



Mwasha & another v Kenya Swimming Federation & 3 others; Omoro & another (Interested Parties) (Petition E088 of 2021) [2025] KEHC 9579 (KLR) (Constitutional and Human Rights) (30 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9579 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E088 OF 2021

EC MWITA, J

JUNE 30, 2025

BETWEEN

MARGARET NDUNG’U MWASHA 1ST PETITIONER

LT COL (RTD) CONRAD DERMOT BILTCLIFFE THORPE ... 2ND PETITIONER

AND

KENYA SWIMMING FEDERATION 1ST RESPONDENT

SPORTS KENYA 2ND RESPONDENT

SPORTS REGISTRAR 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

AND

BEATRICE OMORO INTERESTED PARTY

ELIJAH KIMANI INTERESTED PARTY

RULING

1. This is a ruling on the petitioners’ application dated 21st June 2023, urging this court to issue summons to the 1st respondent’s members of the stabilization committee as at 21st June 2023, namely; Moses B. Mwase, Jace Naido, Francis Mutuku and Michael Otieno to appear before it on a date to be set and explain why orders issued on 19th March 2021 were breached and show cause they should not be held in contempt of court for willful disobedience of those orders.



2. The petitioners seek a further order that the 1st respondent's members of the stabilization committee as at 21st March 2021, namely; Moses B. Mwase, Jace Naidoo, Francis Mutuku and Michael Otieno be cited for contempt of court for disobeying the orders issued on 19th March 2021 and, in default, warrants of arrest do issue against them and they be committed to civil jail for six months or any other sanction the court may deem appropriate. The petitioners also pray for costs of the application be paid by the 1st, 5th, 6th, 7th and 8th respondents.
3. The application is supported by the grounds on its face and the affidavit of Margaret Ndung'u-Mwasha, the 1st petitioner. According to the petitioners, on 19th March 2021, Korir, J. (as he then was) issued an order restraining the 1st respondent, its officials, agents, employees or anyone acting on its behalf from inviting applications for election to the respondent's executive board and or conducting elections for members of the respondent's executive board and or in any way purporting to effect changes in the leadership of the respondent's Executive Board, pending the hearing and determination of that application. The orders were extracted and served on the 1st respondent and members of the stabilization committee.
4. The interested parties filed an application dated 18th October 2021 seeking to set aside those orders but the application was dismissed on 1st February 2022.
5. The petitioners stated that by notice dated 2nd June 2023, the 1st respondent through its stabilization committee which includes Moses B. Mwase, Jace Naidoo and Francis Mutuku as members, and Michael Otieno the team leader of its secretariat, invited the 1st respondent's stakeholders to apply for and nominate delegates for elections of the 1st respondent's executive Board scheduled for 8th July 2023. Election Guidelines and Nomination Form were also sent out.
6. In another notice dated 5th June 2023 signed by Moses B. Mwase, the 1st respondent through the stabilization committee invited stakeholders for a general meeting scheduled for 24th June 2023 to discuss, among others, an update on Election Roadmap for KSF New Executive Board due on 8th July 2023 at Kasarani Stadium and Ratification of key Decisions and Tabling of Revised Draft KSF constitution which purported to change the 1st respondent's name to Kenya Aquatics. During the meeting of 24th June 2023, the stabilization committee changed the 1st respondent's name to Kenya Aquatics, despite existence of the orders.
7. The petitioners contended that holding a general meeting and elections for members of the 1st respondent's Executive Committee on 24th June 2023 and 8th July 2023 would violate the orders of the court and the provisions of the *Sports Act*. Hence, they urged the court to intervene to prevent the petition from being rendered nugatory.
8. It is the petitioners' position that the 1st respondent, its officials, and people purporting to act on its behalf, including members of the stabilization committee, were aware and had knowledge of the terms of the orders which were clear and unambiguous. They also had notice of the orders and penal notice but deliberately and willfully disobeyed the order.
9. The petitioners stated that when they engaged the contemnors regarding their violation the orders, the contemnors contended that it was World Aquatics that authorized the elections and that they would be conducted on behalf of World Aquatics. The petitioners further stated that the 1st respondent and the contemnors called for names of two delegates for an election through delegates voting which was contrary to the provisions of section 46 and the Second Schedule to the *Sports Act*.
10. The petitioners asserted that they engaged the stabilization committee appointed by World Aquatics in an out of court settlement to address the issues pending before the court to enable parties reach a



