



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

PETITION NO 50 OF 2012

AFRICAN CENTRE FOR RIGHTS AND

GOVERNANCE (ACRAG).....1ST PETITIONER

JOHN MUCHINA.....2ND PETITIONER

JOHN MUCHIRI.....3RD PETITIONER

ELIZABETH WANJIKU.....4TH PETITIONER

VERSUS

NAIVASHA MUNICIPAL COUNCIL.....RESPONDENT

RULING

(Application to have the Governor of Nakuru County, the County Executive Officer in Charge of Environment, Natural Resources, Energy and Water, and the Chief Officer in Charge of Environment, Natural Resources, Energy and Water, committed to jail for contempt of court; the subject matter before court having been operation of a dumpsite by the respondent; judgment delivered that dumpsite was illegal for not having a licence; time given for respondent to apply for licence or if no application is made within the given period, the dumpsite be closed; no application made within the time frame given; no effort made to close the dumpsite within the timeframe given; no application for extension of time prosecuted; respondent continuing to dump waste in the site; clear violation of the judgment of court; accounting officers; who may be deemed accounting officers of the respondent; held that Governor and the County Executive liable; application for contempt allowed)

1. The petitioners in this matter have applied to have the Governor of Nakuru County, the County Executive Officer in Charge of Environment, Natural Resources, Energy and Water, and the Chief Officer in Charge of Environment, Natural Resources, Energy and Water, committed to jail for contempt of court. In a nutshell, it is the contention of the petitioners that the said officers have failed to comply with the judgment of this court which was delivered on 31 May 2017, and that being the case, they should be punished for contempt of court.

2. To put the matters into perspective, this suit was commenced by way of a constitutional petition filed on 1 November 2012, vide which the petitioners averred that their rights to a clean and healthy environment as provided for under Article 42 of the Constitution, were infringed by the respondent (then the Municipal Council of Naivasha and now the County Government of Nakuru). The petitioners complained that the respondent has proceeded to illegally dump waste and garbage in a parcel of land identified as Naivasha/Maraigushu Block 11/4 (Karai), which was within their neighbourhood, thus causing them exposure to harmful substances and affecting their right to a clean and healthy environment. In the petition, they inter alia sought orders of a mandatory injunction, compelling the respondent to relocate the dumpsite, and for an environmental restoration order compelling the respondent to restore the area, as far as practicable, to the condition that it was before the dumping. They further asked for an order of prohibition, to permanently prevent continued dumping at the site.

3. I heard the case and read judgment on 31 May 2017. Of significance, I did find that pursuant to Section 87 of the Environment Management and Coordination Act, 1999, (EMCA) no person or entity is permitted to operate a waste disposal site without a licence issued by the National Environment Management Authority (NEMA). That provision of the law prescribes that it is an offence to commit such an act, and provides for a penalty of a jail term of not more than two years, or to a fine of not more than Kshs. 1,000,000/=, or to both imprisonment and fine. If there was a dumpsite in operation at the time that EMCA came into force, Section 89 of EMCA, requires that an application for a licence to continue operating the said dumpsite be made within 6 months of the commencement of the Act. I did find that the respondent, had not applied for any licence to operate the dumpsite in issue, and the dumpsite was not licenced by NEMA. It was therefore clear to me that the dumpsite was an illegal dumpsite and that the petitioners had made out a case that their constitutional right to a clean and healthy environment had been violated.

4. It was also clear to me that the dumpsite was an environmental hazard and a danger to human health and life. I did not order an immediate closure of the facility, but directed the County Government of Nakuru, if it wished to continue to operate the facility, to apply to NEMA, within 14 days of the judgment, for a licence to be allowed to operate the dumpsite as required by Section 89 of EMCA. I directed NEMA to process such application, if one was made, and assess the same, and either allow or decline it, depending on its own independent assessment of the dumpsite. If the application was made, I directed NEMA to make a report within 45 days and present it to court for further directions, if necessary. I made an order that if no application to NEMA was made within 14 days, then it would be deemed that the County Government of Nakuru, no longer wishes to have the site utilized as a dumpsite, and I ordered that in that event, they must stop any further dumping of waste on this site and proceed to restore it to its original state, and such restoration be done within 90 days of the judgment.

