



Okechi & 4 others v Seeds of Peace Africa International [SOPA] & another (Cause E592 of 2021) [2023] KEELRC 2248 (KLR) (21 September 2023) (Ruling)

Neutral citation: [2023] KEELRC 2248 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E592 OF 2021
K OCHARO, J
SEPTEMBER 21, 2023**

BETWEEN

**NAOMI ACHIENG OKECHI 1ST CLAIMANT
KEVIN PASKARI 2ND CLAIMANT
JUDITH RAGUMBI 3RD CLAIMANT
HELLEN BOSIBORI 4TH CLAIMANT
NERNADETTE ONYANGO 5TH CLAIMANT**

AND

**SEEDS OF PEACE AFRICA INTERNATIONAL [SOPA] 1ST RESPONDENT
DR AMBROSE DO ONGWEN 2ND RESPONDENT**

RULING

Introduction

1. Through an application dated April 21, 2022, the 1st and 2nd claimants/applicants seek the following orders;
 - a. Spent
 - b. That leave be and is hereby granted to the 1st and 2nd claimants/applicants to institute contempt proceedings and committal to civil jail for six [6] months or such other punishment as the court may deem fit for contempt of this honourable court's order made on July 27, 2021 against the 2nd respondent Dr D.O Ogwen.



- c. That the 2nd respondent Dr Ambrose D.O Ogwen be and hereby cited for contempt of court and sent to civil jail for a period of six [6] months or such other period as the honourable court may deem fit and just to grant.
 - d. That the court does direct the ABSA Bank Hurlingham Branch Manager to debit from the 1st respondent account No 0xxxxx0 and pay to 1st and 2nd applicants the sum of Kshs 1, 350, 000 and Kshs 675,000 or part thereof respectively.
 - e. That the Inspector General of police or his authorized agents assist in the execution of the honourable court's orders.
 - f. That alternatively, the respondent be directed to settle the 1st and 2nd claimants salaries for the remainder of their contract terms and compensation for damages for unfair loss of employment for an amicable mutual separation in lieu of reinstatement.
 - g. That the cost of the application be paid by the respondents in any event.
2. The application is premised upon the grounds obtaining on the face of the application, and the supporting affidavit that was sworn by the 1st claimant/applicant on the April 21, 2022.
 3. The application is duly opposed by the respondents through the answering affidavits that were sworn by, James Odhiambo, a member of the 1st respondent's Board, Hellen Bosibori, the 4th claimant, and Judith Alouch Ragumbi, the 3rd claimant. The 1st claimant/applicant filed a detailed further affidavit in rejoinder to the answering affidavit by James Odhiambo.
 4. This court gave directions that the application be canvassed by way of written submissions, and timelines for them to file the same. The directions were complied with, and the parties' respective submissions are on record.

The Application

5. The applicants state that through their application dated July 26, 2021, which was presented before this court under certificate of urgency, they and the other claimants sought orders staying the implementation of the respondents' suspension letters dated July 22, 2021 addressed to them together with the notice of restriction of access to the 1st respondent's offices of the same date.
6. They further state that the orders were issued on the July 27, 2021, and the claimants' suspension and purported closure of their offices were stayed. The 2nd respondent was duly served with the order on the July 27, 2021. The order wasn't complied with.
7. The claimants were forced to file another application on the July 30, 2021, seeking that the Officer Commanding Police Station Kilimani provide security for them to access their offices. The court granted the application on the August 19, 2021. The order was not complied with too.
8. To date the respondents and more specifically the 2nd respondent [the chairman of the 1st respondent] continue to be in disobedience of the court orders. They went further to withhold the 1st and 2nd claimant's/applicants' salaries.
9. The applicants state that whereas the respondents reinstated the 3rd, 4th, and 5th claimants to their positions, all of them being junior staff, the respondents discriminated against the 1st and 2nd claimants/ applicants by failing to reinstate them, ostensibly to punish them for having spearheaded the institution of the suit herein.



10. Despite the court's orders, the respondents continue to withhold the applicant's salaries, an act, which amounts to discrimination and unfair labour practice and has subjected them to untold suffering. The cumulative salaries withheld from the 1st and 2nd applicants are to the tune of Kshs 1,350,000 and Kshs 675,000, respectively.
11. The applicants state that their contracts of employment were to terminate by effluxion of time on June 30, 2022, and October 23, 2022, respectively, hence their prayer that they be compensated for the period that was remaining of their contractual terms; paid their withheld salaries; and compensated for unfair termination.
12. They argue that the continued disobedience of the court order by the 2nd respondent is of grave impunity and hurts the dignity of this court.

