



**Rotich & 2 others (Riverside Westend Neighbourhood Association, Westlands) v Director of Trade Licensing, Nairobi City County Government & 2 others; Maina & another t/a Ibury Lounge (Contemnor) (Environment and Land Constitutional Petition E017 of 2024) [2024] KEELC 5642 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5642 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E017 OF 2024**

**AA OMOLLO, J**

**JULY 25, 2024**

**REPUBLIC OF KENYA IN THE ENVIRONMENT AND LAND COURT AT NAIROBI ELC CONSTITUTIONAL PETITION NUMBER E017 OF 2024**

**IN THE MATTER OF ARTICLES 3(1), 10, 20, 21, 22(1), 23, 28, 42, 47(1), 53(2), 55(D), 57, 70, 162, 258 & 259 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF SECTION 139(3) OF THE ENVIRONMENT AND LAND COURT ACT, CAP (8)**

**AND**

**IN THE MATTER OF SECTION 3(3) OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT CAP, 387**

**AND**

**IN THE MATTER OF THE PHYSICAL PLANNING AND LAND USE ACT CAP, 303**

**AND**

**IN THE MATTER OF THE ALCOHOLIC DRINKS CONTROL ACT CAP 121 AND IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 28, 42, 47, 53(2) & 57 OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**BILL KIPSANG ROTICH, FERDINAND BOLAY, DIPAK KUMAR GHOSH (RIVERSIDE WESTEND NEIGHBOURHOOD ASSOCIATION, WESTLANDS) ..... PETITIONER**

**AND**



**DIRECTOR OF TRADE LICENSING, NAIROBI CITY COUNTY  
GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**WESTLANDS SUB-COUNTY ALCOHOLIC DRINKS CONTROL AND  
LICENSING COMMITTEE OF THE NAIROBI CITY COUNTY  
GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**IBURY LOUNGE ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**ERIC NG'ANG'A MAINA & JOHN KIMANZI MUSYOKA T/A IBURY  
LOUNGE ..... CONTEMNOR**

### **RULING**

1. There are two applications coming up for discourse in this ruling. One, is the contempt application contained in the Notice of Motion dated 6<sup>th</sup> June, 2024 and filed on even date and the second being the Preliminary Objection dated 11<sup>th</sup> June, 2024.

#### **Contempt of Court Application**

2. The Applicants vide an application dated 17<sup>th</sup> May, 2024 sought among others, an order for a temporary conservatory order directing the 3<sup>rd</sup> Respondent whether by themselves, agents, nominees or any person whosoever to cease operations of club, bar, alcohol dispensing, disco and or any music playing at its establishment trading as iBury Lounge or howsoever registered at its site along Sri Aurobindo Road, in Lavington Nairobi next to the residences of the members of the Petitioners pending hearing and determination of this application.
3. The said application was placed before Lady Justice J.A Mogeni on the 29<sup>th</sup> of May, 2024 who certified the application as urgent and allowed the above prayer and the same was to be served by the Respondent and for the inter partes hearing set for on the 10<sup>th</sup> of June, 2024.
4. The contempt application is brought under section 5 of the *Judicature Act* CAP 8 Laws of Kenya, section 3A of the *Civil Procedure Act*, CAP 21 Laws of Kenya & Rule 81.10 of the Civil Procedure (Amendment No. 2), Rules, 2015 of the Supreme Court of England. The Applicants sought for ORDERS that:
  - a. That summons be and are hereby issued for personal attendances of Eric Ng'ang'a and John Kimanzi Musyoka, the registered proprietors of the 3<sup>rd</sup> Respondent, iBury Lounge, to personally appear before the Honourable Court for hearing of the present application for contempt for disobedience of orders of this Honourable Court as issued on 29<sup>th</sup> May, 2024, and the said persons to continue personally attending Court on all occasions that the application shall be heard until determination;
  - b. That Eric Ng'ang'a Maina and John Kimanzi Musyoka, the registered proprietors of the 3<sup>rd</sup> Respondent, iBury Lounge, the cited Contemnors herein do stand committed to civil jail for a period that this Honourable Court shall determine for contempt of court, for knowingly and willfully violating and disobeying the orders of this Honourable Court issued on 29<sup>th</sup> May, 2024;