5. Through an application dated 12 June 2017, the County Government of Nakuru, applied to have extended the 14 days period that I gave for the application to NEMA for a licence to operate the facility. A date was given for inter partes hearing of the said application but the matter never came to court and that application has never been pursued and appears to have been abandoned.

6. On 10 October 2017, when I had fixed the matter for mention to assess the issue of compliance, Mr. Magata, learned counsel for the petitioners, informed court that there has been no compliance with the judgment. In court on that day, was counsel representing NEMA, and NEMA had filed a report which inter alia stated that the County Government of Nakuru, has not made any application for a licence to operate the facility. It was also stated that the County Government of Nakuru, has not even undertaken an Environmental Impact Assessment (EIA) despite being directed to do so by NEMA.

7. Following the above revelations, the petitioners, through an application filed on 23 October 2017, filed an application inter alia seeking to have the Governor of Nakuru County, the County Executive Officer in Charge of Environment, Natural Resources, Energy and Water, and the Chief Officer in Charge of Environment, Natural Resources, Energy and Water (hereinafter also referred to as the respondents), to show cause why contempt of court proceedings should not be commenced upon them. On 24 October 2017, when the case was mentioned, counsel for the respondents asked for 21 days to reply to the application. I did give counsel the 21 days and directed that the application be heard inter partes on 16 November 2017. On the said date, it emerged that no reply had been filed to the application and I declined to adjourn the matter. I heard the application and reserved the ruling for 25 January 2018. In the meantime, the respondents filed an application dated 20 November 2017, vide which they sought that the orders of 16 November 2017, be set aside and they be allowed leave to file a reply to the application of 23 October 2017. The application came before me under certificate of urgency on 23 November 2017, and I directed that it be heard inter partes on 15 January 2018. On 15 January 2018, nobody from the firm of M/s S.O Madialo & Company Advocates, for the respondents, appeared to prosecute the application and I had no option but to dismiss it, thus paving way for delivery of the ruling on the application to show cause why contempt of court proceedings should not be commenced against the respondents. On 25 January 2018, I did deliver the ruling and gave the respondents 30 days to show cause why they should not be held to be in contempt of court. I further directed the respondents to appear in court on 27 February 2018 to show cause. On 27 February 2018, both counsel for the applicant and the respondents were present in court, but I deferred the hearing of the Notice to Show Cause to 24 April 2018, as the respondents had been served late with the order of 25 January 2018 and 30 days had not lapsed as directed in the said order.

8. In opposing the motion for contempt, the respondents filed a replying affidavit sworn by one Dr. Maara T. Nelson, who described himself as the Chief Officer in Charge of Environment, Energy and Natural Resources of the County Government of Nakuru. Inter alia, he has deposed that through a letter dated 13 June 2017, their counsel on record informed them of the judgment of 31 May 2017, which letter was received on 15 June 2017, but due to what he terms as "debilitating effect of government bureaucracy" the same was only brought to the attention of the relevant Department in late September 2017. It is averred that upon receipt of the letter, the Department embarked on compliance with the order with immediate effect. He has deposed that on 10 October 2017, the Department sought permission to fast track the requisite procurement process incidental to compliance with the orders of court. He has deposed that following a successful procurement process, the services of M/s Beleka Development Consultants, were retained to undertake and conduct an EIA for the Decommissioning and Rehabilitation of the dumpsite for purposes of NEMA licencing. He has stated that the said firm of consultants prepared and submitted an EIA report to NEMA. He has attached a letter from NEMA dated 17 January 2017. He has further deposed that vide a letter dated 22 January 2018, NEMA acknowledged receipt of the report and indicated that its assessment/finding will be communicated within 28-45 working days from the date of the letter. He has lamented that due to what he has termed as "internal communication failure due to government bureaucratic organizational model" their advocates were not supplied with adequate and accurate information on the concerted efforts by the respondents to comply with the orders of the court in order to present them to court to avert the proceedings. He has stated that the respondents has demonstrated compliance with the orders of this Court and have thus shown sufficient cause as to why they should not be held to be in contempt. He has averred that the inordinate delay in compliance with the orders of court were caused by circumstances beyond the control of the officers named and that they are profoundly apologetic.