settlement; shared their proposal for amendments aligning the 1st respondent's proposed constitution with World Aquatics constitution, the *Sports Act* 2013 and the *Constitution* of Kenya, 2010, but the contemnors frustrated the negotiations and went ahead to disregard the order, thereby committing contempt of court.

1st respondent's response

11. The 1st respondent opposed the application through d grounds of opposition. The 1st respondent contended that the application is premature, misconceived and bad in law because leave of court to institute contempt proceedings was not sought. Further, that the application for restraining orders had been overtaken by events and the orders sought are frivolous and an abuse of the court.
12. The 2nd to 4th respondents did not file responses to the application except written submissions. Interested parties did not file responses or submissions and did not take part in this application.

Petitioners' submissions

13. The petitioners argued that even though the prayers for a temporary injunction had been overtaken by events, the court has jurisdiction to punish for contempt of court by virtue of articles 1, 159 and 160 of the *Constitution*, section 5 of the *Judicature Act* and rule 19 and 23 of the *Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Rules 2013, (Mutunga Rules). They relied on the decision in *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR.
14. The petitioners again relied on the decisions in *Kudheiha Workers v Director Riara Group of Schools* [2021] eKLR; *Johnson vs Grant*, 1923 SC 789 at 790 and *Miguna Miguna v Fred Matiang'i, Cabinet Secretary Ministry of Interior and Co-ordination of National Government & 8 others* [2018] eKLR on the rationale for punishing for contempt and urged the court to allow the application so as to uphold the dignity and authority of the court.
15. On the test for establishing contempt, the petitioners cited the decisions in *Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others* [2018] eKLR and *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR. They submitted that the order issued on 19th March 2021 was clear, unambiguous and binding upon the respondents.
16. The petitioners further relied on the decision in *Henry Musemate Murwa v Francis Owino, Principal Secretary, Ministry of Public Service, Youth and Gender Affairs & another* [2021] eKLR for the proposition that the 1st respondent and members of the stabilization committee were personally served and their advocates on record participated in the proceedings of the court prior to and subsequent to issuance of the order. They filed responses and other pleadings in this matter thus; they had notice of the order.
17. The petitioners maintained that the 1st respondent and members of the stabilization committee deliberately breached the order issued on 19th March 2021, as evidenced in their supporting affidavit regarding the activities that were undertaken after the order had been issued. They relied on the decisions in *Republic v County Government of Kitui Exparte Fairplan Systems Limited* [2022] eKLR and *Republic v Attorney General & another Exparte Mike Maina Kamau* [2020] eKLR for the position that the requirements for proof of contempt have been met.
18. The petitioners again relied on *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others* [2014] eKLR and *Clerk, Nairobi City County Assembly v Speaker, Nairobi City County Assembly & another; Orange Democratic Party & 4 others* [2019] eKLR that leave is not required to commence contempt proceedings. The petitioners relied on *Yatani v Raso* [2023] KEHC 2150 (KLR); *DKG v*



EG [2021] eKLR and Sonko v Clerk, County Assembly of Nairobi City & 12 others [2022] KESC 17 (KLR) and urged the court to allow the application.