- c. That an order for sequestration of the personal property of Eric Ng'ang'a Maina and John Kimanzi Musyoka, the registered proprietors of the 3<sup>rd</sup> Respondent, iBury Lounge, be and is hereby issued for contempt of court, in that being aware of the orders of this Honourable Court as issued 29<sup>th</sup> May, 2024 knowingly and willfully violated and/or disobeyed and/or disregarded and/or thwarted and undermined the effect an purpose of the said order and or knowingly and willfully failed to take reasonable steps to ensure that the said orders were obeyed;
  - d. That the costs of and occasioned by this application be paid by the cited contemnor on indemnity basis.
5. They relied on the grounds listed in the application and the depositions in the supporting affidavit sworn on the 6<sup>th</sup> of June, 2024 and the supplementary affidavit sworn on the 19<sup>th</sup> of June, 2024 both deponed by Bill Kipsang Rotich. Mr. Rotich deposes that despite serving the Court order dated 29<sup>th</sup> May, 2024 on the alleged Contemnors, they flagrantly disobeyed the same and continued to carry out the operations of the bar and club selling and dispensing alcohol and playing loud disco music with impunity. That the present application is integral to protecting the fundamental rights of the members of the Applicants, including children and elderly persons. That the alleged Contemnors are still advertising future parties to be held at their premises as well as posting on social media content of parties held to encourage new revellers to attend despite the court order. He urged this Court to grant orders sought.
  6. In response to the application, John Musyoka Kimanzi swore a Replying Affidavit dated 16<sup>th</sup> of July, 2024. While quoting Article 50(2) of *the Constitution*, he stated that this Court had a duty to meticulously evaluate the veracity of the evidence presented by parties and as such the alleged disobedience of the court orders ought to be critically evaluated to establish the probative value of that material. That the Applicants ought to have set out with a reasonable degree of precision the orders that they complain were disobeyed and the manner in which they are alleged to have been disobeyed that the annexures to the affidavits do not attain the threshold of proving a prima facie case. He urged the Court to dismiss the application for contempt because it is predicated upon conjecture which does not form any valid foundation to sustain an application of contempt.

### **Preliminary Objection**

7. The alleged Contemnors objected to the contempt application on the following grounds:
  - a. That this Honourable Court is divested of jurisdiction, at first instance to seize and determine these applications and petition by reason that there are other forums; created by statute that have been procedurally laid down to provide dispute resolution mechanisms before resorting to the Courts;
  - b. That in approaching this Honourable Court as the first port of call, the Petitioner herein has failed to adhere and attend to the salutary principle of the exhaustion doctrine;
  - c. That in this regard, section 76 of the *Physical and Land Use Planning Act* creates the County Physical and Land Use Planning Liaison Committee which under section 78 is mandated to hear and determine complaints and claims made in respect to applications submitted to the planning authority to the County;



- d. That section 8 of the *Alcoholic Drinks Control Act* establishes a District Committee which at section 8(5) makes provision for the committee to seize and determine any objections raised against any application, inter alia, for the sale of alcoholic drinks;
- e. That section 31 of the Environmental Management & Coordination Act provides for the establishment of a National Environmental Complaints Committee which at section 32(a) is empowered and clothed with authority to investigate any allegations and complaints against any person in relation to the environment in Kenya;
- f. That additionally under section 125 of the Environmental Management & Coordination Act provision is made for the establishment of a National Environment Tribunal to attend to appeals and/or matters referred to it by the Authority;
- g. That accordingly, it is apparent that there are established various forums that are mandated and authorized to seize and determine each and every grievance and/or dispute that the Petitioner alleges through the impugned Petition;
- h. That contrary to the principle of constitutional avoidance the Petitioner herein purports, through the impugned petition, to have issues of alleged irregular alcoholic licensing and/or sale, county planning, environmental and noise pollution considered on Constitutional grounds when they can be sufficiently determined by and under the various audiences and forums created by Parliament under the statutes demonstrated hereinabove;
  - i. That it is imperative, for the realization of the spirit and letter of Article 159 of *the Constitution* of Kenya, 2010, this Honourable Court doth be pleased to discern and emphasize on the gravitas of the statutory remedies laid down; thereby, upholding the exhaustion doctrine.