9. The respondents also file a preliminary objection to the application, in essence stating that personal service of the judgment has not been effected and that the applicants needed to serve the Notice to Show Cause on the accounting officer and the Attorney General. It is stated that the Governor and the County Executive Committee Member, Environment, Natural Resources and Energy, are not the accounting officers and as such the Notice to Show Cause cannot issue to them. It is also contended that there has been no willful disobedience of the orders of this court.

10. In his replying affidavit, sworn on 26 February 2018, Dr. Maara, inter alia deposed that they had retained the services of M/s Beleka Development Consultants to undertake and conduct an EIA "for the decommissioning and rehabilitation of the dumpsite" for purposes of NEMA licencing in compliance with the court's orders. This EIA report was never annexed and it was not very clear to me whether the EIA was for purposes of closing or operating the dumpsite. I directed that the EIA report be filed and there be clarity on whether or not the respondent in the petition had embarked on an exercise to close the facility.

11. A supplementary (replying) affidavit, sworn by Dr. Maara, was filed on 8 June 2018 by the respondents. The said affidavit annexed what was said to be an EIA report. Dr. Maara in the said affidavit deposed inter alia that the report was to be "utilised for licencing, rehabilitation, and/or decommissioning of the suit dumpsite in accordance with the Court's orders". I questioned Dr. Maara whether the respondent in the petition intends to continue using the suit property as a dumpsite and his answer was that they do not intend to stop use of it as they await the NEMA report. I also asked him specifically whether the EIA done was for purposes of decommissioning and closure of the dumpsite and his answer was that it was not for decommissioning. I inquired of him about his first replying affidavit which mentioned that the EIA report was being done for purposes of decommissioning and closure and he stated that the main objective of the EIA report was to see if NEMA would

issue them with a licence to operate.

12. I have taken note of all the issues and will embark on determining the application.

13. The application cites the Governor of Nakuru County, the County Executive Officer in Charge of Environment, Natural Resources, Energy and Water, and the Chief Officer in Charge of Environment, Natural Resources, Energy and Water, for contempt. There is a preliminary objection raised, firstly, that the judgment has not been served, and secondly, that the respondents named are not the accounting Officers of the respondent.

14. Three issues therefore emerge, being :-

- (i) Was the judgment served, and did it need to be served, or was knowledge of the order sufficient in order to sustain a contempt application?
- (ii) Who are the accounting officers of the respondent that may be subject to an application for contempt?
- (iii) Has there been contempt of the court judgment?

15. On the first point, that of service, the position of the law has gradually shifted from insisting on personal service of orders, and it is now considered that it is the knowledge of such orders which is paramount. Thus, if you are aware of an order of court, it does not help you to argue that such order was not personally served upon you. This jurisprudence is apparent in the decisions of the Court of Appeal in the cases of *Justus Kariuki Mate & Another Vs Martin Nyaga Wambora & Another, Court of Appeal at Nyeri, Civil Appeal No 24 of 2014* and *Shimmers Plaza vs NBK, Court of Appeal at Nairobi, Civil Appeal No. 33 of 2012 (2015) eKLR* (Ruling of 18 February 2015).

