



REPUBLIC OF KENYA



KENYA LAW
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**Apuko, The Clerk, County Assembly of HomaBay v Gaya, The
Speaker, County Assembly of HomaBay & 2 others (Petition
E022 of 2024) [2025] KEELRC 1740 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1740 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E022 OF 2024**

JK GAKERI, J

JUNE 16, 2025

**IN THE MATTER OF ARTICLES 10, 27, 28, 29,
41, 47, 236 & 258(1) OF THE CONSTITUTION**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FREEDOMS) PRACTICE AND PROCEDURE RULES, 2-13**

AND

IN THE MATTER OF SECTIONS 5, 45 & 46 OF THE EMPLOYMENT ACT OF 2007

AND

IN THE MATTER OF SECTION 12 & 13 OF THE COUNTY GOVERNMENTS ACT, 2012

AND

**IN THE MATTER OF SECTION 5, 10, 17, 19, 22, 23
OF THE COUNTY ASSEMBLY SERVICE ACT, 2017**

AND

**IN THE MATTER OF CONTRAVENTION OF SECTION 9(2)(D)
OF THE PUBLIC SERVICE (VALUES AND PRINCIPLES) ACT 2017**

AND

**IN THE MATTER OF VIOLATION AND
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND**

**FREEDOMS GUARANTEED UNDER ARTICLES 10,
27, 28, 29, 41, 47 AND 236 OF THE CONSTITUTION**

BETWEEN



FAITH ADHIAMBO APUKO, THE CLERK, COUNTY ASSEMBLY OF HOMA BAY PETITIONER

AND

HON JULIUS O GAYA, THE SPEAKER, COUNTY ASSEMBLY OF HOMABAY 1ST RESPONDENT

HOMABAY COUNTY ASSEMBLE SERVICE BOARD 2ND RESPONDENT

COUNTY ASSEMBLY OF HOMABAY 3RD RESPONDENT

RULING

1. Before the court for determination is the Applicant/Petitioner's Notice of Motion dated 22nd August, 2024 filed under Certificate of Urgency seeking Orders that: -
 - a. Spent
 - b. The court be pleased to issue a further conservatory Order restraining the respondents from undertaking disciplinary hearing and/or removing the applicant from office as Clerk of the County Assembly of Homa Bay pending hearing and determination of this Petition.
 - c. The court be pleased to issue a conservatory Order restraining the respondents from advertising, short listing, recruiting or appointing any person as a substantive holder of the office of Clerk, County Assembly of Homa Bay pending the hearing and determination of the Petition.
 - d. A conservatory Order be issued staying the decision of the respondents Hon. Julius O. Gaya, Speaker County Assembly of Homa Bay and chairperson Homa Bay County Assembly Service Board as contained in his letters dated 8th August, 2024 and 21st August, 2024 and communicating the intention of the 2nd respondent to remove the applicant from office as Clerk, County Assembly of Homa Bay pending the hearing and determination of this Petition.
 - e. The court be pleased to issue a conservatory Order restraining all the respondents and or any person exercising the functions of that office from relying on the letters dated 8th August, 2024 and 21st September, 2024 to undertake and continue a process aimed at undertaking a process of removing the Petitioner from office as Clerk, County Assembly of Homa Bay pending the hearing and final determination of the Petition.
 - f. The 2nd and 3rd respondents be Ordered to continue paying the applicant her salaries and allowances as are due and applicable, pending the hearing and determination of the Petition.
 - g. Lilian Ogongo, Joseph Okoto and Joan Ogada and Raphael Odongo, all current members of Homa Bay County Assembly Service Board be added to these proceedings as respondents.
 - h. Summons do issue to the 1st respondent Hon. Julius O. Gaya, Lilian Okoto, Joan Ogada and Raphael Odongo all current members of the Homa Bay County Assembly Service Board to personally appear before the court and show cause why they should not be cited for contempt of court and why they should not be punished for being in contempt of the Orders of this court dated 23rd July, 2024.