## Submissions

8. Both applications were canvassed by written submissions. The Applicants' submissions are dated 14<sup>th</sup> June 2024 and they began by acknowledging that the Contempt Act was declared unconstitutional in the case of Kenya Human Rights Commission v Attorney General & Another [2018] EKLK. The Applicants' submitted that the Court Order dated 29<sup>th</sup> May, 2023 were physically served on the alleged contemnors as evidenced by the affidavit of service sworn on the 31<sup>st</sup> of May, 2024 where the Deponent confirmed that the orders were served upon the 3<sup>rd</sup> Respondent's manager, Mr. Anthony Wachira, who accepted service on behalf of the said Respondent.
9. The first issue that the Applicants submitted on was whether there was a court order in place and their answer was in the affirmative. They submit that the Court Order dated 29<sup>th</sup> May, 2024 is valid and it is still available and accessible via the e-filing system. On whether the order was brought to the Contemnor's attention the Applicant confirmed that service had actually been effected on the manager who signed receipt of the same.
10. On whether there was a deliberate disobedience of the court order, the Applicant submitted that despite the Court's orders to protect the Applicant from the continued violation of its fundamental right to a clean and healthy environment, the Respondent did not cease its operations. The Applicant



explained that the 3<sup>rd</sup> Respondent is a club/restaurant situated in the heart of a residential area and it continues to impose its agenda on the residents by playing loud music far beyond reasonable decibels, from dusk to dawn. They relied on the case of *MNN v JMM* [2022] EKLR where the Court held thus:

“Before a finding of contempt can be made, there must be a demonstration of willful and deliberate disobedience of a court order.

In light of the gravity of the personal consequences that would ordinarily flow from a finding of contempt, the law requires proof that the order in question was brought to the attention of the alleged contemnor as proof that he/she had personal knowledge of the said order...”

11. On the issue of this Court’s jurisdiction, the Applicant relied on the case of *Amani Residents’ Association/mirema v Mark Senetu T/a Cocorico Wines & others*[2024] EKLR and submitted that this Court is clothed with the requisite jurisdiction to enforce the rights that have been violated in the present petition and to provide any other reliefs. The Applicant urged this Court to allow the application and grant the orders sought with costs.
12. The alleged Contemnors’ Submissions are dated 9<sup>th</sup> July, 2024. After reiterating the background of the application and the preliminary objection, they submitted on two issues for determination: the first issue was the gravitas and requisite veracity of evidentiary material to prove contempt and the second being jurisdiction vis-à-vis the doctrine of exhaustion.
13. The alleged Contemnors relied on the case of *Mutitika v Baharini Farm Limited*[1985] KLR 229, 234 where the Court of Appeal stated that the burden of proof in contempt proceedings was higher than the proof of balance of probabilities. They submitted that for the Applicant to be successful, it must prove and demonstrate willful and deliberate disobedience of the court order that the guilt has to be proved with strictness of proof as is consistent with the allegation or charge. That the Applicant ought to have produced a payment receipt depicting continued dispensation of alcoholic drinks and then report the same to National Environmental Management Authority. They submitted further that the Applicant had not specified the date and period of the alleged violations and all these led to the conclusion that the Applicant had failed to adduce sufficient evidentiary material to prove contempt.
14. On the issue of jurisdiction, the alleged Contemnors submitted that this Court lacked the requisite jurisdiction to seize and determine the matter at first instance by reason that there are alternative dispute resolution mechanism provided under the *Physical and Land Use Planning Act, Alcoholic Drinks Control Act* and the Environmental Management & Coordination Act. They relied on the case of *Geofrey Muthiga Kabiru v Samuel Munga Henry & 1756 Others* [2015] EKLR where the Court stated that it was imperative that where a dispute resolution mechanism exists outside the Courts, the same be exhausted before the jurisdiction of the Court is invoked. That the doctrine of exhaustion serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in protection of their own interest within mechanisms in place for resolution outside the Court.

### **Analysis And Determination**

15. The jurisdiction of this Court has been called into question kickstarting this analysis because without it, this Court can take no further step. The Supreme Court In *The Matter Of Interim Independent Electoral Commission* [2011] eKLR, Constitutional Application No. 2 Of 2011 held that jurisdiction of



courts in Kenya is regulated by *the Constitution*, statute, and principles laid out in judicial precedent. At paragraph 30 of its decision, the Court held in part as follows:

“...a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of Legislation is clear and there is no ambiguity.”

16. *The Constitution* at Article 162(2)(b) denotes the jurisdiction of this Court and provides that this Court shall have jurisdiction over disputes relating to the environment, the use and occupation of, and title to land. In addition, Section 13 of the *Environment and Land Court Act* expounds on the jurisdiction of this Court as follows:

- “(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—
- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - (b) ....;
  - (c) ....;
  - (d) ...; and
  - (e) any other dispute relating to environment and land.”