16. In the case of *Shimmers Plaza vs NBK*, the court stated as follows :-

“Kenya’s growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of Basil Criticos Vs Attorney General and 8 Others [2012] eKLR pronounced himself as follows:-

“...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”

*This position has been affirmed by this Court in several other cases including the **Wambora case** (supra).”*

17. The court was further of the view that knowledge of the judgment or order, by the advocate of the alleged contemnor, suffices for contempt proceedings. The Court stated as follows on this point:-

“Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client’s case.”

18. In the *Justus Kariuki Mate vs Wambora* case, the Court of Appeal stated as follows at paragraph 52 of its judgment, on the issue of knowledge of the court order vis-à-vis service of it, for purposes of entertaining contempt proceedings :-

*“The trial court was correct in holding that the law as then was in contempt of court had since changed; the law as it stands today is that **knowledge** of an order is sufficient for purposes of contempt proceedings.”*

19. It follows that what is most important is a determination of whether or not the respondents had knowledge of the judgment. I have no doubt in my mind that the respondents are fully aware of this judgment. Firstly, counsel for the respondent in the petition was present in court when judgment was delivered. The record reflects that when judgment was delivered, Mr. Charles Langat Advocate, held brief for Mr. Madialo for the respondent in the petition. Following the decision in the *Shimmers Plaza vs NBK* case, it should be deemed that the respondent in the petition and all its officials were aware of the judgment of this court. Moreover, through its own application dated 12 June 2017, the respondent in the petition, did apply for an extension of time to comply with the judgment of the court. How could they have applied for extension of time to comply with the judgment if they were not aware of it ?

20. There can be no question on whether or not the respondents were aware of the judgment. My holding is that they were aware of the judgment, and being aware, I do not need to make any determination on whether or not they were personally served with the judgment.

21. The second preliminary point is that the respondents cited are not the accounting officers of the respondent in the petition and cannot therefore be cited for contempt. The objection is framed as follows :-

“The respondent being a State Organ, the Applicant is required by law to effect service of the Notice to Show Cause upon the

accounting officers and the Attorney General.

That the Governor and the County Executive Committee Member, Environment, Natural Resources, and Energy respectively in the County Government of Nakuru are not the accounting officers and as such the Notice to Show Cause cannot issue to them."

22. Clearly, the respondents have in mind the provisions of Section 30 of the Contempt of Court Act, Act No. 46 of 2016, which provides as follows :-

30. Punishment against management of State organ, government department, ministry or corporation

(1) Where a State organ, government department, ministry or corporation is guilty of contempt of court in respect of any undertaking given to a court by the State organ, government department, ministry or corporation, the court shall serve a notice of not less than thirty days on the accounting officer, requiring the accounting officer to show cause why contempt of court proceedings should not be commenced against the accounting officer.

(2) No contempt of court proceedings shall be commenced against the accounting officer of a State organ, government department, ministry or corporation, unless the court has issued a notice of not less than thirty days to the accounting officer to show cause why contempt of court proceedings should not be commenced against the accounting officer.

(3) A notice issued under subsection (1) shall be served on the accounting officer and the Attorney-General.

(4) If the accounting officer does not respond to the notice to show cause issued under subsection (1) within thirty days of the receipt of the notice, the court shall proceed and commence contempt of court proceedings against the accounting officer.

(5) Where the contempt of court is committed by a State organ, government department, ministry or corporation, and it is proved to the satisfaction of the court that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of any accounting officer, such accounting officer shall be deemed to be guilty of the contempt and may with the leave of the court be liable to a fine not exceeding two hundred thousand shillings.

(6) No State officer or public officer shall be convicted of contempt of court for the execution of his duties in good faith.

23. The County Government of Nakuru is a State Organ as defined by Article 260 of the Constitution, which defines "state organ" as follows :-

"State organ" means a commission, office, agency or other body established under this Constitution.

24. The County Government of Nakuru is certainly a body established by the Constitution. County Governments are in fact established by Article 176 (1) of the Constitution which provides as follows :-

176 (1) There shall be a county government for each county, consisting of a county assembly and a county executive.

