REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

PETITION NO.6 OF 2015

DR. FREDRICK NJERU KAMUNDE.....PETITIONER

VERSUS

THARAKA NITHI COUNTY GOVERNMENT.....1ST RESPONDENT

S.M. RAGWA, GOVERNOR THARAKA NITHI COUNTY.....2ND RESPONDENT

C.N MONARI.....3RD RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 11th March, 2016)

RULING

The petitioner is Dr. Fredrick Njeru Kamunde. He filed the petition on 12.05.2015 through Kamau Kuria and Company Advocates. The petition was said to be in the matter of contravention of Articles 2, 10, 41, 47, 73 and 227 of the Constitution of Kenya. The petition named Tharaka Nithi County Government and S.M. Ragwa, Governor Tharaka Nithi County as the 1st and 2nd respondents respectively and who appointed Murango Mwenda & Company Advocates to act for them in this matter.

Together with filing the petition, the petitioner filed a notice of motion for interim orders. Upon hearing the petitioner's advocate and considering the material before the court in support of that application, the court gave the following orders on 12.05.2015, thus:

1. That the application be and is hereby certified urgent.
2. That the said application be served by close of 13.05.2015 for inter-partes hearing on 21.05.2015 at 9.00am for 40 minutes.
3. That the respondents be and are hereby restrained by themselves, their servants or agents from breaching the contract entered into by the petitioner with the 1st respondent on 22.08.2014 until further orders of this honourable court.
4. That the respondents be and are hereby restrained by themselves, their servants or agents from interfering with the petitioner's discharge of his statutory duties under section 44(3) of the County Governments Act until further orders of this honourable court.
5. That the respondents be and are hereby restrained by themselves, their servants or agents from taking actions calculated to cause an unlawful termination of the petitioner's employment with the 1st respondent until further orders of this honourable court.
6. That the respondents be and are hereby restrained by themselves, their servants or agents from advertising the post of county secretary of the 1st respondent until further orders of this honorable

court.
7. That the costs of this application be in the cause.

On 8.06.2015 the matter came up before the court in presence of the advocates for the parties and by consent of the parties, the court gave orders, the pertinent ones being as follows:

1. ….
2. ….
3. ….
4. That the County Commissioner, Tharaka Nithi County to provide the petitioner with adequate security to enable him to perform his duties as county secretary of the 1st respondent.
5. That the respondents do provide to the petitioner a motor vehicle to enable him to discharge his duties.
6. ….
7. That the orders of 12.05.2015 do remain in force until the determination of the petition.
8. ….
9. That costs in the cause.

It is the petitioner's case that the orders as set out above were disobeyed. Accordingly, the petitioner filed two applications to purge the alleged disobedience of the court orders as given on 12.05.2015 and 8.06.2015. The two applications are subject of this ruling.

The first of the two applications was filed on 03.08.2015 by way of the notice of motion under section 5 of the Judicature Act and order 45 and 52 of the Supreme Court Practice rules. The substantive prayers in that application were as follows:

1. ….
2. ….
3. That this honourable court be pleased to grant leave for the sequestration of the moveable and immovable properties of the 1st respondent to compel it to comply with the orders made herein on 12.05.2015 and 8.06.2015 respectively.
4. That if the prayer above is granted, a writ or order of sequestration do issue appointing H.W. Gichohi, George Kimeu, Isaac Kiragu and Mr. Jonah Kariuki, sequestrators.
5. That the said writ or order of sequestration issued under (4) above do remain in force until the 1st respondent complies with orders made on 12.05.2015 and 8.06.2015.
6. That the 2nd respondent to pay the costs of this application.

The application was based upon the grounds stated in the motion, the statement and petitioner's verifying affidavit sworn on 9.07.2015 and filed in court on 10.07.2015, and, the petitioner's supporting affidavit filed together with the application.