- i. The 1st respondent Hon. Julius O. Gaya and Lillian Ogono, Joseph Okoto, Joan Ogada and Raphael Odongo, all current members of Homa Bay County Assembly Service Board be cited, convicted and punished for being in contempt of the Orders of this court dated 23rd July, 2024 which they had been served with and which they are fully aware of but are deliberately disobeying.
 - j. Such orders as shall preserve the applicant's position as Clerk be issued in order to stop the patent illegality and unlawfulness.
 - k. Costs of this application be provided for.
2. The Notice of Motion is expressed under the provisions of the Judicature Act, Employment and Labour Relations Court (Procedure) Rules, 2016, Employment and Labour Relations Court Act and the Fair Administrative Action Act and is based on the grounds set out on its face and the Affidavit of the Applicant sworn on 22nd August 2024 who deposes that on 23rd July, 2024, the court ordered that the status quo be maintained pending the hearing and determination of the Petition and motion dated 10th July, 2024 and the respondents were represented in court virtually and thus aware of the orders but opted to disobey the Orders the and proposed additional parties were current members of the County Assembly Service Board.
 3. The affiant deposed that the respondents have been withholding her salary and allowances since July, 2024.
 4. That the letter dated 8th August, 2024, which the applicant responded to on 15th August, 2024 was issued in contempt of lawful Orders of the court on maintaining of the status quo in violation of law.
 5. That the 1st respondent had communicated his intention to have the applicant removed from office.
 6. The affiant further deposes that after responding to the letter dated 8th August, 2024, by letter dated 21st August, 2024, the respondents invited the applicant for a disciplinary hearing although it did not state so and the respondents intended to conduct a mock hearing to remove the applicant from office.
 7. That all current members of the Homa Bay County Assembly Service Board were in contempt of the orders of the court, which they had knowledge of Paragraphs 12 – 31 of the applicant's Affidavit sworn on 22nd August, 2024 appears to be contesting the suspension, the gravamen of the Notice of the Notice of Motion dated 10th July, 2024.

Respondents response

8. Vide grounds of opposition dated 27th August, 2024, the 1st and 3rd respondents contend that the application raised new grounds not covered by the earlier Notice of Motion and sought to introduce a new cause of action.
9. That since the applicant was still an employee of the 2nd respondent, it retained the power to supervise, superintend and oversight and the court lacked jurisdiction under 77 of the County Governments Act and Regulation 4 of the Public Service Commission (County Appeals Procedures) Regulations 2022.
10. Similarly, vide Grounds of Opposition dated 27th August 2024, the 2nd respondent argued that the disciplinary process initiated by letter dated 8th August, 2024 was not subject of the courts interrogation in the instant Petition as it was anchored on the charges framed vide letter dated 10th July, 2024 and the application is made in a vacuum and the court had no jurisdiction to determine it and was an abuse of the court process, misconceived and the respondents ought to have been cited for contempt not another application.



11. That there cannot be blanket order stopping the 2nd respondent from exercising disciplinary control over the Petitioner who was still its employee, on any new matters not subject of any case.

