



**Nyangugu v County Executive of Laikipia & another (Constitutional
Petition E001 of 2022) [2025] KEHC 9371 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9371 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CONSTITUTIONAL PETITION E001 OF 2022
AK NDUNG’U, J
JUNE 27, 2025**

BETWEEN

ANYONGE MICHAEL NYANGUGU PETITIONER

AND

COUNTY EXECUTIVE OF LAIKIPIA 1ST RESPONDENT

COUNTY ASSEMBLY OF LAIKIPIA 2ND RESPONDENT

RULING

1. Anyonge Michael Nyangugu (hereinafter, the Petitioner) moved this court vide the notice of motion application dated April 17, 2024 for orders that the 2nd Respondent show cause why they should not be cited for civil contempt and brought before the court to answer for their violation of the injunction issued on 29/11/2023.
2. The application is based on the grounds that on 29/11/2023, this court entered a final decree directing the 2nd Respondent to table the Applicant’s proposed bill, the Laikipia County Environment Management and Coordination Bill, 2019 before the Honourable House for its consideration and enactment upon resubmission by the Applicant in order to give effect to the functions and exercise of powers assigned to county governments in relation to the protection and conservation of the environment of Laikipia County.
3. That on 04/12/2023, he resubmitted the proposed legislation to the 2nd Respondent and on 26/02/2024, he served the 2nd Respondent with a notice that they comply with the orders of this court. That the 2nd Respondent in violation of the orders of this court has continued and is continuing to illegally and unconstitutionally shelve the proposed legislation. He therefore prays that an order be issued requiring the 2nd Respondent to appear before this court and show why they should not be adjudged for contempt of this court’s order.
4. Notably, the application is not supported by an affidavit.



5. In response, the 2nd Respondent filed a replying affidavit dated 19/06/2024 sworn by Peter Ndirangu Hinga, the acting clerk, County Assembly of Laikipia. He deposed that the Petitioner's application is incompetent, a non-starter and an abuse of the court's process. That the Petitioner was ordered by the court to resubmit the Bill to the County Assembly for consideration and the Petitioner resubmitted the Bill which was duly considered and he was advised accordingly through a letter dated 23/04/2024. That he was duly notified that the *Environmental Management and Co-ordination Act* 2012 suffices to address issues touching on environment within Laikipia County. Hinga deposes he was informed by the counsel on record that the Petitioner refused to receive their letter and insisted that they file in court. He urged the court to dismiss the application.
6. In rejoinder, the Petitioner filed a response dated 12/07/2024 responding to the 2nd Respondent replying affidavit. He averred that the 2nd Respondent's replying affidavit should be struck out as it was filed out of time contrary to the order of this court given on 09/05/2024. That if the court allows its admission out of time, the 2nd Respondent ought to be fined for failing to comply with the orders of this court and wasting court's time. He deposed that the Bill was never tabled before the Honourable House as prescribed under Standing Orders No. 110(7) of the County Assembly, nor was he ever invited to any of its subsequent readings contrary to the 2nd Respondent's contention. That the 2nd Respondent through Peter Ndirangu Hinga has continued to shelve the Bill despite this court's findings that the decision whether there existed a lacuna or not to warrant the enactment of the Bill was a decision to be exercised by the people through their elected representatives in the County Assembly.
7. Therefore, the 2nd Respondent's action is a violation of the court's order and a violation to his right to fair administrative action as envisaged under Article 47 of the *Constitution*. He urged the court to make a declaration that this right was violated. That the court should also vary its judgment to include declaration of rights in accordance with Article 23(3)(a) of the *Constitution* for violation of his right to petition public authorities under Article 37 of the *Constitution* considering that this right has never been realised. He urged the court to award him damages for violation of his rights to vindicate the rights violated, to prevent future infringement and for compensation in accordance with Article 23(3) (e) of the *Constitution* for the lost time when the Bill was unprocedurally shelved. He prays for damages amounting to Kshs.12.18 million. That if the status quo remains, the natural resources of Laikipia County remain vulnerable for further environmental degradation and his rights under Article 47 of the *Constitution* are likely to be violated. He maintained that an order be issued to arrest the acting clerk of the 2nd Respondent for contempt of this court's order and that the 2nd Respondent do bear the costs of the petition.
8. The application was canvassed by way of written submissions. The Petitioner submitted that upon resubmission of the Bill, the same was supposed to be subjected to the procedure provided under the Standing Order No 110 of the County Assembly of Laikipia. Therefore, the court is tasked to determine how the decision to reject the Bill was arrived at by the 2nd Respondent and if the decision did not follow the law, then the court is called upon to interfere. That according to the letter attached to the 2nd Respondent's replying affidavit, the decision to reject the Bill was made by acting clerk, Mr Hinga on his own capacity which does not qualify to be a decision by the county assembly. The Bill was never tabled before the assembly for consideration as was directed by the court. That Mr. Hinga lacks authority to be dictating and directing legislative authority which is vested on duly elected members of the 2nd Respondent. Therefore, his inaction is contrary to the court's order and amounts to contempt of court.
9. As to whether his rights under Article 37, 42(a) and 47 of the *Constitution* have been breached, he submitted that his right under Article 37 has been violated since the proposed Bill has never been tabled



