



Benjamin v Lemedeket & 4 others; Law Society of Kenya & another (Interested Parties) (Petition E207 of 2022) [2025] KEELRC 2125 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2125 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E207 OF 2022**

**B ONGAYA, J
JULY 17, 2025**

BETWEEN

DR MAGARE GIKENYI J. BENJAMIN PETITIONER

AND

BERNICE SILAAL LEMEDEKET CONTEMNOR

AND

ATTORNEY GENERAL 1ST RESPONDENT

PUBLIC SERVICE COMMISSION 2ND RESPONDENT

NATIONAL ASSEMBLY 3RD RESPONDENT

NATIONAL POLICE SERVICE COMMISSION 4TH RESPONDENT

AND

LAW SOCIETY OF KENYA INTERESTED PARTY

FREDRICK BIKERI INTERESTED PARTY

RULING

1. The Petitioner (applicant) filed a Notice of Motion under section 5(1) of the *Judicature Act* Cap 8 laws of Kenya, Order 52 rule 2(2) of the rules of the Supreme Court of England 1965, sections 3A, 1A, 1B, and 63 (c) and (e) of the *Civil Procedure Act* Cap 21 Laws of Kenya, sections 6(c) and 28 of the *Contempt of Court Act* No. 46 of 2016, Order 40 and 51 rule 1 of the Civil Procedure Rules and all other enabling provisions of the law. The application dated 22.05.2025 prayed the following orders:
 - a. That the application be certified as urgent and service be dispensed with in the first instance and be heard ex parte.



- b. That this Honourable Court be pleased to cite Bernice Sialaal Lemedeket the Contemnor/52nd Interested party herein for contempt of and/or for disobeying lawful court judgment delivered on 25.07.2023 by Hon Justice Byram Ongaya in Nairobi ELRC PET E207 of 2022.
 - c. That the Honourable Court be pleased to order Bernice Sialaal Lemedeket, the contemnor/52nd interested party herein be arrested and committed to civil jail for such period as would be deemed necessary by this Honourable Court for being in contempt of court by disobeying and breaching the decree & judgment issued on 25.07.2023 by Hon Justice Byram Ongaya.
 - d. That the Honourable Court be pleased to order Bernice Sialaal Lemedeket, the contemnor/52nd interested party herein be heavily/heftly fined for such amount as would be deemed necessary by this Honourable Court for being in contempt of court by disobeying and breaching the lawful court order issued on 25.07.2023 by Hon Justice Byram Ongaya.
 - e. That the Honourable Court be pleased to grant orders for both prayer (c) on being committed to civil jail in addition to prayer (d) above on paying of hefty fines and all other sanctions and punishments as per the law.
 - f. That the Honourable Court be pleased to order the contemnor to pay with interests to the state all salary refunds, benefits and or any other funds and/or any remuneration illegality earned during the contemneering period that is from the judgment date up to date and/or until she has completed payment.
 - g. That pending hearing and determination of this application, the 52nd interested party be restrained from reporting to office at National Police Service Headquarters Jogoo House and/ or any other office and drawing salary from the exchequer.
 - h. That the Honourable Court be pleased to give an order that contemnors/respondents to follow judgment of the court as delivered on 25.07.2023.
 - i. That any other order or modification of the applicant's prayers in which the Honourable Court may deem fit to grant for purposes of attaining justice for all Kenyans at large.
 - j. That the 52nd interested party be condemned to pay the costs of the application.
 - k. Cost be paid by the respondents and/or contemnors.
2. The application is supported by the applicant's affidavit and made on the following grounds:
- a. That the 52nd interested party/contemnor has deliberately disobeyed the orders of this court issued on 25.07.2023 by Justice Byram Ongaya sitting in the Nairobi Employment and Labour Relations Court Nairobi, in that despite having been aware of the said orders, the 52nd interested party/contemnor herein continues to hold the office of accounting officer and Principal Administrative Secretary at National Police Service despite the position being nullified by the Honourable Court.
 - b. That the applicant has recently learnt that the 52nd interested party herein is still in office and drawing salary from the exchequer. The 52nd interested party recently issued memo to other members of staff a clear indication that she is still in office.
 - c. That the court's judgement was unambiguous and therefore the 52nd interested party should have vacated office.