Applicant's submissions

12. Counsel for the applicant submitted that on 23rd July, 2024, the trial Judge issued an Order that the status quo be maintained pending the hearing and determination of the Petition and motion dated 10th July, 2024 and no disciplinary hearing would be undertaken against the applicant but the respondents vide letter dated 8th August, 2024 clearly manifested their intention to remove the applicant from office on grounds other than those that led to the suspension and required her to respond, which she did but made the 1st respondent aware of the subsisting court Order and they invited the applicant for a hearing vide letter dated 21st August, 2024 slated for 29th August, 2024 in violation of subsisting court Order which precipitated the instant application to protect the court process and substratum of the Petition.
13. Counsel further submitted that if the applicant had not moved the court, she would have been removed from office by now and was therefore justified to do so.
14. Counsel submitted that the respondents were intent on undertaking a mock hearing and had not denied that the court had ordered that the status quo be maintained but, the 2nd respondent met on 31st July, 2024 and resolved to commence a fresh process to remove the applicant from office of the Clerk of the County Assembly of Homa Bay.
15. According to counsel, the applicant's right to fair labour practices and right to a hearing and equal protection of law among others are being violated by the respondents.
16. Concerning other current members of the Homa Bay County Assembly Service Board, namely; Lilian Oguno, Joseph OKoto, Joan Ogada and Raphael Odongo, counsel submitted that they jointly constituted the Board and were hiding behind their being non-parties to the suit to undertake disciplinary process against the applicant and it was necessary to add them to the proceeding as respondents and upon their joinder it was necessary for the court to issue them to appear before the court to show cause why they should not be cited for contempt and punished for contempt of court Orders.
17. Counsel submitted that the directive to conduct a disciplinary hearing on the face of a court order on maintenance of the status quo was illegal and unlawful and current members of the Homa Bay County Assembly Service Board had knowledge of the Orders the court made but opted to defy them and ought to be cited convicted and subject to mitigation, sanctioned.
18. Counsel additionally submitted on the issue of withheld salaries urging that the applicant was entitled to half of the basic salary and allowances from date of suspension as she had not been paid by 22nd August, 2024.
19. On reliefs, counsel urged that the applicant had demonstrated prima facie case.
20. Paragraphs 31 – 46 of the submission appears to be discrediting the suspension of the applicant and the law applicable as opposed to the instant applicant or contempt of court and unpaid salaries and allowances.



2nd Respondents submissions

21. Counsel submitted that as the Petitioner was seeking the quashing of the suspension notice, the application for contempt Orders had no basis and was a stand-alone application as it was not mentioned in the main petition.
22. Finally, counsel submitted that the applicant was not entitled to an interlocutory injunction as the main and only pleading is the Petition and thus could not demonstrate the requirement of prima facie case with chances of success which rendered the application unsustainable.
23. The 1st and 3rd Respondents submitted on the nullus principle and jurisdiction of the court citing the decision in Governor, County Government of Kakamega & 4 others V Omweno & 12 others [2025] KECA 190 (KLR) to urge that the court had no jurisdiction to hear and determine the matter.

Analysis and determination

24. It is common ground that the instant application was filed hot on the heels of the Notice of Motion dated 10th July, 2024 which challenged the applicant's suspension as Clerk County Assembly of Homa Bay vide letter dated 9th July, 2024 and appear to have been triggered by members of the 2nd respondent's apparent disregard of court Orders issued by the court on 23rd July, 2024.
25. Before delving into the issue whether members of the 2nd respondent are guilty of contempt, which is the primary issue, I propose to dispose of the issue of joinder or adding members of the 2nd respondent to these proceedings.
26. As to whether the application for joinder or addition of members of the 2nd respondent, namely; Lilian Ogono, Joseph Okoto, Joan Ogada and Raphael Odongo, is merited, the court proceeds as follows:
27. Before delving into the salient issues for determination, it is essential to dispose off the issues raised by the respondents counsel by way of submissions.
28. First, the court was unable to contextualize the nullus principle in the instant application and the court proceeds no further.
29. Second, on jurisdiction the court finds it disingenuous for the respondents to bring up the issue of the court's jurisdiction bearing in mind that maintenance of the Order for maintenance of status quo was made on 23rd July, 2024 more than 8 months ago and the issue of exhaustion of internal dispute resolution mechanism had not been raised.
30. The court is at a loss why the respondents could not file a Notice of Preliminary Objection as opposed to introducing such a foundational issue in submissions.
31. Similarly, the Court of Appeal decision in Governor County Government of Kakamega & 4 others V Omweno and 12 others [2025] KECA 190 (KLR) was delivered on 7th February, 2025 and the respondents had sufficient time to file a Notice of Preliminary Objection challenging the jurisdiction of this court.
32. The question of jurisdiction is so critical and basic that it ought to be raised at the earliest possible instance whenever it arises for an expeditious determination owing to its potential to scuttle the suit before it is heard and determined.
33. As neither of the respondents challenged the order of maintenance of status quo dated 23rd July, 2024 on which the application for contempt of court is grounded, the matter rest there.