before the Honourable House for consideration and enactment. With respect to Article 42(a), he submitted that the continuing shelving of the Bill renders the environment and natural resources of the county vulnerable to further environmental degradation. With respect to Article 47, he submitted that the continuing shelving of the Bill is unlawful, unreasonable and procedurally unfair and a violation to his right.

10. As to award of damages, he urged the court to exercise its discretion to award damages in constitutional violation cases. He urged the court to award him Kshs.12.6 million as damages for violation of his constitutional right as compensation for the time lost which is equivalent to the monthly salary of a member of county assembly of Laikipia, multiplied by the number of months that the proposed legislation was illegally shelved.
11. The 2nd Respondent's counsel on the other hand submitted that the Petitioner's application is not supported by an affidavit as issues raised in the notice of motion should be supported by evidence on oath in form of an affidavit. That it is incumbent upon litigants who intend to invoke the court's jurisdiction on contempt to ascertain the procedure for instituting contempt proceedings in the High Court of England pursuant to section 5 of the *Judicature Act*. That in accordance with Rule 3(b) of England Part 8.10 of the *English Procedure (Amendment No.2)* Rules 12, an affidavit in support of contempt application is mandatory and lack of it renders the Petitioner's application fatally defective and that this is a matter that goes to the substratum of the proceedings and cannot be cured by invocation of Article 159 of the *Constitution*.
12. He submitted that in contempt proceedings, the party seeking committal orders must satisfy the court that there is violation of a court order, the person who has disobeyed the order and the person against whom the contempt orders are sought. That the Applicant has not disclosed in his application who he seeks to direct contempt proceedings against, whether the speaker or the members of the 2nd Respondent as his application sought to have the county assembly of Laikipia to show cause why it should not be punished for contempt. The 2nd Respondent is a separate legal entity which can sue and be sued in its own capacity and he ought to have lifted the corporate veil or cite the specific persons alleged to be contemnors and reliance was placed on the case of *Geoffrey Kathuri Kison & 10 others v East African Portland Cement Co. Ltd & 5 others* (2021) eKLR.
13. Further, the Petitioner did not demonstrate any violation of a court order because in compliance with the judgment of this court, the 2nd Respondent received the Petitioner's Bill, interrogated the contents and through a letter dated 23/04/2024, advised him why his Bill could not be debated and enacted into law and the reasons were clear and plausible. That in accordance with Section 18, and 19 of *County Assembly Services Act*, the clerk of County Assembly is the chief administrative officer and the communication to the Petitioner was made in that capacity. That in paragraph 39 and 40 of the impugned judgment, the court considered separation of power and held that it was not the court's mandate to direct the legislature or the County Assembly on which legislation to be enacted. The court can only interfere where procedural flaws are demonstrated. That the Petitioner appears to be calling upon the court to revisit the merits of the petition which this court cannot do as it is functus officio. On prayer for damages, he submitted that, the court at this stage has no jurisdiction to entertain this issue as it could only have been entertained in the petition.
14. I have considered the application, the replying affidavit, the rejoinder affidavit by the Applicant and submissions made. For determination are firstly, 2 preliminary issues, namely, whether the application is fatally defective for lack of a supporting affidavit and whether this court should vary its judgment to include declaration of rights in accordance with Article 23(3)(a) of the *Constitution* for violation of the applicant's right to petition public authorities under Article 37 of the *Constitution* and whether an award of damages lies in favour of the Applicant in accordance with Article 23(3)(e) of the *Constitution*



for the lost time when the Bill was shelved. Ultimately, the final issue for determination is whether the applicant has achieved the threshold for grant of contempt orders against the 2nd Respondent.