1st respondent's submissions

19. The 1st respondent submitted that the order was in personam and was only binding on the people to whom it was directed. The 1st respondent relied on the decision in *Shimmers Plaza Limited v National Bank of Kenya Limited* (supra).
20. According to the 1st respondent, the alleged contemptuous act as can be seen from correspondences annexed to the application revolve around World Aquatics, an international governing body for aquatic sports, comprising federations from various countries across the world. No orders had been issued against the 1st respondent, its agents, employee, officials or a party in this petition thus, this court lacks jurisdiction over the matter. Reliance was placed on the decision in *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR.
21. The 1st respondent cited the decision in *Samuel M.N. Mweru & Others v National Land Commission & 2 others* (supra) and *Gatharia K. Mutikika v Baharini Farm Limited* [1985] eKLR, to argue that the petitioners failed to demonstrate any of the elements of contempt of court against it and its officials.
22. The 1st respondent asserted that the elections and guidelines were actions of World Aquatics which acted through the stabilizing committee. The guidelines and decisions made by World Aquatics do not fall within the jurisdiction of this court and do not constitute a violation of the court order by it. The 1st respondent cited articles 25 and 50 of the [Constitution](#) and the decisions in *Republic v Principal Secretary, Ministry of Defence Ex Parte George Kariuki Waithaka* [2019] eKLR and *Judicial Service Commission v Speaker of the National Assembly & Another* [2013] eKLR for the position that the individuals alleged to be in contempt had not been specifically cited and were not made parties to the application for contempt. The 1st respondent took the position that no action can be taken against those individuals without giving them an opportunity to defend themselves. Any finding of contempt against them would amount to a violation of their constitutional rights.

2nd -4th respondents' submissions

23. The 2nd to 4th respondents argued through written submissions that World Aquatics is not a party in this petition; no order was issued against it and this court lacks jurisdiction to issue orders against it. Reliance was placed on the decision in *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* (supra).
24. The 2nd to 4th respondents asserted that the petitioners had not satisfied the elements of contempt of court laid down in *Samuel M. N. Mweru & Others v National Land Commission & 2 others* (supra) against them. They again relied on *Gatharia K. Mutikika v Baharini Farm Ltd* (supra) that there is no evidence that they; their officials, agents or employees disobeyed a court order.
25. Relying on the decision in *Republic v Principal Secretary, Ministry of Defence Ex-Parte George Kariuki Waithaka* (supra), the 2nd to 4th respondents reiterated that contempt of court is personal and quasi criminal in nature. The individuals alleged to be in contempt have not been specifically cited or made parties to the application for contempt, rendering the application untenable.
26. The 2nd to 4th respondents also relied on article 25 and 50 of the [Constitution](#) and the decision in *Judicial Service Commission v Speaker of the National Assembly & Another* (supra) for the proposition since the individuals alleged to be in contempt were not made parties to this application; they have not been



given an opportunity to defend themselves and any finding of contempt against them would amount to a violation of their constitutional rights.

27. The 2nd to 4th respondents again relied on the decisions in *Samuel M. N. Mweru & Others v National Land Commission & 2 others* (supra) and *Shimmers Plaza Limited v National Bank of Kenya Limited* (supra) to urge the court to dismiss the application with costs.