- d. That the dignity and authority of the court must be protected at all times.
 - e. That the culture of disobeying court orders with impunity has reached very high levels in Kenya and the courts must now exercise their constitutional authority of punishing offenders for contempt of court.
 - f. That the blatant refusal to obey valid court order is contempt of court.
 - g. That the applicant has no other way of enforcing the said order.
3. The cited contemnor (respondent) filed a Replying Affidavit sworn on 03.06.2025. She stated and urged as follows:
- a. That the application is incompetent to the extent that the same has not met the requirements of the law relating to contempt currently applicable in England as required under section 5 of the Judicature Act.
 - b. The applicant has not satisfied the procedural prerequisites with respect to contempt applications.
 - c. The application has not met the basic threshold for finding of contempt of court.
 - d. The applicant has not set out the factual grounds demonstrating contempt of the court by the respondent.
 - e. On 05.09.2024 the party received a letter informing her of her appointment as Secretary Administration of the National Police Service following consideration and approval by the National Police Service Commission.
 - f. The party maintains that she does not hold the position of Principal Administrative Secretary, which was annulled by the court. That it is therefore untrue, as the applicant alleges, that she has refused to vacate the position of Principal Administrative Secretary, a position she no longer holds having been appointed to a different position by her employer.
 - g. As a civilian in the service, the party believes that her appointment is well grounded in the National Police service Commission Act and the regulations made thereunder, the National Police Service Act as well as the circulars and policies as are issued by government and government agencies from time to time.
 - h. The party believes she has not disobeyed any court orders. She maintains that she is law abiding citizen of Kenya and would never disobey a Court order, more so, while in the service of the very institution mandated to enforce the law.
 - i. Some of the issues which form the basis of the contempt application are the subject of two appeals in the Court of appeal.
 - j. The orders of the court did not prohibit the National Police Service Commission from recruiting civilian staff or continuing to have them within its rank and file.
4. The 4th Respondent (the National Police Service Commission) filed the Replying Affidavit of Peter Kiptanui Leley, the Chief Executive Officer of the National Police Service Commission, sworn on 20.05.2025. He stated and urged as follows:



- a. The 52nd interested party is employed by the Commission as a Secretary Administration in the National Police Service having been recruited in accordance with Article 246 (3) and section 17 of CAP 85 of the laws of Kenya.
 - b. The 52nd interested party does not hold the position of Principal Administrative Secretary as the said position was declared unconstitutional by the court in its judgment dated 25.07.2023. It is a position that remains vacant in the staff establishment of the service until such time and outcome of the determination of the appeal preferred by the respondents at the appellate court.
 - c. The Commission has appealed the entirety of the said judgement in Nairobi COACA E766 of 2023 as the decision affects the exercise of its constitutional powers and mandate particularly in light of Article 234(3)(c)(iv) of *the Constitution*.
 - d. In exercise of its regulatory authority, the Commission has enacted regulations governing the engagement and management of civilian staff within the service.
 - e. The Commission has provided for the professionalization of policing services recognizing that the ranks within the police service continually perform specialized and professional security functions which constitute the core mandate of the service as outlined under article 243 and 244 of *the Constitution*.
 - f. The matters concerning the holder of the office of Secretary Administration are distinct and fall outside the factual and legal scope of the Court in this instant petition, which specifically dealt with the position of Principal Administrative Secretary.
 - g. The 4th respondent (Commission) stated that the designation and appointment of accounting officers for state organs is governed by Article 226 of *the Constitution* as operationalized by section 67 and 68 of the *Public Finance Management Act* and other relevant legislation. The 4th respondent neither has the mandate/power to appoint nor has it appointed an accounting officer.
5. The Respondents filed the Replying Affidavit of Solomon Lempere, Director, Legal services in the office of the Secretary Administration/Accounting Officer, National Police Service, sworn on 19.06.2025 through the office of the Attorney General. It was stated and urged as follows:
- a. The court in its judgment delivered on 25.07.2023 nullified the position of Principal Administrative Secretary (PAS) holding the same to be unconstitutional.
 - b. In compliance, gazette notice no 14712 Vol CXXIV – No 256 which created PAS position was withdrawn and the PAS position has never been implemented or revived since the Court’s decision.
 - c. Ms. Lemedeket ceased to hold or exercise any functions under the abolished PAS position upon the court’s decision and has not at any time wilfully or knowingly disobeyed the orders of the Court.
 - d. That she currently holds a distinct position of Secretary, Administration/Accounting Officer in the national police service, which the respondent stated is legally and institutionally different from the abolished PAS role.
 - e. Salary, allowances or benefits paid to Ms. Lemedeket since the said judgement have been in her capacity as Secretary, Administration/Accounting Officer, a position validly created and filled within the administrative structure of the NPS.