25. There is in existence the Nakuru County and also the County Government of Nakuru.

26. From Section 30 (5) above, where the contempt of court is committed by a State organ, government department, ministry or corporation, and it is proved to the satisfaction of the court that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of any accounting officer, such accounting officer shall be deemed to be guilty of the contempt. From this provision of the law, it is apparent that an "accounting officer" in a state organ may be held liable for contempt. However, the statute does not define who "accounting officer" is. On my part, I am ready to define accounting officer, for purposes of this statute, as including the person who is vested with the responsibility and/or duty of enforcing, complying, and/or acting upon the order issued by court. He/she is the person who has the authority to give directions so that the orders of the court are complied with. Such person may not necessarily be only one individual, and it is proper that any one, or the several persons, who are vested with this responsibility are cited in the application for contempt.

27. In his submissions, Mr. Ondieki, who appeared for the respondents, argued that the respondents cited in this application are not the accounting officers. I asked Mr. Ondieki who the accounting officers are, and he had no answer. Instead, he stated that he is yet to get clear instructions on who the accounting officers may be. That response does not help the respondents.

28. On my part, I am fully satisfied that at least two of the persons mentioned in this application suit the definition of "accounting officers" for purposes of enforcing the judgment herein. The persons cited are three, the Governor of Nakuru County, the County Executive Officer in Charge of Environment, Natural Resources, Energy and Water, and the Chief Officer in Charge of Environment, Natural Resources, Energy and Water. Within the set up of the County Governments, two main organs stand out, that is the County Assembly, and the County Executive. The executive authority of the county government is vested in the County Executive Committee pursuant to Article 179 of the Constitution which provides as follows :-

179 (1) The executive authority of the county is vested in, and exercised by, a county executive committee.

(2) The county executive committee consists of -

(a) the county governor and the deputy county governor; and

(b) members appointed by the county governor, with the approval of the assembly, from among persons who are not members of the assembly.

3. The number of members appointed under clause (2) (b) shall not exceed-

(a) one-third of the number of members of the county assembly, if the assembly has less than thirty members; or

(b) ten, if the assembly has thirty or more members.

4. The county governor and the deputy county governor are the chief executive and deputy chief executive of the county, respectively.

5. When the county governor is absent, the deputy county governor shall act as the county governor.

6. Members of a county executive committee are accountable to the county governor for the performance of their functions and exercise of their powers.

7. If a vacancy arises in the office of the county governor, the members of the county executive committee appointed under clause (2) (b) cease to hold office.

29. A reading of the above provision of the constitution will bring one to the inescapable conclusion that it is the governor of the county government who is the chief executive of the county. In fact, this is explicit under Article 179 (4) above. Sub-article 6, above, further states inter alia that members of the county executive committee are accountable to the county governor for the performance of their functions.

30. It is not disputed, and I am persuaded, that there exists, within the county government of Nakuru, a chief Executive Officer in Charge of Environment, Natural Resources, Energy and Water, and a Chief Officer in Charge of Environment, Natural Resources, Energy and Water. It has not been mentioned that these two persons, the Governor, and the Chief Executive, who is accountable to the Governor, are not the persons who are in charge of matters related to the environment within the county, and it naturally follows that these are the persons in charge of the docket related to the matters in this suit, that is the collection and disposal of waste.

31. It cannot be argued that the Governor is not an accounting officer of the County given that he is the Chief Executive, and can be held for contempt for violations of the County Government. That is indeed what was held by Karanja J, in the case of **Masosa Construction Company vs Executive Committee, Kisii County & 3 Others , High Court of Kenya at Kisii, Misc. Civil Application No. 72 of 2015 (2016) eKLR** (ruling of 5 April 2016). This was an application for contempt vide which the applicant sought to have The Executive Committee, Kisii County, The Governor, Kisii County, the County Government of Kisii and the Transitional Authority, cited for contempt for failing to obey an order of mandamus. Karanja J, held as follows at paragraph 13 of the decision :-

“The Governor is ultimately the chief executive of a County Government. He thus controls the County Executive Committee and when we talk of a County Government we actually mean the County Executive Committee and the County Assembly. It was therefore unnecessary to include the first and second respondents in the application for mandamus and this application and if they had to be included either separately or jointly, then the third respondent ought to have been excluded.”

