrity of the process server had been challenged in a separate application dated 16<sup>th</sup> January 2026, thereby casting doubt on the validity of the alleged service.

78 The Respondents submitted that the process server's affidavit of service and Contemnor's averments leave no doubt that personal service was not effected on the persons accused of breaching the same. It must not be lost that the said Court Orders were obtained *ex-parte* and in, *per incuriam*. They cited **Akber Abdullah Kassam Esmail v Equip Agencies Ltd & 4 others [2014] eKLR** where the Court of Appeal stated: *"This Court has stated time and again that before it can visit upon a citizen the full force of the power of contempt, that citizen must have first been served personally with the order that he is alleged to have breached."*

79 It was further submitted that the Affidavit of Gideon M. Nguli purports to confirm service on an unnamed secretary of a Church without any evidence of that secretary receiving the said Court Orders. No evidence has been produced to demonstrate personal service upon the contemnors, two of whom are not parties to this suit. In **Nyamodi Ochieng Nyamogo & another v Kenya Posts & Telecommunications Corporation [1994] KECA 114 (KLR)**: *"Where the order is made against a company, the order may only be enforced*

*against an officer of the company if this particular officer has been served personally with a copy of the order ...”*

- 80 It was further submitted that the Petitioners merely made general allegations that the contemnors were aware of the Court orders without supporting evidence, yet the alleged contemnors, i.e. Charles Ngaywa and Michael Misiko, are not parties to this suit and they have all affirmed in their respective replying affidavits, that they have never been served with any document, in these proceedings.
- 81 It is the Respondents’ submission that the Petitioners have attempted to misguide this Court that there was an alleged installation of a new Pastor after the Court orders of 24<sup>th</sup> December 2024, however the Petitioners’ own evidence as shown in the replying affidavit of Ben Makasi Simiyu, paragraph 7, clearly demonstrates that the installation of new pastor was in the month of September 2025, way before the said Court Orders. Similarly, it was submitted that the allegation of locking offices is contradicted by paragraph 19(iii) of the Petitioners’ own affidavit sworn on 18<sup>th</sup> December 2025, which indicates that the locks were changed before the Court orders.
- 82 On withholding of salaries, the Respondents submitted that paragraph 19(viii) of the Petitioners’ affidavit sworn on 18<sup>th</sup> December 2025 and the further affidavit of 19<sup>th</sup> March 2026 confirm that the issue arose months before 2<sup>nd</sup> December 2025.

- 83 On the issue of termination, the Respondents submitted that that the Petitioners' services were terminated on 2<sup>nd</sup> December 2025. Further, the certificate of urgency application filed on 3<sup>rd</sup> December 2025 in ELRC No. E964 of 2025 was necessitated by the said termination by the Petitioners' former employer Friends International Centre.
- 84 On the employment relationship, the Respondents submitted that the Petitioners were employees of Friends International Centre and not the Respondents, as evidenced by their letters of employment and their own affidavits. It was argued that the Petitioners cannot approbate and reprobate by denying and later asserting an employment relationship with the Respondents for convenience.
- 85 It is the Respondents' submission that the threshold for contempt had not been met, as the Court order was overtaken by events, there was no breach demonstrated, there was no personal service, and the standard of proof beyond reasonable doubt had not been satisfied. They further submitted, relying on ***Jenipher Achieng' Ouko & 13 others v University of Nairobi [2019] eKLR***, that Court orders must be clear, unambiguous, and personally served before contempt can arise.
- 86 They submitted that the Petitioners have an adequate civil remedy in respect of their employment dispute, and that

contempt proceedings should not be used where such remedies exist, as any unlawful termination can be compensated through the ordinary processes of the Court.

87 I have examined all the averments and submissions of the parties herein. The applicants contend that this court issued unambiguous orders on 24<sup>th</sup> December 2025 restraining the respondents from dismissing them from employment pending the hearing of this matter. The orders issued by Hon. J Onesmus Makau on 23/12/25 indicated that the respondents were to be served physically and in the meantime, interim orders were granted restraining the respondents from dismissing the petitioner from employment until the hearing on 19/1/26.

88 From the affidavit of service dated 19<sup>th</sup> December 2025, Stephen Adier deponed that he served the respondent through their email addresses dated therein on 19/12/25. The respondents on their part have averred that they are not guilty of contempt of court due to the fact that by 2/12/25, the petitioners had already been dismissed from employment. The respondents also state that the petitioners have never been employees of any of the respondents but that the 1<sup>st</sup> petitioner was initially employed by the respondent but later resigned in order to take up employment with Friends International Centre.

89 They further assert that the petitioner have approached this court with unclean hands by concealing material facts

regarding their employment status and the existence of other pending suits and want the orders of 24<sup>th</sup> December 2025 vacated. The respondents also aver that no personal service was effected upon them and only became aware of the application through their advocates who retrieved it from the judiciary online portal.

- 90 I have looked at the supporting documents for and against the petition and application. The petitioners aver that they were employees of the respondents. The respondent exhibited their appointment letters (pg 9 to 10 of respondents documents which show appointments made to the said petitioners. The 4<sup>th</sup> petitioner was appointed on 5<sup>th</sup> December 2016 by Friends International Centre Church - Friends Church Nairobi yearly meeting Kenya and the appointment was transferable within Friends Church. All the petitioners were appointed by Friends Church.
- 91 Vide a letter of 31/5/25 the Friends Church NYM sent a letter to petitioner informing them of their absorption into the NYM. It had a clause and they were to sign signifying acceptance within 7 days. The petitioners declined to respond within the stipulated time. Vide letter of 19<sup>th</sup> September 2025 they were informed they had not responded and so it was deemed to be a decline of their employment offer.
- 92 What is key is that the employer of the petitioner was Friends Church but the letter of offer was from NYM in

which case the NYM had presumed employer status with a MOU which is undated and unsigned. It is only Friends Church that has the employer status with the petitioner and is therefore obligated to pay salaries when they fall due. This court gave orders on 24<sup>th</sup> December 2025 to stay the petitioner's termination or intended termination. If the Friends Church has not paid salaries for the petitioners then they are in contempt of this court's orders.

- 93 The 1<sup>st</sup> respondent is not obligated to pay salaries for petitioner as they are not petitioner's employer and so are not 2<sup>nd</sup> and 3<sup>rd</sup> respondents. It is therefore my finding that claim for contempt as against the respondents can stand in the circumstances and must be dismissed.

**Dated, Signed and Delivered Virtually at Nairobi  
this 11<sup>th</sup> Day of May, 2026.**

**HELLEN WASILWA**

**JUDGE**