- f. There has been no financial misconduct or misappropriation of public resources as alleged and all remuneration has been lawfully processed and disbursed under existing government systems.
 - g. The respondent maintained that the 52nd interested party and the National Police Service have consistently respected and complied with court orders and judicial authority.
 - h. No deliberate or contumacious acts have been committed that would warrant the invocation of contempt jurisdiction. There is no basis for asserting that the respondents have undermined the authority of the court or violated Article 3(1) of *the Constitution*.
 - i. The appointment of Ms. Lemedeket as Secretary, Administration/Accounting Officer was carried out pursuant to the constitutional mandate of the National Police Service Commission (NPSC) under Article 246(3)(a) of *the constitution*.
 - j. That under Article 234(3)(c) the Public Service Commission has no oversight over the NPSC in respect of appointments to the service, maintaining that the actions taken by the NPSC were within its exclusive constitutional domain.
 - k. The test for contempt of court as articulated in *Mutitika v Baharini Farm Ltd (1985) KECA 60 (KLR)* which requires wilful, deliberate and contumacious disobedience has not been met in the present circumstances.
 - l. The contempt of court application filed by the petitioner is misplaced and is based on a misunderstanding of the distinction between the abolished PAS position and the current Secretary Administration/ Accounting Officer post.
6. The parties filed their respective submissions. The court has considered the parties' respective positions and makes finding as follows.
 7. The applicant has submitted that in *Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR* the court held thus, "40. 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 those 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..... 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.....in 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.
 8. The Court finds that the foregoing are the prevailing tests for existence of contempt of Court. The tests are not in dispute.
 9. The applicant submits that the judgement was clear that the accounting officer of the national police service is the Inspector General of Police (IG) assisted by the two Deputy Inspector General (DIG'S) and not any other person/office.
 10. There is no doubt that the 52nd interested party had knowledge of the Court's declaration in the judgment herein thus, " The Inspector General of the National Police Service is the designated Accounting Officer of the National Police Service by operation of the provisions of *the Constitution*



in Article 245 as read with the functions and duties or roles of the Inspector General provided in the [National Police Service Act](#) and the definition, appointment or designation and responsibilities of Accounting Officer provided in sections 2(1), 67 and 68 of the [Public Finance Management Act](#), 2012 respectively.” And a further declaration in the judgment was “The Inspector-General shall discharge the responsibilities of an Accounting Officer as assisted by the Deputy Inspector General of Kenya Police Service, the Deputy Inspector General of the Administration Police Service, and, the Director of the Criminal Investigations in the discharge of their respective functions as prescribed under the [National Police Service Act](#)”

11. The main issue for determination is whether the 52nd interested party has acted in disobedience of the declarations as was made in the judgement.
12. The Court in the judgment herein reported as Benjamin v Attorney General & 2 others; Lemedeket (Petition as relating to the 1st to 51st interested parties having been determined by the ruling delivered by the Court on 27.04.2023) & 2 others (Interested Parties) (Petition E207 of 2022) [2023] KEELRC 1768 (KLR) (25 July 2023) (Judgment) made elaborate findings that the National Police Service Commission had no constitutional or statutory authority to create, establish, or abolish offices in the National Police Service and that the service is exclusively composed of ranked officers and the notion of civilians in the establishment of the National Police Service was both unconstitutional and unlawful.