The Response

13. The respondents through the affidavit of James Odhiambo contend that the present application is devoid of merit, an abuse of the court process, and incompetent to attract the orders sought, as contrary to the allegations by the applicants, it isn't true that the orders of this court have not been complied with and or attempts to comply with the same not made.
14. The instant application has been filed in bad faith, only aimed at defeating an internal audit that the 1st respondent's Board Commissioned to unearth the extent of misappropriation of its funds by the 1st and 2nd claimants.
15. The respondents assert that after the court order [the subject matter of the present application] was served on them, they allowed the applicants to access their offices. This can be confirmed from the 1st claimant's/applicant's own email dated August 23, 2021.
16. It was further stated that upon accessing the offices, the 1st and 2nd claimants/applicants refused to cooperate with the auditor and stole from the office the two laptops, accounts/financial documents, and office CPU to frustrate the audit process. While so doing, the 1st claimant resorted to blackmailing and falsely accusing the 2nd respondent of having stolen the said items.
17. The 1st respondent asserts that the 2nd claimant has since confirmed through a WhatsApp message that the CPU in issue, is in the custody of the 1st claimant and that she stole the same from its premises to frustrate the auditing process.
18. The respondent contends that the 2nd claimant refused to resume work insisting that he will not enter into any agreement with the 1st respondent until one Jane Tournee a donor to the organization is present. The demand is unreasonable as the said Tourene is only a donor and not an official and or employee of the organization.
19. Further, in a move that is malicious and not in the best interest of the 1st respondent, the 1st claimant, without the approval of the 1st respondent through her personal e-mail wrote to several donors and or partners advising them to withhold funding to the 1st respondent thus crippling and or frustrating its financial activities/transactions. It is therefore hypocritical for the claimants to claim withheld salaries yet they are the very persons responsible for grounding the organization's financial capabilities.
20. Without the 1st respondent's board consent or approval, the 1st claimant in collusion with certain DCI officers instituted criminal proceedings against the 2nd respondent - MCCR/E1217/20- Republic v Ambrose Otieno Ong'wen, on its behalf.



21. The respondent allege that the 1st and 2nd claimants/applicants did not seek the consent of the 3rd and 4th claimants to institute the instant suit against the respondents thus attempting to soil the relationship between the latter two and the 1st respondent, their employer.
22. That the respondents have not disobeyed and or refused to comply with the orders of this court, however, it is faced with the difficult situation of balancing between the general interest of the organization and the interest of the claimants who have turned rogue and are hell-bent on frustrating the activities of the 1st respondent.
23. The respondents urge the court not to allow the application as sought but to direct the claimants to appear before the board of the organization for placement.
24. It is further stated that the 2nd respondent has not refused to comply with the court's orders and it will not be in the interest of justice to punish him concerning resolutions made by the board of the organization. His actions have always been in good faith and for the betterment of the organization and its employees.
25. Through her affidavit the 4th claimant asserts that at no time before and after the filing of the suit herein did she and the 3rd respondent instruct the firm of M/s Koceyo & Company Advocates to act on their behalf. She was dragged into this matter without her consent.
26. Here instructions to counsel to withdraw her name from the proceedings herein were not heeded, this prompted her to instruct the respondent's advocates to file a notice of withdrawal of the suit under protest.
27. The 4th claimant confirms that after the court's order was issued, all claimants were ordered to report back to their stations.
28. In support of the respondents' response, the 3rd claimant states that after the court order, the subject matter herein, she was allowed to resume her work, and that to the best of his knowledge, the respondents have not failed to honour the order.