34. It is trite law that misjoinder or non-joinder cannot defeat a suit and the court has jurisdiction to deal with the matter in dispute.
35. When the matter came up under Certificate of Urgency on 11th July, 2024, the court directed immediate service, replies within 7 days and inter partes hearing on 23rd July, 2024.
36. After hearing counsels for the parties, the court Ordered that: -

Owing to the applicant's failure to adhere to the court's directions, the respondents were accorded 7 days to respond to the application, the applicant's Supplementary Affidavit filed without leave be expunged from the record and importantly for purposes of the instant application, the court Ordered that the status quo be maintained pending the hearing of the application inter partes on 1st October, 2024 and the applicant was granted leave to file a Supplement Affidavit.
37. In the meantime, the applicant filed the instant application which the court certified urgent, directed service, heard the parties on 28th August, 2024 and delivered a ruling on the same day ordering that; disciplinary proceedings against the applicant be suspended pending the hearing and determination of the Preliminary Objection on 1st October, 2024.
38. On 1st October, 2024, counsel submitted viva voce a ruling was slated for 23rd October, 2024 and status quo orders were extended. The Ruling was delivered as contemplated dismissing the Preliminary Objection.
39. Notably, the status quo Orders have been extended routinely and remain in force.
40. Instructively, and contrary to the deposition by the applicant and the applicant's counsel, the maintenance of status quo Order was to be maintained pending the inter partes hearing of the Notice of Motion dated 10th July, 2024. The instant motion is an incidental beneficiary of extension of the orders.
41. It is equally not in dispute that after the court ordered that the status quo be maintained pending inter partes hearing of the motion dated 10th July, 2024, members of the 2nd respondent resolved and communicated with the applicant vide letter dated 8th August, 2024 and 21st August 2024 initiating and proceeding with new disciplinary proceedings against the applicant.
42. It is trite that the applicant was still an employee of the 2nd respondent, though on suspension and the respondent's argument that they had supervisory, superintendence and oversight over her, though correct, was misplaced for the simple reason that the applicant could not have committed other acts of misconduct or infractions while on suspension yet she had no access to the office nor the respondents bank accounts or documents.
43. In other words, the applicant was not discharging her ordinary office duties.
44. Equally, the argument that the matters were new could not avail the respondents, as they ought to have been incorporated in the earlier notice of charges or be an addendum.
45. In any event, the respondents did not argue that they had abandoned the earlier statement of charges.
46. It is relatively easy to see through the respondent's camouflaged and flagrant disregard of the court orders issued on 23rd July, 2024.
47. The letter dated 8th August, 2024 states that at its meeting on 31st July, 2024, the Board obtained information which suggested that the applicant may have been involved in misconduct, misbehaviour