13. The Court held as follows:

“ 16. The other relevant statute is the [National Police Service Act](#) cap 84. Section 22(1) of the Act Provides that the Kenya Police Service shall consist of the Ranks set forth in the first schedule and they include: 1. Deputy Inspector-General. 2. Assistant Inspector-General. 3. Senior Superintendent. 4. Superintendent. 5. Assistant Superintendent. 6. Chief Inspector. 7. Inspector. 8. Senior Sergeant. 9. Sergeant 10. Corporal. 11. Constable. Section 22(2) provides that the Cabinet secretary may on the advice of the Commission from time to time, by order published in the Gazette, amend the Schedule. Section 25 of the Act provides that the Administration Police Service shall consist of the Ranks set forth in the Second Schedule and they include: 1. Deputy Inspector-General. 2. Assistant Inspector-General. 3. Senior Superintendent. 4. Superintendent. 5. Assistant Superintendent. 6. Chief Inspector. 7. Inspector. 8. Senior Sergeant. 9. Sergeant. 10. Corporal. 11. Constable. Similarly, the section provides that the Cabinet Secretary may on the advice of the Commission from time to time, by Order published in the Gazette, amend the schedule. Section 33 of the Act provides that the Directorate of Criminal Investigations shall have such number of officers as may be assigned from time to time by the Commission on the recommendation of the Directorate. The Act defines thus, “police officer” means an Administration Police officer or a Kenya Police Officer, and includes officers of the Directorate of Criminal Investigations and reservists. The Court returns that the officers assigned to the Directorate of Criminal Investigations are those drawn from the Ranks of the Kenya Police Service and the Administration Police Service because the law does not prescribe ranks or offices unique to the Directorate. It is important to note that article 243 (2) of [the Constitution](#) provides that the National Police Service shall consist of the Kenya Police Service; and the Administration Police Service. Thus, the Court holds that the Directorate of Criminal Investigations is constituted out



of the officers of the Scheduled Ranks in the Kenya Police Service; and the Administration Police Service.

17. In view of the foregoing, the court returns that the National Police Service exercises its constitutional and statutory mandate strictly over the officers of the National Police Service being the ranked offices duly established under the *National Police Service Act* per the Scheduled Ranks for the Kenya Police Service and the Administration Police Service. The offices or ranks are created or established by the Parliament per the first and second schedules to the Act. The ranks or offices cannot be changed except by the Cabinet Secretary on the advice of the National Police Service Commission from time to time and by order published in the Gazette amending the schedule.
18. The numbers of the officers to hold the ranks in the first and second schedules to the *National Police Service Act* are determined according to provisions of section 4 of the Act on the composition of the National Police Service. The section provides thus: (1) The National Police Service shall consist of such maximum number of officers as shall be determined from time to time by the National Security Council in consultation with the Commission. (2) The Service shall consist of the ranks set out in the first and second schedules. (3) Police officers shall have seniority according to their position as set out in the first and second schedules.
19. It therefore appears to the court and it is the holding that the National Police Service Commission was not vested with the constitutional or statutory authority to create the impugned office of the Principal Administrative Secretary or Accounting Officer, National Police Service (PAS-NPS). Further, the court holds that no office shall exist in the National Police service outside the ranks provided for in the first and second Schedule to the Act.
20. The court has reflected upon the appointment letter dated 09.12.2022 and its reference to National Police Service Civilian Staff. The court returns that *the Constitution* and the *National Police Service Act* do not envisage that there will be such civilian staff within the ranks of the National Police Service because no such civilians are envisaged within the ranks of the National Police Service. The court returns that within the scheduled ranks the National Police Service and the National Police Service Commission are required, in accordance with relevant statutory provisions, to formulate progressive entry character qualifications including academic, professional as well as university, college or technical qualifications, as well as, career growth or promotional progression that enable the service to meet all its human resource needs within its ranked officers. Thus the additional function of the Commission under section 10(1)(a) of the *National Police Service Commission Act* is keep under review all matters relating to standards or qualifications required of members of the service. That is an urgent goal towards the enhanced realization of constitutional objects and functions of Service in article 244 of *the Constitution* namely to:
 - a. strive for the highest standards of professionalism and discipline;