Rejoinder by The Applicants

29. The applicants contend that the deponent of the answering affidavit, James Odhiambo was not official of the 1st respondent's when they were being suspended from employment. He cannot therefore purport to swear on some matters such as those in paragraphs 2-4 of his affidavit. According to the records held by the Registrar of Non-Governmental Organizations, the officials were the 2nd respondent- Ambrose Otieno Ong'wen, Joan Adhiambo Owaka, and Wilfrida Akinyi Otieno It is surprising to them that the minutes of May 2, 2022 which have come to their attention reflect different people as officials.
30. Contrary to the respondents' assertion, they have totally frustrated the applicants' attempts to resume office as per the court order. The intervention by the police didn't help.
31. The applicants state that contrary to the allegations by the respondents, the respondents particularly the 2nd respondent intentionally refused to settle the applicants' salaries as from July 2021 despite the fact that several donors have in fact donated lump sums to the organization. For instance, in or about March 2022 the 1st respondent received Kshs 12,000,000 from the Ministry of Devolution on the basis that they were settling the applicants' salaries.



32. The applicants further state that they were at all material times willing and offered to appear before the 1st respondent and testify against the unlawful suspension by the 2nd respondent. It is unfortunate that the said respondent reinstated the other claimants without consideration to them [applicants].
33. It is stated further that the suit herein was filed with the knowledge and consent of the 3rd and 4th claimants. It is not surprising that they have changed hearts only after being reinstated. It is surprising that they never showed any interest in withdrawing the matter until after the reinstatement.
34. The applicants deny the alleged instances of sabotage to the audit process and or destabilization of the Finance System.

The Claimants/Applicants' Submissions

35. The applicants identify one broad issue for determination in the present application, thus, whether the 1st and 2nd claimants/ applicants are entitled to reliefs sought.
36. The applicants submit that the respondents have subjected them to untold suffering by withholding their salaries. The respondents by their conduct are guilty of discrimination and unfair labour practices.
37. It was further submitted that the applicant's prayer that this court gives direction that the 1st respondent does compensate them for the period that was remaining of their contractual terms, pay them the withheld salaries and compensate them for unfair loss of employment is informed by the fact that the 1st and 2nd claimant's/applicant's contracts were to by effluxion of time come to an end on the June 30, 2022 and October 23, 2022, respectively.
38. The respondents' conduct of withholding their salaries and denying them access to their offices to date, amounts to an infringement on their inherent right to dignity and fair labour practice. To buttress this point, Reliance is placed on the decision in *Violate Wanjiru Kanyiri v Kuku Foods Limited* [2020] eKLR.
39. The applicants urge this court to on strength of the stated decision, grant the order and direction to the bank manager of the bank mentioned in the application, to debit the 1st respondent's account and pay them the withheld salaries.
40. The applicants argue that from the material placed before this court, it is clear that the 2nd respondent is guilty of contempt of the court order, the subject matter of the instant application. He should therefore be found guilty and be committed to civil Jail for a period of six months. This will aid maintenance of the dignity of the court and safeguard the rule of law. To bolster this submission, the decision in *Teachers Service Commission v KNUT & 2 others* [2013] eKLR, was cited.

The Respondents' Submissions

41. In their submissions the respondents posit the question of whether the application is merited, as one that needs to be answered in disposing of the application.
42. The court needs to consider whether the applicants have proved willful disobedience of the orders of this court; whether there has been an abuse of the court process; and whether the applicants are entitled to the order for payment of the alleged withheld salaries.
43. It is submitted that in an application for contempt orders, the applicant must prove that there was willful disobedience of the court order[s] and that the contemnors acted in bad faith. The absence of proof will render the application unmerited. This point was elaborately put forth in the case of *Mengich t/a Mengich & Co Advocates & another v Joseph Mabwai & 10 others* [2018] eKLR.