Determination

28. I have considered the application, responses thereto, submissions by parties and the decisions relied on. Before the court is an application to cite the 1st respondent's members of the stabilization committee for contempt of court. The petitioners' case is that the court order issued on 19th March 2021 was violated. The order restrained the 1st respondent and its officials from changing or amending its constitution or name and conducting elections for members of its Executive Board or effecting changes in the leadership of its Executive Board pending the hearing and determination of that application.
29. The petitioners have also asked this court to issue summons to the 1st respondent's members of the stabilization committee to appear before it on a date to be set and show cause why they should not be cited for contempt of court for disobeying the order issued on 19th March 2021. In default, the petitioners urge the court to commit the alleged contemnors to civil jail for six months or any other sanction the court may deem appropriate. The petitioners also prayed for costs of the application to be paid by the 1st, 5th, 6th, 7th and 8th respondents. I have not seen parties named in this petition as the 5th, 6th, 7th and 8th respondents.
30. According to the petitioners, the 1st respondent and its officials were served with the order but failed to comply. They should therefore be cited for contempt of court for wilful disobedience of the court order.
31. The 1st respondent contended that the application is premature, misconceived and bad in law because leave to institute contempt proceedings was not sought. The application for restraining orders had been overtaken by events thus, the orders sought are frivolous and an abuse of the court process. The 1st respondent argued that the order was in personam and was only binding on the people to whom it was directed and that no order was issued against it, its agents, employee, officials or a party in this petition.
32. Although the 2nd to 4th respondents never filed responses to the application, they nevertheless filed written submissions. They argued that World Aquatics is not a party to this petition; no orders were issued against it and this court cannot issue orders against World Aquatics. The 2nd to 4th respondents asserted that the petitioners had not satisfied the elements of contempt of court and that there is no evidence that they; their officials, agents or employees disobeyed court orders. In essence, the 2nd to 4th respondents denied violating any court orders. They asserted that the order was not directed at them and that disobedience, if any, was by World Aquatic, an international body against whom there were not orders.
33. Contempt of court is the conduct or action that defies or disrespects the authority of the court. Black's Law Dictionary 9th Edition, defines contempt as "The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice."
34. Properly understood, contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the *Judicature Act* confers jurisdiction on the superior courts to punish for contempt.



35. The 1st respondent argued that leave to institute contempt proceedings was not sought and therefore this application is an abuse of the court process. Order 40 rule (3) of the Civil Procedure Rules 2010 provides that in cases of disobedience, or of breach of any terms of a temporary injunction, the court granting that injunction may order the property of the person guilty of such disobedience or breach to be attached. The court may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.
36. The order said to have been violated or disobeyed was issued in these proceedings on 21st March 2021. This court has jurisdiction since the petitioners have invoked powers of this court due to actions alleged to have been taken in violation of an order issued in these proceedings.
37. Courts punish for contempt in order to uphold their dignity and authority; ensure compliance with their directions; observance and respect of due process of law; preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice. If there were no sanctions for disobedience of court orders, there would be a serious threat to the rule of law and administration of justice. In that respect, for a party to be cited for contempt, he must have wilfully violated or disobeyed a court order directed at him.
38. The application before this court seeks to have the 1st respondent's members of the stabilization committee as at 21st June 2023 cited for contempt of court for violating the order issued on 19th March 2021 and to be committed to civil jail and or fined.
39. Obedience of court orders is not an option. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J. (as he then was), underscored the importance of obeying court orders, stating:
- It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.
40. In *T. N. Gadavarman Thiru Mulpad v Ashok Khot And Anor* [2006] 5 SCC, the Supreme Court of India emphasized on the dangers of disobeying Court orders, stating:
- Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.
41. Contempt of Court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of the balance of probability. This is because liberty of a person is usually



at stake and the applicant must prove wilful and deliberate disobedience of the court order, if he is to succeed. This was aptly stated in *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227, that:

Contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily...It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge.

42. The Court opined that recourse should not be had to contempt of court in aid of a civil remedy where there is another method of doing justice. “The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject...”
43. Due to the gravity of the consequences that flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order.
44. The petitioners stated that the 1st respondent and its officials were served and had knowledge of the order. Further, that their advocate participated and had filed pleadings in court thus, was aware of the order. The 1st respondent argued that contempt of court being personnum; the parties against whom the order was directed were not made parties to this application and that there was no violation of the order by its officials as the activities complained of were by World Aquatics, an international body which is not a party and over which the court has no jurisdiction.
45. I have perused the order issued on 19th March 2021. The order was in the following terms:

A temporary order of injunction be and is hereby issued restraining the 1st respondent and or its officials and or its agents and or its employees or anyone purporting to act on its behalf from inviting applications for election to the respondent’s executive board and or conducting election of members and or any way purporting to effect changes in the leadership of the respondent Executive Board pending hearing and determination of the instant application.
46. The order was issued against the 1st respondent and prevented its officials, its agents and or its employees or anyone purporting to act on its behalf.
47. I have also perused the affidavit of service sworn by Caroline Mumbi Kithuka (process server) on 22nd March 2021. At paragraph 2, the process server states that she received the documents, including the order for service. She states at paragraph 3, that on the same day she proceeded to Moi Sports Centre Kasarani where the offices of the 1st respondent are situated and at the reception, she served the documents to the “receptionist” who accepted the documents, stamped and signed on her copies. The process server is clear that the documents and the court order were served on the 1st respondent’s receptionist. There is no deposition that the documents were served on any of the officials of the 1st respondent.
48. There is a second affidavit of service by the same process server sworn on 14th June 2023. The process server again states that she received a “Notice to Cease and Desist from unlawful contempt of court order” dated 14th June 2023 together with an order issued by the Deputy Registrar on 19th June 2023 with instructions to serve the Stabilization Committee of the Kenya Swimming Federation alias



- Kenya Aquatics; Mr. Moses B. Mwase, Jace Naibo, Francis Mutuku and Dr. Michael Otieno. The process server further states that she served the documents through their office email address to the email addresses of Mr. Moses B. Mwase, Jace Naibo, Francis Mutuku and Dr. Michael Otieno.
49. The process server does not state how and where she got the email addresses of Mr. Moses B. Mwase, Jace Naibo, Francis Mutuku and Dr. Michael Otieno. The process server does not also state that the email addresses were the known and last used email addresses of those people. I have also not seen the order issued by the Deputy Registrar on 19th March 2023 that the process server said she served. The Notice dated 14th June 2023 to CEASE and DESIST from unlawful contempt of court was addressed to the Stabilization Committee, Kenya Swimming Federation, “attention to; Mr. Moses B. Mwase. It is not clear whether the notice was also meant for the rest of the members of that committee.
 50. The first affidavit of service is clear that the order was not served on the officials of the 1st respondent. It was left with the receptionist at the reception. The second affidavit of service shows that the documents were sent by email but does not disclose who gave the process server the email addresses of the people she purported to have sent the documents to. There is also no order issued by the Deputy Registrar on 19th June 2023 on record that was said to have been sent for purposes of service.
 51. Order 5 rule 22B (1) of the Civil Procedure Rules provides that Summons (documents) sent by Electronic Mail Service shall be sent to the defendant’s last confirmed and used E-mail address. It was the duty of the person who effected service to state how the email addresses used were obtained and that they were the last known and used email address of the persons served as required by the rule.
 52. Contempt of court is an act of personal responsibility and the position in law is that a contemnor must have personal knowledge of the terms of the order and must have deliberately and wilfully disobeyed the order. The petitioners did not point out to any affidavit of service that demonstrates service of the order dated 19th March 2021 on any person alleged to have disobeyed it.
 53. The 1st respondent as a juristic person is incapable of disobeying the order. Only its leaders or officers could. It has not been demonstrated that Moses B. Mwase, Jace Naibo, Francis Mutuku and Dr. Michael Otieno said to be members of the stabilization committee were served with the order issued on 19th March 2021; when they were served and that they were aware of the terms of the order but deliberately and wilfully disobeyed it.
 54. In other words, there is no demonstration of service of the court order; on which officials and that as a result of that service, the person(s) were aware of the terms of the order but wilfully and deliberately disobeyed the order.
 55. For a party to be adjudged to be in contempt, the applicant must demonstrate that there was wilful disobedience of that order. In this regard, the Supreme Court of India held in *Indian Airports Employees Union v Ranjan Catterjee & Another* [AIR 1999 SC 880: 1999(2) SCC:537], that “in order to amount to “civil contempt” disobedience must be willful. If disobedience is based on the interpretation of court’s order, notification and other relevant documents, it does not amount to willful disobedience.”
 56. The petitioners did not also show that the order was served with a penal notice. The people who are alleged to have disobeyed the order were not made parties to these contempt proceedings and there is no evidence that they were personally served with the application to give them an opportunity to defend themselves.
 57. The applicants submitted that the 1st respondent was aware of the order because its advocate was in court. There is no evidence that the advocate represented those alleged to have disobeyed the court order. Knowledge of existence of an order is a question of fact and one must be aware of the terms