17. Section 13 (3) of the *Environment and Land Court Act* provides thus:

“(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of *the Constitution*. (emphasis added)”

18. The alleged Contemnors’ argument is that the dispute between the parties should have first been presented to following bodies; the County Physical Planning and Land Use Committee, the District Committee established under section 8 of the *Alcoholic Drinks Control Act*, the National Environmental Complaints Committee and the National Environment Tribunal. The Petitioner’s have alleged the infringement of rights and freedoms under the Bill of Rights in particular Article 42 of *the Constitution* on the right to a clean and healthy environment. They have submitted extensively on the doctrine of exhaustion.

19. The underpinnings of doctrine cannot be ignored, however there are exceptions to the doctrine. The Court in the case of *William Odhiambo Ramogi & 3 Others v A. G & 4 Others* [2020] eKLR dealt extensively with the exceptions and stated thus

“9. However, our case law has developed a number of exceptions to the doctrine of exhaustion. In *R. v Independent Electoral and Boundaries Commission (I.E.B.C.) & Others*



ex parte The National Super Alliance Kenya (NASA) (supra), after exhaustively reviewing Kenya's decisional law on the exhaustion doctrine, the High Court described the first exception thus:

What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the Shikara Limited Case (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in *the Constitution* or law and permit the suit to proceed before it. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. See also *Moffat Kamau and 9 Others vs Aelous (K) Ltd and 9 Others.*)

60. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in *the Constitution* or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.

61. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics [1972] Ltd v Nairobi County Government & 2 others [2018] eKLR.*

62. In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere “bootstraps” or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court. (emphasis added)

20. In this case, the contemnors have listed 4 bodies that the Applicants were required to present their claims before. This means that the alternative dispute resolution mechanism would not be timely efficacious and would be expensive. The exhaustion requirement would not serve the values enshrined in *the Constitution* and or justice where what can be addressed by this court as one cause of action has to go to different bodies in the name of honoring the principle of exhaustion. Article 159 (2)(b) of *the Constitution* requires that justice shall not be delayed.
21. Further, the petition raises the question of infringement of fundamental rights and freedoms which rights can only be determined by this Court as it retains original jurisdiction to handle the petition. The committees and Tribunals suggested by the alleged Contemnors are not clothed with jurisdiction to handle questions of violations of rights and fundamental freedoms as enshrined in article 23 of *the Constitution*.



22. On whether contempt orders should be issued, it is prudent that litigants understand that Court orders are not made in vain or in a vacuum and a party against whom the order is directed must obey it. (See Kyoga Hauliers Limited v Long Distance Truck Drivers & Allied Workers Union[2015] EKLR).
23. The nature of contempt of court was described in Stewart Robertson v Her Majesty's Advocate[2007] HCAC 63 as follows,
- “Contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.”
24. The Court also set out the standard of proof required to find an alleged contemnor guilty of contempt of court and the rationale of laying down the standard as follows:
- “[28]... We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of Court is well established. In the case of Mutitika v Baharini Farm Limited [1985] KLR 229, 234 the Court of Appeal held that:
- “In our view, the standard of proof in contempt proceedings must be higher than proof on the 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.”
- [29] 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. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a 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 willfully acted in a manner that flouted the Court Order.
- [30] The question that begs an answer, thus, is: did the applicant willfully disobey this Court's Orders?”
25. One must therefore prove that an alleged contemnor had knowledge of the order and then willfully disobeyed the order. This means that the order should have been served upon the alleged contemnor and an Applicant proved that service was actually done (see Nyamogo & Another v Kenya Posts And Telecommunications Corporation[1994] KLR 141)). However, Courts have since held that an Applicant is only required to prove awareness of the order by the alleged contemnor and that personal service of the order upon the contemnor is no longer a mandatory requirement. (see Kenya Tea Growers Association v Francis Atwoli & Others[2012] EKLR).
26. The Affidavit of Service sworn by Monica N. Werimo on the 31<sup>st</sup> of May, 2024, marked as BKR-3 was annexed to the Applicant's supporting affidavit as proof that service of the court order was done. At paragraph 2, she depones that on the 30<sup>th</sup> of May, 2024 she personally visited the 3<sup>rd</sup> Respondent's offices and served the Court order on Anthony Wachira who confirmed that he was authorized to receive legal documents on behalf of the 3<sup>rd</sup> Respondent and proceeded to acknowledge receipt. The alleged Contemnors have not denied that they were served with the Court Orders.