44. The respondents argue that when the circumstances revolving around this matter are put to scale against the parties' conduct, there is no cogent proof that the respondents deliberately disobeyed the orders of this court or acted in bad faith. Instead, there is clear evidence that it is the applicants who are unjustifiably on a war path with the employer and the 2nd respondent. Their actions have not only crippled the 1st respondent organization financially but have negatively affected the orders issued by this court.
45. The respondents while admitting that this court ordered the reinstatement of the applicants back to their employment positions, the latter having been allowed to resume work, immediately engaged themselves in a conduct[s] that was detrimental to the wellbeing of the former. Resumption of duty without a constructive meeting with the respondents, especially the 1st respondent's board, will expose the organization to grave risk.
46. It is further submitted that the order issued on July 27, 2021 ought to be complied with in a constructive manner and procedurally as per the provisions of sections 12 through to 14 of the [Employment Act](#), to avoid any prejudice being suffered by either party. Terms of settlement and or agreement between them ought to be formulated. Unfortunately, the 1st and 2nd claimants have fermented unwelcome hostility rendering it impossible for both parties to have sobriety in addressing the issue between them. Further, in the circumstances of this matter, it is clear that the 1st and 2nd claimants have not approached this court properly and honestly. They have abused the process of the court. To buttress this point, counsel for the respondents puts reliance on the holding in the case of [Satya Bhama Gandhi v Director of Public Prosecutions & 3 others](#) [2018] eKLR, thus;
- “ 23. The situations that may give rise to an abuse of the court process are indeed inexhaustive, it involves situations where the process of court has not been resorted to fairly, properly, honestly to the detriment of the other party.”
47. It was further submitted that the conduct of the applicants cannot be seen in any other manner other than that which amounts to an abuse of the court process and, prompted by bad faith. They are therefore undeserving of the orders sought. As to what amounts to bad faith, counsel urged this court to be persuaded by the description that was given in the case of [MacMillan Bloedel Ltd v Galiano Island Trust Committee](#) cited with approval in [Republic v Anti-Counterfeit Agency Expert Calorine Magala t/a Hair Works Saloon](#) [2019] eKLR, thus;
- “The words bad faith have been used in municipal and administrative case law to cover a wide range of conduct in the exercise of legislatively delegated authority. Bad faith has been held to include dishonesty, fraud, bias, and conflict of interest, and discrimination, abuse of power, corruption, oppression, unfairness, and conduct that is unreasonable. The words have also been held to include conduct based on an improper motive, or undertaken for an improper, indirect or ulterior purpose. In all these senses, bad faith describes the exercise of delegated authority that is illegal, and renders the consequential act void. And in all these senses bad faith must be proven by evidence of illegal conduct, adequate to support the finding of fact. [Emphasis ours].”
48. Counsel further submits that it is possible to suggest that the respondents ought to have moved this court for appropriate reliefs at the earliest time possible, the inaction by their previous advocate has led to the present situation. Such mistakes ought not to be visited upon respondents.
49. It is argued further that article 5.4 of the [Constitution](#) which governs the 1st respondent insulates a member of the board who executes resolutions made by the board and acts in the interest of the



organization. It will be unjust to punish the 2nd respondent for a decision arrived at by the organization seeking to protect itself from the applicants who have turned rogue against it.

50. It is further submitted that it is interesting that the applicants are seeking payment of salary dues when in fact they are responsible for grounding the 1st respondent financially. They wrote to various partners advising them not to fund the 1st respondent, which advice some of them have endorsed and suspend funding. The applicants verily knew that they were employees of a non-profit making organization and that their salaries were subject to availability of funds.

Analysis and Determination

51. I have carefully considered the material placed before me by the parties herein, inclusive of the submissions by their respective counsels and distil the following two issues for determination, thus;
- I. Whether the order[s] sought in limbs 4, and 6 of the application can be availed to the applicants at this point of the proceedings.
 - II. Whether the applicants have made a case for finding the respondents in contempt of the court order, the subject matter of the application.

Whether the orders sought in limb 4, and 6 of the application can be availed to the applicants at this point of the proceedings.

52. The applicants sought the following orders in prayers 4 and 6 of the application, thus;
- “4. That the court do direct the ABSA Bank Hurlingham Branch Manager to debit from the 1st respondent account No 0xxxxx0 and pay to the 1st and 2nd applicants the sum of Kshs 1,350,000 and Kshs 675,000 or part thereof respectively.
 6. That alternatively, the respondent be directed to settle the 1st and 2nd claimants’ salaries for the remainder of their contract terms and compensation for damages for unfair loss of employment for an amicable separation in lieu of reinstatement.”
53. This court finds no difficulty in stating that these are orders that cannot be granted at this point of the proceedings. They sound and indeed are orders that can only be granted post-judgment and, in a judgment, if proved to be deserved. The court forms the impression that what the applicants have sought in limb 4 of the application is some sort of a garnishee order. Garnishee orders are grantable after judgment upon an application by the decree holder.
54. The relief for compensation for; the remainder of a contract period; and loss of employment can only be granted upon taking evidence by the parties not unless there is an admission by the respondent that the reliefs are deserved by the claimant or the matter is compromised by way of a consent giving the claimant entitlement to the reliefs.
55. I have carefully considered the reliefs section of the applicants’ memorandum of claim, and without hesitation pronounce that they cannot form a fountain for the prayers sought in the limbs of the application above stated.
56. The order for the stay of suspension of the applicants did not encompass an order quantifying the arrear salary payable to them for the period of suspension. Such salary becomes a contractual debt to be dealt with in terms of the principles of the law of contract. The respondent’s failure to pay the



salary arrears or its action of withholding the applicant's salary cannot be competently enforced with a contempt application.