- b. prevent corruption and promote and practice transparency and accountability;
- c. comply with constitutional standards of human rights and fundamental freedoms;
- d. train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and
- e. foster and promote relationships with the broader society.”

14. The Court finds that from the holding of the Court in the judgment herein and as reproduced above, there cannot be civilians in the National Police Service which is purely and properly constituted by the ranked officers of the Kenya Police Service and The Administration Police Service. As was found in the judgment, the notion of civilian staff of the National Police Service is strange and the position of Secretary, Administration/Accounting Officer is strange to the composition of the National Police Service which is composed only of the ranked officers as was elaborated in the judgment in the instant petition.
15. Thus, in the same judgment and as relates to the roles of accounting officer for the National Police Service, the Court in the judgment herein held as follows:

“26. The court has considered the provisions of the *National Police Service Act* and returns that the role of an accounting officer as defined in section 2(1) of the Public Financial Management Act is clearly vested in the Inspector General of the National Police Service as assisted by the Deputy Inspector General of Kenya Police Service, the Deputy Inspector General of the Administration Police Service, and, the Director of the Criminal Investigations -and each of the three being answerable to the Inspector General of Police. Section 67(2) of the *Public Finance Management Act* is clear that except as otherwise stated in other legislation, the person responsible for the administration of a Constitutional Commission or institution or Independent Office shall be the accounting officer responsible for managing the finances of that Commission, institution or Independent Office. The court holds that the person responsible for administration of the National Police Service is the Inspector General of the National Police Service and he is accounting officer of the service by reason of the wide statutory roles as cited earlier in this Judgment. The Inspector General of National Police Service ought therefore be designated by the Cabinet Secretary under the *Public Finance Management Act* as the Accounting Officer – and in event of a vacancy in the office of the Inspector General of the National Police Service or for one reason or other, the Inspector General in not available or able to perform the role of an accounting officer, then the Cabinet Secretary under the *Public Finance Management Act* ought to designate either of the deputies, the Deputy Inspector General of Kenya Police Service, or, the Deputy Inspector General of the Administration Police Service, to perform the role of an Accounting Officer in the Service in event of such intervening period. The Cabinet Secretary assigned by the President to administer the *National Police Service Act* performs the oversight role over



the budgetary issues of the service by approving the estimates and after which approval, the service cannot deviate therefrom.”