32. I agree with the position taken by Karanja J, that a Governor can be held for contempt for failure by the County Government to obey court orders. I do not however think that a person is precluded from enjoining other persons who are also charged with the responsibility of enforcing the court order so long as those persons are also vested with power to execute the court order.

33. The position that a Governor is ultimately responsible was also held by the Kerugoya **Dr. Fredrick Njeru Kamunde vs Tharaka Nithi County Government & 2 Others, ELRC at Nyeri, Petition No. 6 of 2015** (ruling of Ongaya J, of 11 March 2016). In this case, an order was issued, directing the County Government of Tharaka Nithi, not to bar the applicant from serving as its county secretary. This order was breached and contempt proceedings were brought inter alia against the Governor of the said county. The court held the Governor liable for its breach.

34. In respect of whether or not the County Executive can be held to be the accounting officer, I take cue from the ruling of Odunga J in the case of **Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County Ex Parte Stanley Muturi [2018] eKLR**. In this matter, an order was made directing the respondent to pay a certain sum of money to the applicant. The monies were not paid and the applicant commenced contempt of court proceedings against the Chief Accounting Officer, the County Executive in Charge of Finance, and the County Chief Officer, Finance and Economic Planning of Nairobi County. An argument was raised that contempt of court proceedings cannot be taken against the 1st and 3rd respondents. The learned judge held that in the circumstances of the case, it was the County Executive in Charge of Finance of the Nairobi County Government who was responsible for execution of the court order but the application was not incompetent merely because other persons were enjoined.

35. I am prepared to hold that for purposes of executing the judgment herein, the responsibility of doing so rested with the Governor of Nakuru County, and the Chief Executive, in charge of Water, Environment, Energy and Natural Resources, who have been cited as the 1st and 2nd respondents. They are therefore to be deemed as the accounting officers for purposes of Section 30 of the Contempt of Court Act, in the context of this litigation, and liable to be held in contempt for any alleged violation of the judgment herein. I believe the mandate of the Chief Officer is to execute orders from the two superiors, the Governor and Chief Executive, and since his two superiors have been cited, I will not deem him to be an accounting officer for purposes of this application. His joinder, does not however make the application incompetent.

36. The central question is whether the respondents are liable for contempt of court. Contempt of court is defined in Section 4 of the Contempt of Court Act, as follows :-

4. Contempt of Court

(1) Contempt of court includes —

(a) civil contempt which means willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court;

(b) criminal contempt which means the publication, whether by words, spoken or written, by signs, visible representation, or otherwise, of any matters or the doing of any other act which —

(i) scandalizes or tends to scandalize, or lowers or tends to lower the judicial authority or dignity of the court;

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice.

(2) In any case not relating to civil or criminal proceedings as contemplated under [subsection \(1\)](#), an act that is willfully committed to interfere, obstruct or interrupt the due process of the administration of justice in relation to any court, or to lower the authority of a court, or to scandalize a judge, judicial officer in relation to any proceedings before the court, on any other manner constitutes contempt of court.

37. What we are dealing with is an application that would fall under Section 4 (1) above, and what I need to determine is whether the respondents have willfully disobeyed the judgment herein. I had already set down the important aspects of the judgment but I wish to reiterate the following order :-

"The County Government of Nakuru, must also forthwith, if it intends to continue using the site as a dump, apply for the requisite licence from NEMA, as required by Sections 87 and 88 of EMCA and such application must be made within 14 days from today... If no application to operate the site is made within 14 days as directed above, then it will be clear that the County Government of Nakuru, no longer wishes to have the same site utilized as a dumpsite and must then stop any further dumping of waste on site, and proceed to restore it to its original state and such restoration must be done within 90 days of today (31 May 2017)."