- and violation of *the constitution* including Chapter 6 and provisions of operative statute, principally, that the applicant had employed one Charles Stephen Otieno Apuko as an Internal Audit Assistant, and Rose Arwa Onyango as a Research Officer II without approval of the Board among other charges.
48. By letter dated 21st August, 2024, the respondents invited the applicant for a hearing slated for 29th August, 2024 and was informed that she could appear with an advocate of her choice.
49. Clearly, members of the 2nd respondent appear to have been advised, discovered or discerned that by altering the texture of the charges against the applicant they would circumvent the court orders on maintenance of the status quo.
50. Because the members of the 2nd respondent appear to be challenging the meaning and essence of status quo, it is imperative for the court to unpack the word status quo in law.
51. According to Black’s Law Dictionary 10th Edition status quo is defined as “state in which”, “the situation that currently exists”.
52. In *Shimmers Plaza Ltd V National Bank of Kenya Ltd* [2015] eKLR, the Court held that status quo meant
- “the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events. The purpose of which is to maintain the substratum of the suit”.
53. Similarly, in *Mugah V Kunga* [1988] KLR 748 the Court of Appeal stated as follows:
- “Status quo orders should always be issued for purposes of preserving the subject matter. This court’s practice direction vide Gazette Notice No.5178/2014 have followed suit. Practice direction No.28(K) is relatively clear. It gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the suit”.
54. Finally, in *Republic V National Environment Tribunal Ex Parte Palm Homes Ltd & another* [2013] eKLR Odunga J (as he then was) stated:
- “When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...” In *TSS Spinning & Weaving; Company Ltd Vs Nic Bank Limited & another* [2020] eKLR, the court unpacked the purpose of a status quo order as follows: “In essence therefore, a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention. ‘In *Kenya Airline Pilots Association (KALPA) Vs Co-operative Bank of Kenya Limited & another* [2020] eKLR, the purpose of a status quo order was explained as follows:..... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision”.
55. The court is guided by these sentiments.



56. In a nutshell status quo means that things or matters be left as they are pending a determination or hearing of a suit.
57. In the instant case and as adverted to elsewhere in this ruling the trial court ordered the maintenance of status quo on 23rd July, 2024 but in disregard of the Orders, members of the 2nd respondent hatched a duplicity in a thin veiled attempt to circumvent the orders of the court by originating new charges against the applicant and purporting to subjected her to a new disciplinary process.
58. The status quo order, in the court's view required the parties to ensure that things or matters remained as they were when the order was made. The applicant was on suspension and the respondent, it was envisioned would not take any further action against the applicant in relation to past or future happenings.
59. The applicant took no action, but the members of the 2nd respondent disregarded the order and wanted to change the status quo using backdoor which is discreditable.
60. Whether current members of the 2nd respondent were in contempt of court.
61. In *Shimmers Plaza Ltd V National Bank of Kenya Ltd (supra)*, the Court of Appeal expressed itself as follows:

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26th President of the United States of America once said: -

“No man is above the law and no man is below it; nor do we ask any man's permission to obey it. Obedience to the law is demanded as a right; not as a favour”.

The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by *the Constitution*. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy...”.

62. See also *Miguna Miguna V Dr. Fred Matiangi & 7 others* [2018] eKLR, *Hadkinson V Hadkinson* [1952] ALLER, *Econet Wireless Kenya Ltd V Minister for Information of Kenya & another* [2005] eKLR, *Gillab Chand Popatlal Shah & another Civil App. No. 39 of 1990* and *Teachers Service Commission V Kenya Nation Union of Teachers and 2 others* [2013] eKLR, on the need to punish contempt of court to safeguard the rule of law.

63. Similarly, in *Republic V Mohammed & another* [2019] KESC 47(KLR) the Supreme Court stated:

“There is no doubt that an act in contempt of the Court constitutes an affront to judicial authority; and the Court has the liberty and empowerment to mete out penalty for such conduct, in a proper case. The object is, firstly, to vindicate the Court's authority; secondly, to uphold honourable conduct among Advocates, in their standing as officers of the Court; and thirdly, to safeguard its processes for assuring compliance, so as to sustain the rule of law and the administration of justice”.



(See also Josephine Mueni Mutunga V Energy Regulatory Commission & another [2016] eKLR, Praxes Namoni Sisi V Geothermal Development Co. Ltd & another [2016] eKLR, Mwaniki Silas Ngare V John Akama & another [2016] eKLR and Republic V Ahmad Abdufathi Mohamed & another [2018] eKLR among others).