15. The application is not supported by an affidavit. This is not a technical default. It is an omission that goes to the root of the application as prove of contemptuous act is an issue of fact that must be brought to the attention of the court by way of evidence in an affidavit, and in appropriate cases viva voce. In a contempt application, an affidavit in support of contempt application is mandatory and lack of it renders the Petitioner's application fatally defective.
16. The omission herein renders the application bare and incapable of prove. It is a fatal omission that cannot be cured under Article 159 of the Constitution or the Oxygen Principle.
17. On the invite to this court to vary its judgement and make a declaration of rights and award damages, I need not belabour that the point is not well taken. The Applicant has offended the court's review jurisdiction which cannot possibly be invoked in a contempt application.
18. While the above findings would be enough to dispose of the application, I find it necessary to delve into the issue whether, either way, the Applicant has proved contempt against the 2nd Respondent.
19. Contempt of court is conduct or action that defies or disrespects authority of 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.”
20. Section 5 (1) of the Judicature Act Cap 8 Laws of Kenya confers on this court the jurisdiction to punish for contempt in the following terms: -

“The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.
21. The reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, 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 by courts: (See Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui [2021] eKLR).
22. In Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR Mativo J. (as he then was) pronounced himself as follows:
 46. Contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest. [49]”
23. The judge proceeded to set down the requirements necessary for contempt of court to lie as follows;
 40. It is an established principle of law that [45] in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the



order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. [46].

24. In the book, *Contempt in Modern New Zealand*, the issue is extrapolated concisely in the following terms ;

“ There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that: -.the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant; the defendant had knowledge of or proper notice of the terms of the order; the defendant has acted in breach of the terms of the order; and the defendant's conduct was deliberate.”

25. Thus 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 before the court or who is bound by an order of the court is expected to obey the orders of the court in full compliance with no option to select which part of the order to obey.

26. Notably, given the serious consequences that flow from contempt proceedings such as fines or imprisonment, it is essential that the Court Order be properly served upon the alleged Contemnor and that it is established that she has personal knowledge of its terms.

27. In our instant Motion, the issue of service is a settled one in that the 2nd Respondent's position is that, yes, the orders were given and were complied with.

28. The motion as drawn fails to cite specific persons to be held in contempt. It is noted that the 2nd Respondent is a separate legal entity which can sue and be sued in its own capacity and the Applicant ought to have lifted the corporate veil or cite the specific persons alleged to be contemnors.

29. The court of Appeal *Geoffrey Kathuri Kison & 10 others v East African Portland Cement Co. Ltd & 5 others* (2021) eKLR). Rendered itself as follows;

“ In the persuasive authority of *Katsuri Limited v Kapurchand Depar Shah* [2016] eKLR, the High Court (Mativo, J.) in considering contempt by a director of a company observed and rightly so in our view that:“ The alleged contemnor is a director of the company. He is not a party to these proceedings in his personal capacity. The company is a legal entity. The proper procedure for the applicant was first to apply to lift the corporate veil then go for the directors in their personal capacities.” It follows therefore that failure by the applicants cite the 1st respondent for contempt and to lift the corporate veil of the 1st respondent denied them the chance to cite the 2nd to 6th respondents for contempt as directors or accounting officers of the 1st respondent.”

30. Further the, the 2nd Respondent through its Clerk of the County Assembly in a letter dated 23rd April 2024 demonstrated compliance with the court's judgement since as directed by the court, the Applicant presented the bill to the 2nd Respondent, the same was considered and communication made to the Applicant to the effect that there was no vacuum in the law.



31. What is apparent is that the Applicant seeks to have this court assume the constitutional mandate of the 2nd Respondent, an invite that must be firmly declined in deference to the doctrine of separation of powers.
32. In the end, I find and hold that the Application has no merit and is dismissed. This being a public interest litigation, each party is to bear its own costs.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF JUNE 2025.

A.K. NDUNG’U

JUDGE