16. The work of the National Police Service is invariably extremely important to the Kenya citizens’ and State’s safety and security. It is an extremely sensitive job. It appears to the Court that the persons eligible to join the National Police Service must include persons with various professional and technical qualifications to serve within the ranks of the Service and keeping pace with the highly professional and discipline needs of the Service in the contemporary world of safety and security. It is the view of the Court that the ranking system is crucial for the discipline and professionalism of the Service as is consistent with the findings of the constitutional and statutory design that there be no civilian establishment and non-ranked officers appointed therein. A better reformation would be that there be an entry path of professional and technical cadres into the ranks of the National Police Service and clear career guidelines in that respect. *The Constitution* recognises the professionalism and discipline of the National Police Service when in Article 244 (a) it is provided that the Service shall strive for the highest standards of professionalism and discipline, and, in Article 244 (d) which states that the Service shall train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity.
17. A comparative analysis shows other jurisdictions have embraced the same highest standards of Police Services. For instance, in the US, as the nation’s foremost law enforcement and intelligence agency, the Federal Bureau of Investigation (FBI) mission is to safeguard the US national security, protect the American people, and uphold the U.S. Constitution. In the FBI published “Police Officer Selection System” (POSS) last revised in February 2025, the selection process is most challenging and designed to find only most capable applicants. Eligibility requirements for entry to the FBI include being a U.S. citizen, able to attend and pass the panel interview and POSS written test, able to obtain a Top Secret Sensitive Compartmented Information (SCI) Clearance, selectee will be required to complete the annual Financial Disclosure process, able to pass a U.S. Government Physical Exam, have (or be able to obtain) a valid driver’s license, become proficient in the use of a firearm and various other weapon systems, be a minimum of 21 years of age, and, have successfully completed a full 4-year course of study leading to a bachelor’s degree in any field. Thus, possession of a university bachelor’s degree in any field is a mandatory requirement. The factors which would automatically disqualify job candidates from employment with the FBI include: Non-U.S. citizenship; a felony conviction; a domestic violence conviction; violating the FBI Employment Drug Policy; defaulting on a student loan insured by the U.S. government; failing an FBI-administered urinalysis drug test; failing to register with the Selective Service System (for male applicants only and prescribed exceptions apply); knowingly or willfully engaging in acts or activities designed to overthrow the U.S. government by force; failing to pay court ordered child support; and, failing to file federal, state, or local income tax returns.
18. It may be that police training is delinked from university education like is prevailing in Kenya and such as it also obtains in Australia. In that event, it is the Court’s opinion that a horizontal pathway into the National Police Service and its statutory scheduled ranks becomes useful towards meeting the needs of the Service in various professional disciplines which are necessary for the proper or enhanced delivery of the Service – professional and disciplined as envisaged in *the Constitution*.
19. The Court has said enough to show and offered sufficient opinion on what can be done to achieve the desired outcomes within the existing constitutional and statutory design that the National Police Service is composed only of statutory ranked and scheduled officers of the Kenya Police Service and the Administration Police Service.
20. Turning to the instant contempt application, it appears to the Court that the cited and alleged contemnor holds an office which is not statutorily ranked and scheduled in the *National Police Service*



Act and which was not the impugned office in issue in the judgment herein. It is also apparent that the National Police Service Commission which purports to have established the office, albeit contrary to the findings in the judgment, was not initially a party to the petition and was enjoined (upon its own application) as a 4th respondent for purposes of the contempt application. It appears to the Court that the National Police Service Commission being a party is now properly guided as to the province of its powers and functions in relation to the establishment and abolition of offices in the National Police Service which are by statute scheduled and ranked officers of either the Kenya Police Service or the Administration Police Service. As was held in the judgment herein the ranks or offices cannot be changed except by the Cabinet Secretary on the advice of the National Police Service Commission, from time to time, and, by order published in the Gazette amending the schedule. It therefore appears to the Court that if other ranks are needed for better delivery of the National Police Service, the same ranks should be established by the Cabinet Secretary on the advice of the National Police Service Commission by way of an order in the gazette. Further, it should be possible to establish a horizontal entry of persons with professional or technical competencies as may be necessary to enter the service at appropriate scheduled ranks without distortion of the professionalism, discipline and command structure of the National Police Service.