64. Needless to emphasize, as concerns the burden of proof; the mantra that he who alleges must establish the allegations as encapsulated under the provisions of Section 107, 108 and 109 of the *Evidence Act* is operative.
65. The applicant is required to show that the respondent has behaved in a manner which indignifies the court or defies its authority.
66. As regards the standard of proof, in B V Attorney General [2004] IKLR 43 OJwang J. (as he then was) stated:

“ It is therefore evident that not only do contemnors demean the integrity and authority of the court but they also deride the rule of law. This must not be allowed to happen. We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt is well established. In Gatharia K. Mutitika V Baharini Farm Ltd [1985] KLR 229 at 234 the Court of Appeal held that: -

“In our view, the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, almost but not exactly beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs to wit in criminal cases. It is not safe to extend it to an offence, which can be said to be quasi-criminal in nature”.

67. The rationale for this standard is that if cited for contempt and the prayer sought is for committal to jail, the Liberty of the contemnor will be affected.
68. As such the standard of proof is higher than the standard in civil case. This power to commit a person to jail must be exercised only as last resort. It is of utmost importance therefore for the respondents to establish that the alleged contemnor’s conduct was deliberate in the sense that he or she wilfully acted in manner that flouted the court order”.
69. (See also Githiga & 5 Others V Kiru Tea Factory Co. Ltd [2023] KESC 41 (KLR).
- 70.. Finally, as regards the elements of contempt, in Samuel M. N. Mweru & others V National Land Commission & 2 others [2020] eKLR the court held:

“It is an established principle of law that 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. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book Contempt in Modern New Zealand who succinctly stated: -

“There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that: -



- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate.

72. (See also *Katsuvi Ltd V Kapurchand Deparshah* [2016] eKLR, *Mahinderjit Singh Bitta V Union of India & Others* No. 10 of 2010). In *Republic V Attorney General & another Ex parte Mike Kamau Maina, Mativo J* (as he then was) addressed the issue of willfulness or deliberate acts at length as follows:

“The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed deliberately and mala fides.

73. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly believe he/she is entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids infraction. Even a refusal to comply, that it objectively unreasonable may be bonafide (though unreasonableness could evidence lack of good faith). The requirements that is the refusal to obey should be both willful and mala fides and that unreasonable non-compliance, provided its bona fide does not constitute contempt ...

They show that the offence is committed not by mere disregard of a court order but by the deliberate and intentional violation of the court's dignity repute or authority that his envies...”

74. In the instant application, a juxtaposition of the requirements of contempt against the circumstances of this case leaves little doubt that the current members of the Homa Bay County Assembly Service Board are in contempt of the Court Order.

75. First, the terms of the order of the court dated 23rd July, 2024 are both clear and unambiguous and binding on both parties.

76. The trial court stated:

“To preserve the subject matter of the suit, I do order that status quo be maintained until the application herein is heard inter partes. Hearing on 1st October, 2024.”

77. In sum, things were to remain as they were on 23rd July, 2023 until inter partes hearing of the application dated 10th July, 2024. The application was heard inter partes on 28th April, 2025.

78. As regards knowledge of the Order by members of the 2nd respondent, on 23rd July, 2024, all the parties in the suit were represented by counsel as follows: Mr. Mwamu for the Applicant/Petitioner, Mr. Nyamweya for the 2nd Respondent and Mr. Onsongo for the 1st and 3rd Respondents.

79. The Order was given in the course of proceedings and counsel as the 2nd respondent's agent was under an obligation to notify the client and from the record, it is discernible that members of the 2nd respondent were aware of the terms of the order to maintain the status quo. Neither the 2nd respondent nor its members has sworn an affidavit to the effect that they were unaware of the terms of the court order issued on 23rd July, 2024.