The second of the petitioner's applications was by way of the Originating Notice of Motion filed on 01.10.2015 and dated 30.09.2015 brought under section 5 of the Judicature Act and Order 52 of the Supreme Court of England rules. The petitioner prayed for orders thus:

1. That this honourable court be pleased to commit S.M. Ragwa and C.N Monari, the 2nd and 3rd respondents respectively for contempt of court.
2. That the 2nd and 3rd respondents to pay costs of the application.

The application was based upon the grounds set out in the motion and the statement and petitioner's

verifying affidavit on record.

To support the applications the petitioner filed a supplementary affidavit on 30.10.2015 and gave an oral testimony in court.

The respondents opposed the applications by filing the affidavit of Humphrey Mawira in reply to motion dated 30.09.2015 filed on 21.10.2015; the grounds of opposition to the motion dated 3.08.2015 filed on 09.10.2015; the replying affidavit of Samuel M. Ragwa filed on 09.10.2015; the affidavit of Humphrey Mawira sworn on 27.05.2015; and the further replying affidavit of Samuel M. Ragwa filed on 03.12.2015. The 2nd respondent also made an oral testimony to oppose the applications.

The court has considered the applications and all the material on record and determines the matters in dispute as follows.

The **1st issue** for determination is whether this court enjoys the contempt jurisdiction to determine the two applications. It was submitted for the respondents that the court did not enjoy the contempt jurisdiction because such jurisdiction is vested only in the High Court and the Court of Appeal as provided for in section 5 of the Judicature Act, Cap 8 Laws of Kenya.

For the petitioner it was submitted that the Supreme Court had already held that every court enjoys the power to make effective its orders and authority. Counsel for the petitioner cited **Board of Governors, Moi High School Kabarak –Versus- Malkom Bell and Another[2013]KLR-SCK** where the Supreme Court held that like any other court it had inherent power to make such orders or give such directions as may be necessary for the ends of justice. Thus, in that case, the court held that it had power to grant injunctions although the applicable rules did not state so clearly. This court follows that submission especially that Article 162 of the Constitution declares that the superior courts are the Supreme Court, the Court of Appeal, the High Court, the Employment and Labour Relations Court, and the Environment and Land Court. In the commonwealth jurisdictions, a superior court is a court of general or unlimited jurisdiction in civil and criminal matters. Thus, in our system of courts, the court holds that the superior courts, within the scope of their respective jurisdictions, they are courts of general jurisdiction with civil and criminal jurisdiction including the contempt jurisdiction. Thus, in **Black's Law Dictionary, 9th Edition**, **"superior court"** means a trial court of general jurisdiction. Needless to state, this court has made many decisions in the exercise of the contempt jurisdiction including **Mwaniki Silas Ngari –Versus-John S. Akama & Another[2015]eKLR** (Wasilwa J.).

The court upholds its opinion in the ruling of 18.07.2014 in **Geoffrey Makana Asanyo-Versus- Nakuru Water and Sanitation Services Company and 6 Others [2014]eKLR** thus, **"The court has considered the respective submissions made for the parties. The Judicature Act does not define "High Court" but defines Chief Justice and Judge in terms of appointments under the former Constitution of Kenya and which provisions ceased to apply with the coming into operation of the Constitution of Kenya, 2010. Thus, interpretation as urged for the respondent would mean that the High Court and the Court of Appeal as constituted and in place under the Constitution of Kenya 2010 are not the courts as envisaged in section 5 of the Act with the consequence that the section is vestigial and inconsequential. Such interpretation would result into absurd and undesirable outcomes in our administration of justice.**

In the opinion of the court, section 5 of the Judicature Act is to be interpreted to enable our superior courts as established under the Constitution of Kenya, 2010 and the relevant enabling legislation to punish for contempt. In particular, section 7(1) of the Transitional and Consequential Provisions in the Sixth Schedule to the Constitution of Kenya, 2010 provides that

all law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the Constitution. Taking into account that provision, the court finds that the court is vested with jurisdiction under section 5 of the Judicature Act to hear and determine contempt proceedings including the kind of application for contempt that was filed in this case. Accordingly, the court finds that the preliminary objection shall fail."