21. In view of the finding that the office held by the cited person was not one and the same as the impugned office in the judgment herein and considering that the contempt proceedings are in the nature of criminal proceedings determined upon the standard of proof of beyond reasonable doubt, the application will be declined.
22. In particular the Court finds that the declaratory orders as to the accounting officer of the National Police Service were not directed at the 52nd interested party but were in rem, defining terms of who is the proper accounting officer of the service.
23. The applicant is concerned that the 52nd interested party converted from the Principal Administrative Secretary(PAS) into Secretary Administration and Accounting Officer of the Service without showing how the same was advertised and even more importantly the 52nd interested party continued as accounting officer of the National Police Service, essentially continuing the accounting office role from PAS to Secretary Administration (in effort to defeat wheels of Justice).The petitioner urges the same to have been crafty in an effort to disobey court order. The Court considers that the new office and the surrounding roles of accounting officer are a new cause of action and the pressed contempt against the 52nd interested party is vitiated by the fact that it was not by action or omission of the 52nd interested party that she emplaced herself in the new position or role of accounting officer.
24. It appears to the Court that the primary duty bearers in the alleged contempt would be the authorities that created the new position, appointed the 52nd interested party therein, and then designated the 52nd interested party as an accounting officer.
25. The applicant prayed for modification of his prayers or grant of such other orders as will meet justice and benefit Kenyans generally. In that consideration, clarifications as found and set out in this ruling should meet the ends of justice towards achieving compliance with the statutory and constitutional design as found herein and in lieu of the court imposing an immediate punishment against the cited person. The Court considers that the primary purpose of contempt proceedings is to uphold the authority of the Court and to achieve compliance with the Court orders. There appears to be mistaken actions surrounding the alleged contempt in the instant application and thus, the clarification in lieu of imposition of a punishment should meet the ends of justice.
26. The litigation was in the public interest and each party will bear own costs of the application.



27. While making the findings, the Court further returns that whether the 4th respondent, the National Police Service Commission, was in contempt of court in view of the judgment herein is not an issue in the application as it does not arise for determination in the instant ruling.
28. Further, the Court has considered that in urging that the 4th respondent can employ civilians within the National Police Service, the 4th respondent cited section 124 of the *National Police Service Act* which provides that the Commission may make regulations including those for employing of civilian staff within the Service. The Court considers the issue to go beyond the instant application and does not fall for determination together with related considerations about whether such staff would be part of the Service and the constitutional or statutory domicile of the power for establishment and abolition of offices to be filled by such civilian staff. The issue amounts to a new cause of action, all together, and the Court refrains from delving any further. Nevertheless, the Court has already found that the National Police Service is composed only of the statutorily scheduled ranks. There exist no establishment of non-ranked and scheduled officers or staff of the National Police Service. Accordingly, the power of the Commission to make regulations “....for employing of civilian staff within the Service....” may only be construed by the Court to mean regulations for advertisement, application, recruitment, selection, interview, qualifications, and, disqualifications applicable to civilians who wish to join the National Police Service such as at the entry points in the current recruitment processes or even entry into the service of civilians in possession of requisite professional or technical qualifications and at horizontal entries to the appropriate scheduled ranks, as may be appropriate, in recruitment and selection systems established in accordance with *the Constitution*, the *National Police Service Act*, and, the *National Police Service Commission Act*. In taking that view, the Court has considered that there appears to exist no constitutional or statutory powers to create, establish or abolish offices known as “civilian” offices in the establishment of the National Police Service so that regulations with respect to such non-existing offices and which conceivably cannot be brought into existence would ab initio be moribund or vestigial regulations.
29. It was also submitted for the 52nd interested party that section 2 of the *National Police Service Act* defines “members of the Service” to include civilian members of the Service. The submission appears to be a new line of submission constituting a new cause of action especially as weighed against the express constitutional provision on the composition of the National Police Service. The Court refrains from delving into the issue especially that it is said for the respondents and the 52nd interested party that the issues are subject of the appeal against the Court’s judgment herein.

In conclusion, the application for contempt dated 22.05.2025 is hereby determined with orders:

1. The declaration that parties to the application are bound and accordingly guided by the clarifications and findings in this ruling.
2. Each party to bear own costs of the application.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 17TH JULY, 2025.

**BYRAM ONGAYA,
PRINCIPAL JUDGE**