38. This application was filed on 23 October 2017, more than 90 days after the delivery of the judgment. In the affidavit in support of the application, it is deposed that the respondent in the petition has not applied for a NEMA licence within the time stipulated. It is also deposed that in violation of the judgment, the respondent in the petition continues to dump waste at the site to date. To the application, is annexed a report by NEMA confirming that no EIA report has ever been submitted by the County Government of Nakuru as directed by court. There is on record, a statutory declaration sworn on 5 October 2017, by Cecilia W. Githaiga, a Senior Legal Officer of NEMA, that the County Government of Nakuru has not submitted an EIA as directed in the judgment.

39. The replying affidavit of Dr. Maara, does not state that it prepared any application to NEMA within 14 days as directed in the judgment in the event that the County Government of Nakuru, intended to continue operating the dumpsite. Dr. Maara has merely attempted to create excuses by citing "deliberate effect of government bureaucracy." I am afraid this does not wash with me. I already held that the dumpsite is a health risk and one cannot cite debilitating effects of government bureaucracy while people's lives and health are at risk. You cannot expose people to danger and cite such flimsy excuses. Moreover, it is not denied that the County Government of Nakuru, did not stop using the dumpsite despite not making an application to NEMA within 14 days of the judgment. They continued doing so and took absolutely no measures to close the dumpsite within 90 days of the judgment. As we speak, they continue using the dumpsite, way past this 90 days period, in fact more than one year after the judgment. I am aware that Dr. Maara mentioned that they have presented an EIA to NEMA, which was done in January this year. However, the respondent has never applied for any extension of time to enable it comply with the judgment (the application dated 12 June 2017 seemingly having been abandoned). Clearly, the respondent is now operating outside the confines of the judgment of the court.

40. The fact remains that no EIA report was ever made to NEMA within 14 days of the judgment if the County Government of Nakuru intended to continue using the dumpsite in question; no extension of time has ever been given to extend the 14 days period; no closure has ever been attempted within 90 days of the judgment or at all; dumping of waste has continued despite the court making an order stopping any further dumping of waste after 90 days of the judgment. It is apparent that the County Government of Nakuru has continued to dump waste on the site in question as if no judgment was ever delivered by this Court. In fact, it appeared to me, from the presentation of Dr. Maara, that the County Government is hell bent to utilize the facility irrespective of the judgment of this court and irrespective of the danger and risks that it has exposed to persons, which I well elaborated in my judgment, by the continued operation of the dumpsite. The County Government of Nakuru does not care a hoot that the dumpsite has already been declared a health hazard and cares less about the constitutional rights of its residents to a clean and healthy environment. That is impunity of the highest order which cannot be allowed to continue.

41. It should not be lost that the dumpsite in issue is an illegal dumpsite that was never licensed to operate in the first place, and the continued operation of the dumpsite without a licence as required by EMCA, also constitutes a criminal offence by itself. We are dealing here with serious breaches of the law, and life and death matters, and this court cannot, and ought not, to sit on its hands while the lives and health of people continues to be put in jeopardy.

42. I am convinced that the County Government of Nakuru is in contempt of the judgment of this court of 31 May 2017. I am also persuaded that in the context of this application, the accounting officers are the Governor and the County Executive in charge of Environment, Natural Resources, and Energy. I hold these two officers in contempt of court and allow this application to that extent.

43. I will deliver sentence after giving them an opportunity to mitigate. I will give the date for mitigation and further directions immediately upon delivery of this ruling.

44. The applicants shall also have the costs of this application.

45. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 11th day of July 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Owen Magata for the petitioners/applicants

Mr. Bichang'a Nicholas holding brief for Mr. Nyamumbo for the respondents.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU