



**Ogada (AIC Kisumu City Region) & 3 others v Mulwa (Presiding Bishop AIC Kenya) & 3 others
(Constitutional Petition E010 of 2023) [2024] KEHC 8224 (KLR) (21 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 8224 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CONSTITUTIONAL PETITION E010 OF 2023**

**RE ABURILI, J
MARCH 21, 2024**

BETWEEN

**ELD AMOS NAYIGA OGADA (AIC KISUMU CITY REGION) .. 1ST APPLICANT
ELD MARTIN ORWA OBUYA (AIC KISUMU CITY REGION) . 2ND APPLICANT
ELD JOSHUA DUMA AYIECHO (AIC MUHORONI REGION) . 3RD APPLICANT
ELD DAVID OUKO ANYANGO (AIC KISUMU CITY
REGION) 4TH APPLICANT**

AND

**REV ABRAHAM MULWA (PRESIDING BISHOP AIC
KENYA) 1ST RESPONDENT
REV PAUL KIRUI (DEPUTY PRESIDING BISHOP AIC
KENYA) 2ND RESPONDENT
REV JOHN KITALA (ADMINISTRATIVE SECRETARY, AIC
KENYA) 3RD RESPONDENT
THE REGISTERED TRUSTEE, AIC CHURCH KENYA 4TH RESPONDENT**

RULING

1. The applicants/ petitioners vide an application amended on the 18th November 2023 sought the following orders:
 - a. Spent
 - b. That the applicant be granted leave to cite the respondents for contempt of the court order issued on the 7th November 2023.



- c. That upon granting prayer (2) above, the court be pleased to commit the 1st respondent, 2nd respondent and 3rd respondent for contempt of court for a period of 6 months for failure to comply with the orders of the court dated 7.11.2023 issued by this Honourable Court.
 - d. That in the alternative to prayer 3 above, the respondents be compelled to pay a fine of Kshs. 5,000,000.
 - e. That the court be pleased to declare that the 3rd respondent is unfit to hold office for being an incessant and notorious contemnor of court orders.
 - f. That the court to issue an order cancelling/revoking the AIC Kenya Elections which were done throughout the Republic of Kenya on 12.11.2023 from Local Church Council, District Church Council, Regional Church Council, Area Church Council and Central Church Council as the same was done in contempt of the court orders.
 - g. That costs of this application be provided for.
2. The Application is founded on the grounds set out on the face therein and by a supporting affidavit sworn on the 17th November 2023 by the 1st applicant Elder Amos Nyaiga Ogada and a further affidavit sworn by the same deponent.
 3. It is the applicants' case that on the 7th November 2023 this court (M.S. Shariff J) issued conservatory orders restraining the 1st, 2nd and 3rd respondents, their agents, servants, employees, assignees and for the representatives from conducting any elections of the 4th respondents throughout the Republic of Kenya on 12th November 2023 pending the hearing of the application, which orders were served to the respondents on the 10th November 2023. The applicants averred that they stood to suffer substantial loss if the respondents were not committed to civil jail.
 4. In response the respondents filed a replying affidavit sworn by the 3rd respondent on the 1st December 2023 in which he deposed that the Amended Motion dated 18th November 2023 was irregularly before court as it was filed without leave of court and thus should be struck out.
 5. It was further deposed that the founding petition and application dated 6th November 2023 were filed to create the conditions for contempt as from the outset the applicants failed to activate and/or exhaust the provisions of the AIC Kenya's constitution and by-laws as regards dispute resolution warrants dismissal of the contempt application.
 6. The 3rd respondent deposed that at their point of filing the petition and application for contempt the applicants were well aware that the gist of the matters raised were actively before the court in Kisumu CMCC Civil Suit No. 555 of 2018.
 7. It was deposed that this court should reject the applicants' attempt to use the tool of contempt to create a secondary battleground for its 5-year long dispute with the respondents and AIC – Kenya in general.
 8. It was further deposed that the court issued the orders in issue herein on the 7th November 2023 and in an unequivocal act of malice, withheld service of the same until 10th November 2023 and thus the respondents were constrained in reaction and/or response to the same and further that this delay in service led a different court in issuing orders on the same subject matter in Milimani Petition No. E439 of 2023 but that they were able to obtain a consent on the same to allow the elections to proceed and if the applicants herein had served them earlier then they, the respondents would have been in a position to engage in a negotiated settlement and thus avoid being in contempt.
 9. Opposing the application, the respondents filed their respective affidavits



10. The 1st respondent swore a replying affidavit on the 13.12.2023 to the motion for contempt filed by the petitioners in which he deposed that the said replying affidavit was filed “Under Protest” for the reason that there was no body or person known as “Registered Trustee, AIC Church Kenya” as sued herein and that the Board of Trustees of the AIC-Kenya is a body corporate known as Africa Inland Church-Kenya Trustees Registered thus the orders given on 7.11.2023 were directed at a non-existing person and/or body.
11. It was deposed that contrary to the averments in the Petition, the Board of Trustees did not, on 20.9.2023, send out and/or authorize the sending of invitations to the Petitioners “to attend a meeting of Annual General Church Council meeting in Nairobi on the 12th of October 2023” and further that none of the petitioners were members of the AIC Central Church Council thus they did not have capacity to attend any meeting of the CCC, contrary to allegations in paras. 20-35 of the Petition.
12. The 1st respondent further deposed that the Board of Trustees does not conduct countrywide elections as alleged thus significantly, the Trustees are appointed by the AIC Central Church Council and not subject to any local, regional or national elections by members of AIC as enshrined in *the Constitution* of the AIC.
13. It was further deposed that contrary to the allegations therein, the Board of Trustees did not remove the members of the Greater Central Lake Area from any alleged “annual general meeting” and that the prayers sought, even if granted, were incapable of being complied with.
14. The 1st respondent deposed that that the composition of the Board of Trustees is not the “Area Bishops” as alleged and that this repeated citation of the wrong body allegedly describing the Board of Trustees actually confirms that the Petitioners are not aware of, or chose to ignore the organizational structure of the AIC-Kenya.
15. It was further deposed that in the absence of evidence to show that the Petitioners disobeyed the order of the court and thus this court ought to find that the Petitioners have not proven on the required standard that the Respondents have disobeyed orders of this court.
16. It was deposed that the Petition (and all subsequent applications filed by the Petitioners) were fatally defective and void of substance, were vexatious, frivolous, scandalous and an abuse of Court process and ought to be dismissed with costs.
17. The applicants filed a supplementary affidavit asserting that it was different from the general AIC Kenya and or that no elections relating to the 4th respondent were held throughout the country in contravention of the order issued by this court.
18. The applicants maintained that the 4th respondent was one and the same entity as the AIC Kenya.

The petitioners/applicants’ written Submissions

19. The petitioner’s counsel submitted under various headings, in support of their application for contempt of court and responding to the contentions by the respondents on the competency of the petition and the amended application.
20. On whether the amended application is irregular, it was submitted that the amendment was done before the close of Pleadings to introduce Section 5 (1) of the *Judicature Act*, section 36 of The *High*



Court (Organization and Administration) Act, 2015 and that Order 8 rule 1 of the Civil Procedure rules which provides that:

“(1) A party may, without the leave of the court, amend any of his pleadings once at any time before the pleadings are closed.

21. Secondly, that even at the time of argument, the Court can allow the amendment as stipulated under Order 8 Rule 5 of the Civil Procedure Rules which stipulates that:

(1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.

22. On alleged lack of compliant authority to petition, the applicants ‘counsel submitted relying on the decision by this Court on Appeal setting aside a judgment striking out a suit for lack of authority or a non-compliant authority in the case of Livestock Research Organization v Okoko & another (Civil Appeal 36 A of 2021) [2022] KEHC 3302 (KLR) (29 June 2022) .

23. It was submitted that this being a Constitutional petition and public interest litigation, determination of sufficient interest of the parties in the enforcement proceedings has to be in line with the broad provisions of Article 22 of the Constitution, which provides as follows:

“ 22

- (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by-
 - (a) a person acting on behalf of another person who cannot act in their own name;
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest.
 - (d) an association acting in the interest of one or more of its members.”

24. Finally, on the competence of the petition, it was submitted that in any event, the Applicants had since filed a complaint authority as attached.

25. Counsel for the applicants submitted quite strongly that the application for contempt of court was coming at a time when the Judiciary is facing an assault from Political and a section Religious leaders such as the Respondents who have declared in no uncertain terms that they will not obey Court orders. That they have asserted quite unfortunately that they only obey Court orders which they think are obtained transparently and without corruption; which stance defies logic and understanding, is warped up and unfathomable hence it must be resisted by people of goodwill.



26. The applicant's counsel cited from the Holy Book in Romans 13:1-5 and asserted that judicial Authority is first of all derived from the Bible, where God Himself instituted judicial authority and bestowed that authority on the judges who sit on the Judgment seat over his people.
27. Secondly, it was submitted that judicial Authority is derived from the people of Kenya as stipulated in Article 159 of *the Constitution*.
28. He further cited from the High Court website the mandate, mission and vision of the Court.
29. Counsel further cited the Chief Justice in her memorandum to Judicial officers on the 5th January 2024 and echoed the address to new Judges by the Late Justice Mahomed (Former Chief Justice of South Africa and Former Chief Justice of Namibia. He submitted that disobedience of Court orders is becoming fashionable among the elite groups comprising of political and religious leaders hence the Courts must put a stop to this impunity by exercising the authority bestowed on it by the people of Kenya. He submitted that unless the Judicial authority reigns on this conduct, it is setting a stage for chaos where leaders begin to operate above the law.
30. Reliance was placed on the case of Nthabiseng Pheko v Ekurhuleni Metropolitan Municipality & another CCT 19/11(75/2015) where Nkabinde, J observed that:

“The rule of law, a foundational value of *the constitution*, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of courts to carry out their functions depends upon it. As *the constitution* commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere in any matter, with the functioning of the courts. It follows from this that disobedience towards courts orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.”
31. Further reliance was placed on Canadian Metal Co. Ltd v Canadian Broadcasting Corp(N0.2) [1975] 48 D.L.R.(30), wherein the court stated that:

“To allow court orders to be disobeyed would be to tread the road toward anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn... if the remedies that the courts grant to correct... wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the courts will quickly result into the destruction of our society.”
32. Counsel submitted that Courts therefore punish for contempt to insulate its processes for purposes of compliance so that the rule of law and administration of justice are not undermined; and that without this power, or where it is limited or diminished, the court is left helpless and its decisions would mean nothing. This ultimately erodes public confidence in the courts; endangers the rule of law, administration of justice and more importantly, development of society. He relied on the case of Carey v Laiken [2015] SCC17 where it was stated that:

“Contempt of court rests on the power of the court to uphold its dignity and process. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect.”
33. The Applicants' counsel outlined the facts of the case beforehand and was emphatic that the respondents were served with the court order as confirmed by the Registered Board Trustee A.I.C



Kenya, (the Area Bishops) through whatsapp that he had been served with the Court order, which order was brazenly disobeyed and that the respondents went ahead and conducted elections for AIC Kenya contrary to the court orders dated 7-11-2023 stopping the elections of the A.I.C Kenya throughout the Republic of Kenya.

34. The rest of the submissions were essentially the facts which are deposed in the supporting and further affidavits and which were being replicated in the submissions.
35. On the law of contempt of court, reliance was placed on the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR where it was restated the law as regards contempt of court, citing with approval Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others, [2014]e KLR where the Court found that the English law on committal for contempt of court under Rule 81.4 of the English Civil Procedure Rules, which deals with breach of judgment, order or undertakings, was applied by virtue of section 5(1) of the Judicature Act, which still stands following the declaration of the unconstitutionality of the Contempt of Court Act.
36. It was submitted that the 3rd Respondent was a serial contemnor who believes that he is the law in himself. That he has persistently refused to obey the orders made by court in this matter and the subordinate Court. further, that third respondent Rev. John Kitale has not complied with the court orders dated 11/4/2019, 16/12/2021 and 4/3/2022 issued by Hon.Agutu and that the Court found him with contempt and currently he is out on bond of Ksh 50,000 hence he does not deserve any audience from this Court for his past antecedents. Reliance was placed on the case of K v JW [2017] eKLR, where the court stated:

“A litigant who refuses to obey court orders as shown that he will not submit himself to the jurisdiction of the court when it does not suit his purpose. To blatantly choose to obey orders made by a court of competent jurisdiction is to abuse the dignity of the court and to have no regard whatsoever for the rule of law.”

37. Further reliance was placed on Econet Wireless Ltd v Minister for Information & Communication of Kenya & another [2005] KLR 828, where Ibrahim J (as he then was) stated thus:

“It is essential for the maintenance of the rule of law and good order that the authority and 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 plain and unqualified obligation of every person against whom an order is made by a court of competent jurisdiction to obey it unless and until that 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 an order believes it to be irregular or even void.”

38. The applicants’ counsel further cited the case of Fred Matiangi, Cabinet Secretary Ministry of Interior and Co-ordination of National Government vs Miguna Miguna & 4 others [2018] eKLR where the Court of Appeal stated that:

“When courts issue orders, they do so not as suggestions or pleas to the persons at whom they are directed. Court orders issue ex cathedra, are compulsive, peremptory and expressly binding. It is not for any party; be he high or low, weak or mighty and quite regardless of his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance.”



39. It was additionally submitted that Rev. John Kitala does not recognize the authority of the Word of God in Romans 13:7 that directs all men to obey Court Orders as follows: “Pay everyone what you owe him: taxes to whom taxes are due, revenue to whom revenue is due, respect to whom respect is due, honor to whom honor is due.”
40. It was submitted that by disobeying the lawful orders of this Court, the 3rd Respondent has completely dishonored the authority of the Court and the judicial officer who issued it hence he deserves no mercy from this Court, having treated this Court shabbily, with utter contempt and disrespect.

The 1st, 2nd and 3rd Respondent’s submissions

41. On behalf of the 1st to 3rd respondents, it was submitted, opposing the applicants’ application for contempt of Court application as amended on 18th November 2023. Counsel relied on the case of Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui [2021] eKLR, where the Court, in highlighting the nature of contempt proceedings, cited the case of Gatharia K. Mutikika v Baharini Farm Limited [1985] KLR 227 as follows:

“... A 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... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other 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 party 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...”

42. It was submitted that for the prayers sought to succeed, it required the Applicants, both substantively and procedurally, to advance their pursuit in a precise, accurate and legitimate manner, so as to meet the elevated standard set by the Court. On this premise, submissions were made under the following headings:

Non-disclosure of facts

The irredeemable breach of procedure

The petitioners’ bad faith and abuse of court process

Use of illegally obtained evidence

43. Reliance was placed on the 3rd Respondent’s replying affidavits both dated 1st December 2023 sworn in response to the petition and contempt application, and the supplementary affidavit dated 22nd December 2023.
44. On non-disclosure of facts, reliance was placed on Republic v Principal Registrar of Government Lands & 3 others Ex-Parte John Ngugi Gathumbi [2014] eKLR, where the Court noted that where a party, at the ex-parte stage of an application, fails to disclose relevant material to court and thus obtains an order from the court by disguise and camouflage, the court will set aside the ex-parte orders so



obtained. Further reliance was placed *Babadurali Ebrahim Shamji vs. Al Noor Jamal & 2 Others Civil Appeal No. 210 of 1997* where it was held that:

“ ... It is perfectly well-settled that a person who makes an ex parte

application to the court – that is to say, in the absence of the person who will be affected by that which the court is asked to do – is under an obligation to the court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make the fullest possible disclosure then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained.”

45. It was submitted, giving the narration of facts in other matters pending before the lower court that the applicants were extremely economical with the full facts of the matter before the ex-parte Judge. That they intentionally failed to disclose to the learned Judge the pendency of the ruling on the Preliminary Objection in the lower court and only referred to Kisumu CMCC No. 555 of 2018 in general terms; which was to deny the court an opportunity to make a just determination.
46. Further, that the petitioners also hid from the Court the clear provisions of the AIC-Kenya's Constitution on the resolution of disputes which prescribes in section XI that no member shall take the church or its officials to court and that the same section provides for two dispute resolution bodies being the Church Disputes Resolution Tribunal and the Church Disputes Resolution Tribunal at both the Area Church Council and Central Church Council level, which procedure was not adhered to by the applicants herein.
47. It was submitted reiterating the depositions in the affidavits as filed that the decision to exclude the officials of the GCLA was taken on the 21st of September 2022, the decision to not conduct the elections of the GCLA was taken on the 12th of October 2023 and the constitutional act of dissolve all councils was taken on 12th October 2023.
48. On alleged irredeemable breach of procedure, it was submitted citing Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 6 others [2013] eKLR, where the Appellate Court referred to the case of *Ayub Murumba Kakai V. Town Clerk of Webuye County Council, Civil Appeal No. 107 of 2009* in which it was held that:

“ ... It ought to be clearly understood that the courts have not belittled the role of procedural rules. It is emphasized that procedural rules are tools designed to facilitate adjudication of disputes; they ensure orderly management of cases. Courts and litigants (and their lawyers) alike are, thus, enjoined to abide strictly by the rules. Parties and lawyers ought to be reminded that the bare invocation of the oxygen principle is not a magic wand that will automatically compel the court to suspend procedural rules. And while the court, in some instances, may allow the liberal application or interpretation of the rules that can only be done in proper cases and under justifiable causes and circumstances. That is why *the Constitution* and other statutes that promote substantive Justice deliberately use the phrase that justice be done without “undue regard” to procedural technicalities.”

49. It was submitted that the Petitioners had confirmed that they indeed used an erroneous authority in their filing of the petition. Counsel further relied on the case of *Katana Mwangi & Another V*



Canon Assurance K. Ltd[2013]e KLR where the Court referred to John Mungai Njoroge & Others, NakuruH.C.C.C. No. 152 of 2003, where it was held as follows:

“The plain reading of the above rule (order 1 Rule 12 of the Civil Procedure Rules) is that where a party requires another party to appear, plead, or act on his behalf he had to give the authority in writing before such a person filing the suit can claim to be representing such person.”

50. It was further submitted that the Petitioners moved to file another authority in the further affidavit, which resembles their belated filing of an Amended Contempt Application. The case of Vector Projects Limited & another v Sweetland Holdings Limited [2022] eKLR was relied on where M.D Mwangi, J, cited the Supreme Court in Teachers Service Commission vs Simon P. Kamau & 19 Others (2015) eKLR, when it held that:

“By past practice, this Court has not favoured the practice by parties of filing a document improperly, and then seeking ex post facto endorsement by the Court.”

51. It was further submitted that the Petitioners had enjoined the Registered Trustee, AIC-Church Kenya as the 4th Respondent, which is the entity which the Petitioners wanted not to conduct elections and that the order interdicting the elections was expressly against the 4th Respondent, yet the cited party, “Registered Trustee, AIC-Church” does not exist. It was submitted that Section VIII of [the Constitution](#) only recognizes the Board of Trustees, whose composition is subject to appointment, and not election. Reliance was placed on the cases of Safaricom Staff Pension Scheme Registered Trustees v Erdemann Property Limited & 3 others; Everest Limited & another (Interested Parties) [2019] eKLR, where the Court made reference to the case of Gachoni Enterprises Limited vs. D.N. Nyaga t/a Njeru, Nyaga & Co. Advocates & Another (2012) eKLR and held as follows:

“... the slightest ambiguity to the order can invalidate an Application for committal, as ambiguity can in turn lead to the standard of proof, which is the criminal standard, not being attained especially on affidavit evidence.”

52. It was submitted that the vagueness manifested by the Petitioners’ pleadings defeats their attempts to commit the 1st to 3rd Respondents to jail. Further, that the Petitioners also amended their contempt application without the leave of this court, upon filing and serving the application dated 17th November 2023 in haste. Counsel relied on the case of Kiru Tea Factory Company Ltd v Stephen Maina Githiga & 13 others [2019] eKLR, where the Court of Appeal held as follows:

“... We hereby re-affirm the decision in Shimmers Plaza and Christine Wangari Cases (supra) and reiterate that, to institute contempt proceedings leave of court is not required. However, we state that leave must be obtained to amend any pleadings filed subsequent to institution of the contempt application.”

53. On the applicant’s annexing the 3rd Respondent’s private Whatsapp communication, it was submitted that aside from the concerns of violation to privacy of the 3rd Respondent, all these Whatsapp messages were attached to the application without the necessary certificate of production of electronic evidence as provided for under section 106(B) of the [Evidence Act](#) accompanying it.



The 4th Respondent's Submissions

54. It was submitted that the suit identifies the 4th Respondent as “The Registered Trustee, AIC Church Kenya” and thus it was not clear whether the intention of the petitioner to sue one Trustee amongst the Board of Trustees of the church which is composed of not more than 15 members some of whom have since retired from the office of Bishop or are deceased.
55. It was submitted that The Africa Inland Church Kenya Trustees Registered is a body corporate that was incorporated in 1958 under the then Land (Perpetual Succession) Ordinance (now the *Trustees (Perpetual Succession) Act*) Cap 164 which was formerly under Cap 286) of the Laws of Kenya, is not registered under the *Societies Act* and does not operate as a church society and thus has nothing to do with elections of the various councils within the Africa Inland Church-Kenya.
56. The 4th respondent further submitted that the Board of Trustees is not comprised of all the Bishops of the AIC as alleged and does not conduct countrywide elections as alleged and Significantly, that the Trustees are appointed by the AIC Central Church Council and are not subject to any local, regional or national elections by members of AIC.
57. It was submitted that the orders, stemming from the applicants’ application, stopped elections of the 4th Respondent, the Registered Trustee, AIC Church Kenya contrary to the applicants’ allegation that that the 1st – 3rd Respondents disobeyed orders that stopped the elections of the A.I.C Kenya throughout the Republic of Kenya.
58. The 4th respondent submitted that since the contempt of court proceedings are quasi-criminal in nature it therefore behooves that the initial application must be succinctly clear on the prayers sought and that the orders must be capable of being obeyed and must not be presumptive.
59. It was submitted that annexed to the applicants’ submissions, the applicants attached documents that they intend to rely on as evidence which was unprocedural as any document they wished to rely on should have been annexed to the supporting affidavit to their application as was held in the case of Transmara Sugar Company Limited v Hosea Muga & another (2020) eKLR.
60. It was submitted that the Petition in itself is an abuse of the court process as it is fatally defective and void of substance, is vexatious, frivolous, scandalous and an abuse of Court process and ought to be dismissed with costs.

Analysis and Determination

61. I have considered the application for contempt of court as amended, the response made thereto in opposition and the rival submissions. I have also examined the entire court record and the applicable law. This court issued conservatory orders on the 7.11.2023 for 14 days restraining the 1st, 2nd and 3rd respondents, their agents, servants, employees, assignees and for representatives from conducting any elections of the 4th respondent throughout the Republic of Kenya on 12th November 2023.
62. The only issue therefore that commends to me for determination is whether the 1st, 2nd and 3rd respondents are in contempt of the court orders issued on 22nd October 2020 as claimed by the applicant? The other prayers follow this single issue once determined.



63. The Black's Law Dictionary 11th Edition, defines contempt as:
- “The act or state of despising; the quality, state or condition of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it punishable by fine or imprisonment.”
64. The legal framework that governed contempt of court was the *Contempt of Court Act* until it's nullification in the case of *Kenya Human Rights Commission v Attorney General & another [2018] eKLR Constitutional Petition No. 87 of 2017*.
65. The court in the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR while discussing the legal framework on contempt of court stated as follows:
- “The applicable law as regards contempt of court existing before the enactment of the *Contempt of Court Act* was restated by the Court of Appeal in Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others, [2014] eKLR. In that case the Court found that the English law on committal for contempt of court under Rule 81.4 of the English Civil Procedure Rules, which deals with breach of judgment, order or undertakings, was applied by virtue of section 5(1) of the *Judicature Act* which provided that:
- “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.”
- This section was repealed by section 38 of the *Contempt of Court Act* of 2016, and as the said Act has since been declared invalid, the consequential effect in law is that it had no legal effect on, and therefore did not repeal section 5 of the *Judicature Act*, which therefore continues to apply. In addition, the substance of the common law is still applicable under section 3 of the *Judicature Act*. This Court is in this regard guided by the applicable English Law which is Part 81 of the English Civil Procedure Rules of 1998 as variously amended, and the requirement for personal service of court orders in contempt of Court proceedings is found in Rule 81.8 of the English Civil Procedure Rules.”
66. As restated above, the law applicable in contempt of court proceedings is Section 5(1) of the *Judicature Act* which mandates that the court relies on the applicable law in England at the time the alleged contempt is committed. In the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR the court dealing with an application for contempt of court based on disobeyed of a court order stated
- “An application under Rule 81.4 “(breach of judgement, order or undertaking) now referred to as “application notice” (as opposed to a notice of motion) is the relevant one for making the application now under consideration. The application notice must set out fully the grounds on which the committal application is made and must identify separately and numerically, each alleged act of contempt and be supported by affidavit(s) containing all the evidence relied upon.”
67. A claim on contempt of court is a grave issue that the court treats with a lot of seriousness as it goes to the core of undermining the authority of the court and the rule of law. It is a fundamental principle of law that court orders are meant to be obeyed to the letter as they are not issued in vain and neither are they suggestions. Failure to obey court orders would then result in contempt of court.