The **2nd issue** for determination is whether the orders of 12.05.2015 were served upon the respondents and particularly the 1st and 2nd respondents, and, whether, personal service was mandatory. The 2nd respondent in the replying affidavit filed on 09.10.2015 at paragraph 3 acknowledges that when the orders were served on 12.05.2015 at the county government office at Kathwana, he was absent and therefore he was not personally served. Further, he stated in the affidavit that he received a copy of the orders and the other court papers the same day especially that he was scheduled to be away from the office on 13.05.2015. Throughout his oral testimony, the 2nd respondent admitted that he had information and knowledge of the court orders throughout the material time. Counsel for the petitioner, Dr. Gibson Kamau Kuria, SC filed the relevant affidavit of service on 15.05.2015 and in his oral testimony confirmed that he had caused service of the orders as detailed in the affidavit of service by email and later physically at the respondents' office. The court returns that the orders were served as set out in the affidavit of service on record and the 1st and 2nd respondents were aware of the orders at all material times.

The court considers that it is currently clear that personal service of an order or judgment is not necessary where the judge is satisfied that the person to be served was present when the judgment or order was given or made; or the person has been notified of the terms of the judgment or order whether by telephone, fax, e-mail or otherwise.

Thus, as submitted for the petitioner, the 1st and 2nd respondents being aware of the orders, they were bound to obey the orders. The court follows the submissions as made for the petitioner that personal service was not mandatory and that it was sufficient that the respondents were aware of or had knowledge of the court orders, the last of the orders in issue having been made by consent of the parties. Thus in **Justus Wanjala Kisiangani and 2 Others-Versus- City Council of Nairobi and 3 Others[2008]eKLR** it was held that it is trite law that any party who is aware of a court order is required to obey the same. Further, in **Kenya Tourist Development Corporation –Versus- Kenya National Capital Corporation & Another, High Court Civil Appeal No. 6776 of 1992,** Akiwumi J. held that notice of a restraining order may be given by telephone, telegram or otherwise and that suffices for purposes of enforcing the order. Akiwumi J (as he then was) followed **Halsbury's Laws of England, 4th Edition Vol.9** thus, **"Where an order requires a person to abstain from doing an act, it may be enforced notwithstanding that service of a duly endorsed copy of the order has not been served, if the court is satisfied that, pending such service, the person against whom enforcement is sought has notice of the terms of the order either by being present when the order was made or by being notified of the terms of the order whether by telephone, telegram, or otherwise."**

The **3rd issue** for determination is whether the court can issue sequestration orders in contempt proceedings to purge disobedience of a court order as has been invoked by the petitioner in the present case, and if in affirmative, whether the order should issue in this case. It was submitted for the respondents that sequestration orders are consequential and are sought after a corporate body has failed to comply with final orders of the court like where awarded damages have not been paid. In the present case, it was submitted for the 1st respondent that the applicant had to show that the court had in previous contempt proceedings imposed a fine for an established contempt liability against the 1st respondent and upon the 1st respondent failing to pay such a fine, the sequestration orders would then

be properly invoked. It was further submitted that to place the 1st respondent's property in private hands would not be fair because there existed better and alternative remedies to enforce the court orders if disobedience was established. For the petitioner it was submitted that the orders for sequestration were available in contempt proceedings alongside sentencing the contemnor to imprisonment or fine.

Black's Law Dictionary, 9th Edition defines **"sequestration"** to include a writ which is sometimes issued against a civil defendant who has defaulted or has acted in contempt of court. Thus the court returns that a sequestration order is available in contempt proceedings just like a sentence to imprisonment or a fine. Further, the court holds that sequestration is a remedy of the last resort in contempt cases in line with the submissions made for the 1st respondent that the order may not be made where other remedies are available; that was further confirmed in the submissions for the petitioner by citing **O'Regan, Contempt of Court and the Enforcement of Labour Injunctions, Modern Law Review, Vol54, 1991 at 401** thus, **"Sequestration is a remedy of the last resort in contempt cases. It is a process whereby a person in contempt of court is deprived of his or her property and that property is given to sequestrators to hold and detain in order to obtain compliance with the court order. There were four well publicized disputes which led to the sequestration of trade union assets in the 1980's"**

In the current case, the court has made some considerations which operate as a bar to giving an order of sequestration as prayed for.

First, it has been urged that the order is to be made upon the principle of vicarious liability so that the 1st respondent would become liable by reason of the actions and omissions of the 2nd respondent who is the chief executive officer of the 1st respondent as provided for in Article 179(4) of the Constitution. It is the opinion of the court that the principle of vicarious liability would apply only if the 2nd respondent's alleged offensive actions or omissions are shown to have been in genuine furtherance of governmental purposes. In this case, it has been urged for the petitioner that the 2nd respondent's actions and omissions are unlawful and in that case, the court finds that it would be unjustified to visit the 1st respondent as the principal with *ultra-vires* actions of its supposed agent, the 2nd respondent. In making that finding the court upholds its opinion in **Mundia Njeru Gateria-Versus-Embu County Government and 3 Others [2015]eKLR** thus, **"The material before the court show that the 2nd responded failed to act as per the advice and instead allowed the petitioner's lamentations about the violations of his rights to persist. The court finds that in the circumstances of the case the petitioner is entitled to compensation by the 2nd respondent for the violation and continued violation of the rights beyond the clear advice that the 2nd respondent was given by the Transitional Authority. As submitted for the petitioner, the 2nd respondent continued to violate the petitioner's rights after receiving the advice and the court finds that taking all the circumstances into account, the 2nd respondent's violation of the petitioner's rights was not in pursuit of justified or genuine governmental purpose. It is the opinion of the court that it would be unjustified to burden the tax payer to meet the compensation for violation of the rights in this case whereby the 2nd respondent engaged in the illegalities and his actions were clearly in violation of the law and were advanced in clear disregard of the advice given by the relevant government agency. The 2nd respondent and not the tax payer is therefore found liable for paying the compensation for the violation of the fundamental rights and freedoms."** Following that opinion, the court holds that the principle of vicarious liability would not apply to bind government for clearly unlawful actions or omissions or, like in this case, alleged unlawful actions or omissions on the part of a state or public officer which are clearly devoid of furtherance of the governmental purpose or public interest.

Second, the court has considered the likely scope and effect of an order of sequestration against the 1st respondent and in the circumstances of this case so as to achieve the desired outcomes that uphold the

dignity of the court and the ends of justice. The 1st respondent is the County Government of Tharaka Nithi. Under Article 176 (1), a county government for each county consists of a county assembly and a county executive. In the present proceedings, the property that would be subject of the sequestration order has not been scheduled or identified. Secondly, taking into account all the material on record, the county assembly of Tharaka Nithi has not been mentioned or shown to have engaged in any offensive action or omission by itself or by its servants that amounts to disobeying the court orders that are to be enforced. It would therefore not be justified to issue the orders as prayed for in the application filed on 3.08.2015 with the possible consequence that the orders may affect or be enforced against the innocent county assembly of Tharaka Nithi. Under the vagueness doctrine, the court is guided that imposition of sanctions in the contempt jurisdiction is in the nature of criminal process under which the sanctions must be explicit, definite with fair warnings to those concerned and devoid of arbitrary enforcement.

In the circumstance of this case and in view of the highlighted bars to the granting of an order of sequestration, the application filed on 3.08.2015 will therefore fail.