of the order. That is, he must know what the order required him to do or not to do, but wilfully and deliberately disobeyed it.

58. The Supreme Court of India again explained in *Mahinderjit Singh Bitta v Union of India & Others* 1 A No. 10 of 2010 (13th October, 2011) that:

In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is *lis* before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution.

59. The emphasis in the available jurisprudence is that there must be “wilful and deliberate disobedience of court orders.” There cannot be deliberate and wilful disobedience unless the contemnor had knowledge of the existence and terms of the order. And because contempt is of a criminal nature, it is always important that breach of the order be proved to the required standard; first, that the order was directed to the contemnor; that the contemnor was aware of the order having been served or having personal knowledge of it, and that he/she deliberately and wilfully disobeyed it.

60. The fact of knowledge and wilful disobedience was restated in *Kristen Carla Burchell v Barry Grant Burchell* [2005] ZAECHC 35 thus:

(5) In order to succeed in civil contempt proceedings the applicant had to prove the terms of the order, knowledge of these terms by the respondent, and a failure by the respondent to comply with the terms of the order. Upon proof of these requirements the presence of wilfulness and bad faith on the part of the respondent would normally be inferred, but the respondent could rebut this inference by contrary proof on a balance of probabilities.

61. Cromwell J, writing for the Supreme of Canada in *Carey v Laiken*, 2015 SCC 17 (16th April 2015), expounded that the party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

62. In the present application, it has not been sufficiently demonstrated who deliberately disobeyed the court order. Contempt proceedings are a serious undertaking because a court exercising this jurisdiction is minded to ensure the orderly functioning of society and the rule of law. On conviction, the alleged contemnor stands to lose his or her liberty thus, it is not a matter to be taken lightly as courts have to ensure that the authority and dignity of the court is preserved.

63. In this regard, the Supreme Court of India stated in *Re: Vinay Chandra Mishra* [(1995) 2 SCC584] stated:

The judiciary has a special and additional duty to perform, viz, to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. Dignity and authority of the court has to be respected and protected at all costs.

64. But even as courts punish for contempt to safeguard the peaceful and development of society and the rule of law, it must be borne in mind that the power to punish for contempt is a discretionary one and should be used sparingly. That is why the court warned in *Carey v Laiken* (*supra*), that if courts were to find contempt too easily, “a court’s outrage might be treated as just so much bluster that might



ultimately cheapen the role and authority of the very judicial power it seeks to protect. The court's contempt power should be used cautiously and with great restraint. It is an enforcement power of last resort rather than first resort." (underlining)

65. Taking into account the circumstances of this case and the material placed before this court, I am not satisfied that the petitioners have proved, first, that the order was served on the officials of the 1st respondent and identify who the officials were.
66. Second, the people who are said to have disobeyed the order were not made parties to these contempt proceedings. There is no evidence that they were served with the application to give them an opportunity to present their case.
67. Third, there is no evidence that there was an order directed at the 2nd to 4th respondents; that they were served with the order but disobeyed it.
68. In the circumstances, contempt being a personal responsibility to be proved, and being "an enforcement power of last resort rather than first resort", I am not satisfied that the petitioners have proved contempt of court to the required standard. Consequently, the application dated 21st June 2023 is declined and dismissed. Each party will, however, bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE 2025

E C MWITA

JUDGE