Whether the applicants have made a case for finding the respondents in contempt of the court order, the subject matter of the application herein.

57. Before I delve further into this issue, it is imperative to emphasize that the objective underlying of contempt proceedings is the preservation of the court's authority by ensuring that its orders are complied with.

58. In relation to the objective of contempt proceedings, the Constitutional Court of South Africa in *Matjhabeng Local Municipality v Eskom Holdings Ltd And Others* 2018 [1] SA 1[CC], thus;

“..... To ensure that courts' authority is effective, s 165[5] [of the Constitution] makes orders of court binding on “all persons and organs of state to which it applies. The purpose of a finding of contempt is to protect the fount of justice by preventing unlawful disdain for judicial authority. Discernably, continual non-compliance with court orders imperils judicial authority.”

59. It has come to be stated that in order for an application for contempt to succeed, the applicant must show;

- i. The existence of the order granted against the respondents.
- ii. The order has been served or has come to the attention of the respondents.
- iii. The respondents have failed to comply with the order and have not furnished an explanation raising a reasonable doubt, and
- iv. The respondents acted willfully and mal fides.

60. In the South Africa case of *Fakie No v Systems [PTY]Ltd* 2006[4] SA 326[SCA],[2006] JOL 17080[SCA]-ED the principles applicable in contempt of court application were summarized as follows;

- a] As the civil contempt procedure is a valuable and important mechanism for securing compliance with court orders and survives constitutional scrutiny in the form of a motion court application adopted to constitutional requirements;
- b] the respondent in such proceedings is not an accused “person” but is entitled to analogous protections as are applicable to motion proceedings;
- c] in particular the applicant must prove the requisites of contempt [the order service or notice; non-compliance; and willfulness and mal fides] beyond reasonable doubt;
- d] but, once the applicant has proved the order, service or notice and noncompliance, the respondent bears the evidential burden in relation to the willfulness and mal fides; should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was willful and mal fide, contempt would have been established beyond reasonable doubt;



e] declaratory and other appropriate remedies remain available to a civil application on a balance of probabilities.”

61. The respondents have not disputed that there is a court order. It also appears that there was proper service. However, all the respondents are opposing the application.
62. It is not in dispute too that the applicants have not been allowed back to their respective positions with effect, the service of the order. Hence, there is non-compliance with the court order.
63. The main issue that remains for determination in this application therefore is whether such non-compliance by the respondents are willful or mal fide.
64. It is important to state that as service and non-compliance are not disputed, the evidential burden shifted to the respondents in relation to willfulness and mal fides. They were bound to tender evidence that the non-compliance was not willful and mal fides. In a bid to discharge the evidential burden, the respondents gave explanations in the answering affidavits hereinbefore mentioned.
65. This court notes that the tone of the applicants’ application herein is to the effect that the 2nd respondent is the person, as chairman of the 2nd respondent, who disobeyed the court order and or caused the same not to be complied with. Actually, he comes out as the main contemnor. In my view, he was the person bound to give an explanation on the aspects, willfulness and mal fides, for avoidance of doubt, more particularly as the accusation of disobedience was levelled against him personally.
66. I find considerable difficulty to fathom out why the 2nd respondent avoided swearing an affidavit to cast doubt on the allegations against him on the two aspects hereinabove mentioned. This court has not lost sight of the fact that the replying affidavit in opposition to the applicant’s notice of motion application dated July 26, 2021, from which the order the subject matter of the instant contempt application emanated, was sworn by the 2nd respondent.
67. Further, I have carefully considered the replying affidavit sworn by one James Odhiambo, and confirm that nowhere in its contents does it; state that it was being sworn with the authority of the 2nd respondent; mention why the 2nd respondent was not swearing an affidavit to explain those matters that were in his personal knowledge as regards the order and the alleged disobedience of the same; and that on the contents that touched on him [2nd respondent], they were upon basis of information given by him.
68. I cannot help but come to two inescapable conclusions, first that by reason of the premises, the 2nd respondent failed to advance evidence that demonstrates that the non-compliance was not willful and mal fide, lastly that this is a matter where an adverse inference should be made against the 2nd respondent flowing from his unexplained failure to proffer evidence. The inference is that had he sworn an answering affidavit, the same wouldn’t have aided the defence against the contempt application and he could have perjured himself.
69. Whether the deponent of the answering affidavit was the chairperson of the 1st respondent, was made an issue. The applicants asserted that according to the registrar’s official records, the 2nd respondent was. The court notes that this assertion by the applicants was not sufficiently or at all discounted by the respondents either through any form of affidavit or the submissions filed by their counsel.
70. Having stated as I have hereinabove, and without any prejudice thereto, I now turn to consider the explanation given in the replying affidavits filed by the respondents. It was alleged that the applicants frustrated the respondents’ compliance with the order. They were allowed to access their offices and resume work. Upon accessing their offices, they refused to cooperate with the auditor and stole from