68. The importance of obedience of court orders was restated in the case of Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] eKLR where the court cited with approval the case of Gulabchand Popatlal Shah & Another Civil Application No. 39 of 1990, (unreported). The Court of Appeal held, inter alia that:
- “..... It is essential for the maintenance of the Rule of Law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors ...”
69. The court needs to ascertain whether the applicants herein have met the basic elements set out to prove a case for contempt of court. In the case of Katsuri Limited v Kapurchand Depar Shah [2016] eKLR, the court stated that
- “The applicant must prove to the required standard (in civil contempt cases which is higher than in criminal cases) that:-
- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
 - (b) the defendant had knowledge of or proper notice of the terms of the order;
 - (c) the defendant has acted in breach of the terms of the order; and
 - (d) the defendant's conduct was deliberate.
70. I will therefore analyze each element as set out above.
71. I have examined the court order issued by the court and it is clear that the order issued by the court was clear and was addressed to the 1st, 2nd and 3rd respondents, hence binding upon them.
72. On the second element, the alleged contemnor ought to have knowledge of or proper notice of the terms of the order. The respondents by their own admission have confirmed having knowledge of the court order. The applicants produced an affidavit of service sworn on the 17th November 2023 by one Julius Otieno Raminya in which he deposed that on the 10th November, 2023, he served the orders at the respondents' central office in Upperhill, Nairobi. This court is satisfied that the 1st, 2nd and 3rd respondents had sufficient knowledge of the contents of the court order.
73. The issue of whether the respondents are in deliberate or brazen breach of the court order is what is in contention and quite strongly. The applicant has alleged that the respondents breached the court order and proceeded to hold elections of the 4th respondent on the 12.11.2023.
74. The 4th respondents on their part have remained firm that they have at all times obeyed the court orders, that the 4th respondent was a distinct entity from AIC Kenya and that the Board of Trustees is not comprised of all the Bishops of the AIC as alleged by the applicants and that it does not conduct countrywide elections as alleged and Significantly, that the Trustees are appointed by the AIC Central Church Council and are not subject to any local, regional or national elections by members of the AIC. The 4th respondent further submitted that the elections carried out on the 12.11.2023 were for all AIC Kenya and not the 4th respondent.
75. The nature of a claim of contempt of court though civil in nature, has been held to be of a criminal character as it has the potential of limiting one's liberty to freedom when one is committed to civil jail.



The standard of proof of such a claim is higher than proof on a balance of probability but not beyond reasonable doubt. This was so held in the case of *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227, where the court rendered itself thus:

“A 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.”

76. I have examined the claim by the applicant and I deduce that the elections that were carried out on the 12.11.2023 were for the general AIC Kenya and not the 4th respondent the Registered Trustee, AIC Church Kenya. The orders sought and obtained referred to the elections of the 4th respondent. No evidence has been adduced to the contrary by the applicants. I have made this distinction which is necessary because even from the spent application made by the respondents herein wherein they sought for review and setting aside of the conservatory orders issued on 7th November, 2023, they annexed copy of the order from Milimani High Court in Nairobi issued on 9/11/2023 in HCC Constitutional Petition No. E439 of 2023 where the court initially issued a conservatory order restraining the respondents from carrying out the Africa Inland Church of Kenya elections and not elections of the Registered Trustee of the AIC Church Kenya.
77. Having found that a claim of contempt of court is one that has potential consequences of restricting one's liberty or imposition of a fine and also that the threshold for proof is higher than on a balance of probabilities, it was incumbent upon the applicants to establish that the alleged elections of 12.11.2023 were specifically for the 4th respondent and not the AIC Kenya. Given the seriousness with which the court treats allegations of contempt, I am hesitant to make a finding that contempt was proved to the required standard.
78. Accordingly, I find and hold that the applicants have not proved to the required standard, that the respondents are in contempt of court order and therefore, the orders sought are not available to them. The application amended on 18th November, 2023 is hereby dismissed with an order that each party bear their own costs, this being a matter involving the clergy whom this court will continue to implore to, at all times, in the first instance, endeavour to resolve their differences and disputes amicably using the many available channels before resorting to court process.
79. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 21ST DAY OF MARCH, 2024

R.E. ABURILI

JUDGE

