



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Omondi & another v Attorney General & 2 others; EtheKon & 7
others (Interested Parties) (Constitutional Petition E269 of 2025)
[2025] KEHC 9450 (KLR) (Constitutional and Human Rights) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9450 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E269 OF 2025
RE ABURILI, JM CHIGITI & AB MWAMUYE, JJ
JUNE 24, 2025**

BETWEEN

**KELVIN ROY OMONDI 1ST PETITIONER
BONFACE MWANGI 2ND PETITIONER**

AND

**ATTORNEY GENERAL 1ST RESPONDENT
HEAD OF PUBLIC SERVICE 2ND RESPONDENT
THE NATIONAL ASSEMBLY 3RD RESPONDENT**

AND

**ERASTUS EDUNG ETHEKON INTERESTED PARTY
ANNE NJERI NDERITU INTERESTED PARTY
MOSES ALUTALALA MUKHWANA INTERESTED PARTY
MARY KAREN SORBOI INTERESTED PARTY
HASSAN NOOR HASSAN INTERESTED PARTY
FRANCIS ODHIAMBO ADUOL INTERESTED PARTY
FAHIMA ARAPHAT ABDALLAH INTERESTED PARTY
JUSTUS MUTUNGA MUTUKU INTERESTED PARTY**



RULING

1. On 23/06/2025, during the court appearance for highlighting of written submissions on the Petition, Counsel for the Petitioners, in the course of their highlighting, made an oral application seeking a citing, finding, and conviction and sentencing of the President of the Republic of Kenya, The Head of Government Press and other persons who had knowledge of the interim conservatory order issued on 29/05/2025 by Justice L.N. Mugambi staying the appointment and swearing in of the IEBC Nominees for Chairman and Commissioners.
2. The petitioners submitted that the President of the Republic of Kenya and the Head of the Government Press as well as the Attorney general and Head of Public Service contravened the said orders by appointing the nominees and publishing of the appointments in the Gazette Notices No. 7724 and 7725 both dated 10/06/2025 and carried in Volume CXXVII – No. 122 of the Kenya Gazette published on 10/06/2025 by dint of which the President of the Republic appointed and caused to be gazetted the 1st to 7th Interested Parties herein as the Chairperson and Commissioners of the Independent Electoral and Boundaries Commission for a period of six (6) years each from the date of the respective notices.
3. The petitioners argued that the Attorney general represents the President, the Head of public Service and that even though the President and the Government Press are not parties to this petition, they are aware of the clear and unambiguous order staying the appointment/ gazettement and swearing in of the nominees. That they are represented by the Attorney general who was served with the Conservatory order. That knowledge of the conservatory stay order was sufficient hence this Court should find the persons responsible for flouting the said order to be in contempt of court and that the said persons should not have audience before they purge the contempt.
4. Further, the petitioners' counsel submitted that in as much as the President cannot be sued in civil and criminal proceedings while he is still in office, contempt of court is sui generis, being neither civil nor criminal hence this court can make a finding of guilt against the President and impose penalties against him but suspend the fine to be paid once the President is out of office. They argued that the Gazette Notice appointing the nominees is a nullity.
5. The Respondents and Interested Parties made brief oral responses opposing the oral application for contempt of Court and they were all unified in adopting a position that the matter of Contempt of Court is a grave one and that as there was no formal application filed and served upon the alleged contemnors, giving them the opportunity to be heard in reply, the court cannot determine the merits of the alleged contempt against persons who are not parties to these proceedings as that would violate their right to a fair hearing guaranteed under Article 50(1) of *the Constitution*.
6. We have considered the arguments for and against the oral submissions seeking to have the President and the Head of Government Press among others, to be held to be in contempt of Court orders issued on 29th May, 2025.
7. We acknowledge that Court orders are not mere suggestions and that obedience to court orders is a cornerstone of the rule of law, which is essential for a functioning democracy and a stable society
8. Every individual and institution, regardless of their position in society, is under an unqualified obligation to obey court orders. Failure to comply with a court order can lead to contempt of court charges, which can result in penalties like fines or imprisonment.



9. More so, willful disobedience of court orders is often inferred where the applicant demonstrates the existence of a clear and unambiguous court order, the alleged contemnor's knowledge of the order and their failure to comply with its terms. However, the alleged contemnor must always, in recognition of the right to be heard, be accorded the opportunity to rebut this inference.
10. The Supreme Court of Kenya in *Githiga & 5 others v Kiru Tea Factory Company Ltd* (Petition 13 of 2019) [2023] KESC 41 (KLR) (16 June 2023) (Judgment) Neutral citation: [2023] KESC 41 (KLR) had this to say in matters contempt of Court:
- “ 50. Due to the quasi-criminal nature of contempt proceedings and the gravity of the consequences that flow from these proceedings, courts are required to adhere to the principles of natural justice, procedural fairness, and the right to a fair hearing. This is because, in contempt proceedings, the liberty of the subject is usually at stake.
58. In enforcing compliance with lawful court orders, the procedures adopted by the court must be fair and reasonable in which full opportunity is given to an alleged contemnor to defend himself or herself. This is because contempt proceedings being quasi-criminal, require a higher standard of proof than in normal civil cases, and one can only be committed to civil jail or penalized on the basis of evidence that leaves no doubt as to the contemnor's culpability.”
11. Contempt proceedings are indeed, quasi-criminal in nature, and it is for that reason that the Supreme Court in the above case had this to say, invoking the right to fair trial under Article 50(2) of *the Constitution*:
- “ 60. Accordingly, Article 50(2) of *the Constitution* on the right to a fair trial imposes a duty on the court to guarantee the parties to contempt proceedings procedural justice by evaluating the evidence brought forth by all parties. We note that, while there exists no fixed content to the duty to afford procedural fairness, the fairness of procedure depends on the nature of the matters in issue and that would constitute a reasonable opportunity for parties to present their cases in any given circumstance. Procedural fairness in the administration of justice involves the fair hearing rule and the rule against bias. The fair hearing rules require a decision maker to inter alia afford a person an opportunity to be heard before making any decision affecting his/her interests.
12. Additionally, in the earlier case of *Salat v Independent Electoral and Boundaries Commission & 7 others* (Petition 23 of 2014) [2015] KESC 31 (KLR) (Election Petitions) (19 October 2015) (Judgment) Neutral citation: [2015] KESC 31 (KLR), the Supreme stated as follows on how courts should handle contempt proceedings:
- “ All Courts must consider the principles and values of the rule of law, participation of the people, equity, inclusiveness, equality, human rights, transparency and accountability. This is because the four corners of due process of the law, specifically the right to be heard and the right to a fair hearing requires that both parties be heard if an issue is raised before the court in order to accord the court the opportunity to pronounce itself on the issue.”
13. We also note that Contempt of Court is an issue that can be dealt with by the Court at any stage of the proceedings, even post-judgment.



14. For the above reasons, we issue the following directions with regard to the oral application for contempt of court made by the Petitioners on 23/06/2025:
- a. The question of contempt of court being a grave one, cannot be determined meritoriously on an oral application and against persons, some of whom are not parties to these proceedings and have not been accorded the opportunity to be heard in reply.
 - b. We so order.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 24TH DAY OF JUNE, 2025.

R.E. ABURILI

JUDGE

J.M. CHIGITI (SC)

JUDGE

B. MWAMUYE

JUDGE