the office 2 laptops, accounts/financial documents and office CPU to frustrate the internal audit process. Demonstrating that there was an audit process, required more than a bare assertion by a deponent of an affidavit whose involvement as regards the central events of the matter was, not present or, peripheral. Reasonably one would expect the auditor's affidavit demonstrating, the scope of his instructions, that the applicants were invited for questioning or representation[s] on the areas of concern, and that they declined to avail themselves for the purpose. In fact, no document was placed forth from which it can be discerned that there was an audit process.

71. From the explanation, a further question pops up, if indeed the applicants were allowed to access the offices and resume work in compliance with the order, how then did they exit, since there is no denial that they are no longer in office? This pivotal question does not find any explanation in any of the replying affidavits and or submissions by the respondents.
72. Theft of an employer's property is a grave allegation against an employee, more especially when it is alleged as is by the respondents that the stealing was influenced by no other reason than that of ensuring concealment of an alleged earlier theft of the employer's property [read money in the context of this matter] by the same employee. With the gravity in mind, it surprises this court that the respondents did not make it, a police matter as the alleged conduct is heavily criminal, or, a disciplinary issue as definitely as amounted to gross misconduct that could attract a summary dismissal under section 44 of the *Employment Act*.
73. The respondents have placed before this court an email of August 23, 2021 by the 1st applicant. I have carefully considered the email. The respondents deliberately placed reliance on the 1st paragraph of the same only, the paragraph which they deem supports their response. In my view, the email read fully reveals the applicant largely lamenting against the 2nd respondent's actions and expressing frustration of the resumption of work.
74. Lastly, the respondents submitted that the order ought to be complied with in a constructive manner. Terms of settlement and/or agreement between the applicants and the employer [1st respondent] should be formulated. I struggle to understand this assertion. Surely, if the respondent genuinely thought that the justice of this matter required that some conditions for the resumption of work by the applicants be imposed, they could have engaged the relevant legal provisions to have "the conditions" attached to the order. Nothing precluded them from so doing. It is here that I must state that parties who are obligated to adhere to a court order must adhere without any conditionalities. They are not at liberty to fix the terms and or conditions of adherence and when to adhere.
75. Court orders are made to be obeyed and to be complied with, this in my view is the distinctive characteristic that sets apart a civilized democracy which espouses the rule of law from the tyranny of the oppression of lawlessness. Our courts deplore the disobedience of court orders as inimical to the foundational values of the *Constitution* of Kenya, 2010.
76. In the premises, this court comes to the conclusion that the respondents' explanations which in my view were vague, general and unconvincing, were not sufficient enough to aid them in discharging the evidential burden mentioned above and rebut the inference of willfulness and mal fides.
77. By reason of the foregoing premises, I am convinced that the applicants have demonstrated that the respondents were in contempt of the court order of July 27, 2021.
78. Consequently, the respondents are hereby ordered to appear before this court on the 4th day of October, 2023 for sentencing. For the 1st respondent its board of directors must appear.
79. Orders accordingly.



READ, SIGNED AND DELIVERED THIS 21ST DAY OF SEPTEMBER, 2023.

OCHARO KEBIRA

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 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.

A signed copy will be availed to each party upon payment of Court fees.

OCHARO KEBIRA

JUDGE