27. This court issued interim orders on the 29<sup>th</sup> of May, 2024 as follows:

“This Matter coming up on 29<sup>th</sup> May, 2024 for directions on the Notice of Motion dated 17<sup>th</sup> May, 2024 before Honourable Justice Mogeni. J. UPON considering the same;

It is Hereby Ordered:

1. That the Application be and is hereby certified urgent and should be served by 03.06.2024;
2. That the response be filed and served by 07.06.2024;
3. That meanwhile I will grant prayer 2 in the interim to be observed by the Respondent only until the next date when the parties appear in Court for inter partes hearing;
4. That the parties to attend court on 10.06.2024 for inter partes hearing.

28. The specifics of that prayer 2 as contained in the application dated 17.5.2024 were:

“That there be and is hereby issued a temporary conservatory order directing the 3<sup>rd</sup> Respondent whether by themselves, agents, nominees or any person whosoever to cease operations of club, bar, alcohol dispensing, disco and or any music playing at its establishment trading as iBury Lounge or howsoever registered at its site along Sri Aurobindo Road, in Lavington Nairobi next to the residences of the members of the Petitioners pending hearing and determination of this application.”

29. The thrust of the Applicant’s case is that despite the alleged contemnors being aware of the existence of the court order issued suspending the operations of the 3<sup>rd</sup> Respondent pending the hearing and determination of the application, the doors of the 3<sup>rd</sup> Respondent are still open to revellers. Have the Applicants proved beyond a balance of probabilities that the alleged contemnors are operating contrary to the court order and therefore guilty of contempt of court?

30. In their endeavor to prove the disobedience, the applicants pleaded thus in paragraph 6 of Mr. Rotich’s affidavit sworn on 6<sup>th</sup> June, 2024 in support of the application;

“Despite service as aforesaid and despite knowledge of existence of the court order aforesaid, the 3<sup>rd</sup> Respondent, and indeed the contemnors being the proprietors, in flagrant disobedience and contempt of court order continue to carry out its operations of the bar and club; selling and dispensing alcohol and playing loud disco music, with impunity. Now produced and marked as annexure BKR -4 is the search from the Registrar of companies.”

31. The order complained to have been disobeyed did not direct for the cancellation of the certificate of registration annexed by the Applicants. The certificate perse does not evident operation of bar & club; selling of alcohol and or playing loud music. In my opinion and I so hold, the certificate only demonstrates the nexus between the 3<sup>rd</sup> Respondent and the persons now sued as alleged contemnors. The order issued was specific and the Applicants were under a duty in law (by virtue of section 107 of *Evidence Act*) to demonstrate the activities the alleged contemnors were actually carrying out that amount to willful disobedience.

32. The applicants filed supplementary affidavit which have annexed printouts from the social online sights of the 3<sup>rd</sup> Respondent. The deponent stated that he downloaded these pictures on the 19<sup>th</sup> June, 2024.



The first part of annexure BKR -2 shows as a picture with an advert reading, “ultimate Karaoke Tuesday live with Emmy Jouner 20<sup>th</sup> June, Tuesday.” The remainder of the photos are unidentified people with some writings below it, “ibury lounge thirsty Thursday..., ibury lounge living for the nights we won’t remember...”

33. While the write-ups refer to the 3<sup>rd</sup> Respondent, no recordings of 20<sup>th</sup> June, 2024 or any other day post the issuance of the order was produced to show that what took place on these dates were at the impugned premises, that music was played and alcohol sold. The impugned premises are within the neighbourhood of the Respondent and they could have easily taken live pictures instead of relying on what is posted on social media. They could have also engaged an expert to write a report on what the 3<sup>rd</sup> Respondent has done contrary to the orders in place.
34. As already pointed out by the case law cited by the parties, the standard of proof for contempt must be high as by its very nature it touches on the liberty of the persons accused. In this instance, I find the Applicants have not met the said threshold on proving how the alleged contemnors disobeyed the court order. The affidavits sworn in support border on statements without corroboration of documentary evidence. Therefore, I find no merit in the motion and proceed to dismiss it with costs.
35. In conclusion, I dismiss both the preliminary objection June 11, 2024 and the notice of motion dated June 6, 2024 for lack of merit. Costs of both ordered in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY, 2024.**

**A. OMOLLO**

**JUDGE**