80. Concerning failure to comply with the order or breach thereof, neither the 2nd respondent nor any of its members has deposed that they complied with the order. Neither of them denied having held meetings after 23rd July, 2024, discussed and made decisions affecting the applicant and authoring the letters dated 8th August, 2024 and 21st August, 2024 communicating new charges to the applicant and inviting her for a disciplinary hearing on 29th August, 2024 during the pendency of the status quo order.
81. The contention that there cannot be a blanket order stopping the 2nd respondent from exercising disciplinary control over the applicant as she was still its employee cannot avail the 2nd respondent as there was a court order in force for the maintenance of the status quo for pending inter partes hearing of the application dated 10th July, 2024.
82. The court is at a loss as to why members of the 2nd respondent was in a hurry to subject the applicant to a disciplinary process on different allegations pending the hearing of her application and a maintenance of status quo order was already in force. What was the urgency in the matter yet the applicant had a case in court?
83. The court is in agreement with the applicant's counsel's submission that the members of the 2nd respondent were trying to cover their faces from the eye of equity by hiding behind the corporate veil of the 2nd respondent oblivious of the reality that the Homa Bay County Assembly Service Board can only think and act through them as they are regarded as its alter ego under the principle of organic theory in corporate law.
84. From the foregoing, the court is satisfied that members of the 2nd respondent acted in breach of the order of maintenance of status quo dated 23rd July, 2024.
85. Similarly, the attempt to camouflage their flagrant disregard of the court order by introducing a set of new charges against the applicant, without first withdrawing the earlier charges is in the courts view, a clear manifestation of willfulness to disobey a court order they were aware thus acted of and mala fides.
86. In the upshot, current members of the 2nd respondent stand cited for contempt of court.
87. As regards joinder of parties, Rule 5(d) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure rules, 2013, provides:
- The court may at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear just-
- i. Order the name of any party improperly joined, be struck out; and
 - ii. that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter be adopted.
 - c. Where a respondent is added or substituted, the Petition shall unless the court otherwise directs, be amended in such manner as may be necessary and amended copies of the Petition shall be served on the new respondent and, if the court thinks, fit on the original respondents.
88. In *Praving Bowry V John Ward & another* [2015] eKLR where the Court of Appeal examined the rules for joinder of parties, it referred to the Ugandan case in *Deported Asiani Custodian Board V*



Jaffer Brothers Ltd [1999] IEA 55 (SCU) and Civicon Ltd V Kivu Watt Ltd & 2 others [2015] eKLR where the court observed as follows:

“Again the power given under the Rule is discretionary which discretion must be exercised judicially. The objective of these rules is to bring on record all persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus any party reasonably affected by the pending litigation is a necessary and proper party and should be enjoined... from the foregoing it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principle as set out in Order 1 rule 10(2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event the plaintiff should succeed. We may add that all that the party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial”.

89. See also *Zephir Holdings Ltd V Mimosa Plantations Ltd*; *Jeremiah Maztagaro and Ezekiel Misango Mutisya* [2014] eKLR *William Kiprono Towett & 1597 others V Farmland Aviation Ltd & 2 others* [2016] eKLR, *Local Building and Construction Ltd V Institute of the Blessed Virgin Mary Loreto Msongary & 2 others* [2019] eKLR, *King’ori V Chege & 3 others* [2002] 2 KLR 243 *Martin Kirima Balthambu V Jeremiah Miriti* [2017] eKLR, and *Taug Gas Distributors Ltd V Saida & others* [2014] EA 448 among others.
90. In *King’ori V Chege & 3 others* (supra) *Nambuye J* (as she then was) stated that the guiding principles for a party to join or be joined to a suit are
1. He must be necessary party.
 2. He must be a proper party.
 3. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
 4. The ultimate order or decree cannot be enforced without his presence in the matter.
 5. His presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.
91. In *Martin Kirima Balthambu V Jeremiah Miriti* (supra) the court expressed itself as follows:
- The pragmatic reality has been for courts to add parties in a suit based on guarantee if it is desirable to add such party so that the court can resolve all the matters in controversy effectually and completely. Aply here would be to invoke the procedure under Order 1 Rule 15 of the Civil Procedure Rules. I say these things for the sake of jurisprudence”.
92. Finally, in *Sammy Kanyi Kareithi V Barclays Bank of Kenya & 2 others: Ross Xavier Witney (Applicant)* [2021] eKLR the court stated:
- Firstly, the court is empowered to join a party to a suit at any stage of the proceedings with or without an application by any party...”
93. In the instant application the applicant seeks the joinder of *Lilian Ogono, Joseph Okoto, Joan Ogada and Raphael Odongo*, all current members of the Homa Bay County Assembly Service Board to these proceedings and although the prayer appear to have been actuated by the alleged contempt of court,



the applicant is seeking an order against the 2nd respondent and its chairman, the Speaker of the County Assembly of Homa Bay, and being the current members of the County Assembly Service Board, in the court's view, they are necessary and proper parties to the suit.

94. From the foregoing analysis, the court finds merit in the prayer that Lilian Ogono, Joseph Okoto, Joan Ogada and Raphael Odongo be added to these proceedings as defendants for purposes of disposal of the suit.

Appropriate Reliefs

- i. The Applicant/Petitioner seeks a conservatory Order to restrain the respondents from undertaking disciplinary hearing and/or removing her from the office of Clerk, County Assembly of Homa Bay pending the hearing and eventual determination of the Petition.

Having noted the previous conduct of the 1st respondent and members of the 2nd respondent, this court is satisfied that there may be merit in seeking the relief sought. However, the court will not issue a conservatory order but orders that the status quo be maintained pending the hearing and determination of the Petition.

- ii. On a conservatory Order restraining the respondents from advertising, shortlisting, recruiting or appointing any person to the office of Clerk County Assembly of Homa Bay pending the hearing and determination of the Petition, since the Applicant/Petitioner is still an employee of the 2nd respondent and no evidence has been availed to show that the respondents were planning to advertise the position of Clerk soon, or had declared it vacant, the Order is unmerited at this stage.

- iii. As regards the order to restrain the 1st and 2nd respondents or any other person exercising the functions of the office from relying on the letters dated 8th August, 2024 and 21st August, 2024, the court is of the view that granted that the letters were written and dispatched to the applicant/Petitioner in flagrant breach of the order of maintenance of status quo dated 23rd January, 2024, the letters were legally ineffectual and no consequence. The respondents or any other person purposing to rely on the letters or act in furtherance of their intent can only do so at their peril.

In the court's view, no conservatory order is required to restrain a person from disobeying court Orders.

It is trite law that court orders are not optional and must be obeyed by all affected parties and the respondents were not exempted from doing so when they acted ignominiously by originating new charges against the applicant and purporting to invite her for a disciplinary hearing contrary to an Order of this court.

- iv. On payment of salaries and allowances, the applicant remains an employee of the respondent, though on suspension, and is entitled to whatever portion of the salary and allowances is due to her during suspension and the same ought to be paid to her as ordained by the provisions of Section 17 of the *Employment Act*.

Relatedly, the respondent's adduced no evidence of having paid the applicant what is due to her.

95. Flowing from the foregoing analysis, the Orders that commend themselves are:



- a. Respondent shall pay the applicant/petitioner the portion of salary and/or allowances payable to employees on suspension effective July 2024.
- b. Lilian Ogono, Joseph Okoto, Joan Ogada and Raphael Odongo be and are hereby added as respondents in these proceedings.
- c. Lilian Ogono, Joseph Okoto, Joan Ogada and Raphael Odongo shall appear in court virtually on 19th June, 2025 to show cause they should not be punished for disobedience of a court Order.
- d. Petition be fixed for hearing and determination.
- e. 2nd and 3rd respondents shall bear costs of this application.
- f. Status quo be maintained.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 16TH DAY OF JUNE 2025.

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