The **4th issue** is whether the 3rd respondent is liable as prayed for in the application filed on 01.10.2015 and dated 30.09.2015. The order that the County Commissioner, Tharaka Nithi County do provide the petitioner with adequate security to enable him to perform his duties as County Secretary of the 1st respondent was given on 8.06.2015. As per the affidavit of service by Gitari Mwenda sworn on 16.06.2015, the order was personally served upon the 3rd respondent on 16.06.2015 at about 11.00am. The 3rd respondent in his replying affidavit filed on 01.10.2015 has stated that at the material time he was the acting County Commissioner; that on 21.07.2015 at the meeting of the county security committee which he chaired it was decided that the petitioner should follow the procedure for getting personal security involving the Inspector General of Police giving relevant instructions to the county police commander; that further, the meeting decided that the police at Kathwana AP Camp be deployed to provide security to the petitioner while on duty at the county headquarters; and the 3rd respondent held the acting capacity from 23.03.2015 to 31.08.2015. The court has considered the order as directed to the 3rd respondent. The 3rd respondent conveyed to the petitioner's advocate in the letter of 24.06.2015 that the police at Kathwana AP Camp would be deployed to provide security to the petitioner while the petitioner was on duty at the county headquarters and that he lacked the authority to deploy personal security as that function was vested in the Inspector General of Police. The lack of authority as urged for the 3rd respondent has not been rebutted and the 3rd respondent having done all that was within his authority to do, the court finds that it has not been established that the 3rd respondent disobeyed the court order as the prayers made against him will fail.

The **5th issue** is whether the 2nd respondent is liable as prayed for in the application filed on 01.10.2015 and dated 30.09.2015.

On 8.06.2015 the court ordered that the respondents do provide to the petitioner a motor vehicle to enable him to discharge his duties. The evidence shows that the motor vehicle KBY 048C which had been allocated for the petitioner's use was last used by the petitioner on 13.05.2015. The evidence further shows that in the circular dated 20.08.2013 the Salaries and Remuneration Commission set out the policy on use of county government cars. Under the circular, a County Secretary was not among the officers who would be allocated a car but was entitled to use any of the five pool cars. The court finds that in view of that prevailing policy and as per the 2nd respondent's evidence, the petitioner was entitled to use any of the pool cars. The main issue before the court is whether, within the prevailing policies, the 2nd respondent provided transport to facilitate the petitioner to discharge his duties. It is the court's opinion that the said order could be complied with by the petitioner accessing any of the pool cars and therefore within the prevailing government policies on transport as had been laid out by the Commission. The court finds that the 2nd respondent by action or omission failed to provide transport by way of a

motor vehicle through making decisions by him-self or his agents or officers working under him that would enable the petitioner to access one of the pool cars. Further, the court finds that the petitioner has showed that by actions of the 2nd respondent making it impossible for the petitioner to report back at work, the petitioner was absent from the work station. Accordingly, the court finds that the 2nd respondent cannot attribute that particular disobedience of the court order to the petitioner's absence as the 2nd respondent cannot be allowed the benefit of his own designs surrounding and in furtherance of the disobedience. Thus the court returns that the 3rd respondent disobeyed that order as regards provision of the car.

On 12.05.2015 the court made pertinent orders as follows:

1. ….
2. ….
3. That the respondents be and are hereby restrained by themselves, their servants or agents from breaching the contract entered into by the petitioner with the 1st respondent on 22.08.2014 until further orders of this honourable court.
4. That the respondents be and are hereby restrained by themselves, their servants or agents from interfering with the petitioner's discharge of his statutory duties under section 44(3) of the County Governments Act until further orders of this honourable court.
5. That the respondents be and are hereby restrained by themselves, their servants or agents from taking actions calculated to cause an unlawful termination of the petitioner's employment with the 1st respondent until further orders of this honourable court.
6. That the respondents be and are hereby restrained by themselves, their servants or agents from advertising the post of county secretary of the 1st respondent until further orders of this honorable court.
7. ….

In determining whether the 2nd respondent is liable in contempt with respect to the foregoing orders and as prayed for by the petitioner, the court makes the following preliminary findings as they appear to have a serious bearing in this case:

a. As submitted for the petitioner and as per **Borrie and Lowe, The Law of Contempt, 4th Edition, 139,** the general rule is that the liability for breaking a court order is strict in the sense that all that requires to be proved is service of the order and subsequent doing by the party bound of that which is prohibited. Thus *mens rea* is not necessary and as per Sachs LJ in **Knight-Versus-Clifton [1971]2 ALL E.R 378 at 393,** when an injunction prohibits an act, the prohibition is absolute and is not to be related to intent unless otherwise stated on the face of the order. Thus, the court considers that intention or therefore *mens rea* is necessary if the order has incorporated it. Thus once a court order has been given, the person who is bound must obey it and cannot be heard to say that by reason that he thought he was acting reasonably with due care or upon some legal or other professional advice, there was no intention to disobey the order. It was submitted for the respondents that *mens rea* was crucial because in **Kenya Tea Growers Association –Versus- Francis Atwoli & 5 Others [2012]eKLR** and on the basis of **Clarke & Others –Versus-Chad Burn & Others (1985) ALL ER 211,** the court stated thus, **" I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed, willful disobedience to an order of the court is punishable as contempt of court."** It was submitted that the word willful connoted intention so that *mens rea* had to be established. While the court agrees that the word willful is not a term of art and it means voluntary and intentional, the necessity for intention in contempt must be understood within the established exception being that intention will be required where it was shown that it had been

incorporated in the order. In the present case, it was not shown that intention had been incorporated in the court order.

b. As for the burden of proof and as submitted for the respondents, under section 107 of the Evidence Act, Cap. 80, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. Thus he who alleges must prove and as submitted for the respondents, the burden of proving the sets of facts that establish the alleged contempt in this case rests upon the petitioner.
c. As for the standard of proof and as submitted for the petitioner, the same was established in **Mutika-Versus- Baharini Farm Limited (1985)KLR 229** thus, **"In our view, the standard of proof in contempt proceedings 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, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature."**
d. It has already been established earlier in this ruling that knowledge of the court order is sufficient and personal service is not necessary. Further the court has already found that the 2nd respondent was aware and had knowledge of the court order as of close of 12.05.2015.

Turning back to the issue whether the 2nd respondent disobeyed the orders of 12.05.2015 as extended in the orders of 8.06.2015, and taking into account the guiding principles as highlighted in (a) to (d) above, the court makes findings as follows.

First, did the 2nd respondent by himself or his agents or servants breach the contract entered into by the petitioner with the 1st respondent on 22.08.2014" The court has carefully revisited the record and particularly the petitioner's affidavit and oral evidence. The petitioner had to set out the relevant term or condition of the contract entered into on 22.08.2014, the particulars of the alleged breach, and finally the evidence establishing the substance of the breaches. The petitioner has lamented that under the contract he was entitled to a salary and allowances. He lamented that the 2nd respondent by himself or by his agents or servants had failed to pay him salary and benefits for April, May and June 2015. **The court finds that after the court made order (3) of 12.05.2015, indeed the 2nd respondent breached the contract as the salaries and allowances were not paid as urged for the petitioner.**

Second is whether the 2nd respondent by himself or by his servant or agents interfered with the petitioner's discharge of the petitioner's statutory duties under section 44(3) of the County Governments Act, 2012. The evidence on record is clear. On 13.05.2015 the petitioner reported at work. There is no reason to doubt the petitioner's account that on the afternoon of 13.05.2015, goons evicted the petitioner from his office. However it has not been established that the goons were acting upon the 2nd respondent's instructions. It has not been shown that the goons were employees of the 1st respondent. It is therefore difficult to find that the goons were agents or servants of the 2nd respondent and the 2nd respondent would thereby get exculpated in that regard.

Nevertheless there are other events, actions and omissions that the petitioner has lamented about. The petitioner has lamented that on 13.05.2015 the motor vehicle KBY 048C allocated for his use was withdrawn. His official driver one Humprey Mawira has stated in his affidavit that on that day the petitioner failed to give him instructions and so he closed the work ticket for the day. For the petitioner, he says faced with that predicament, he applied in court on 3.06.2015 for an order that the 3rd respondent provides him with transport by way of providing a motor vehicle. The court has earlier, in this ruling, made its findings on the issue of provision of transport as ordered by the court implicating the 2nd respondent in that disobedience of the court order. At this stage, the crucial issue is whether on 13.05.2015 the 2nd respondent by himself or by his agents withdrew motor vehicle KBY 048C and thereby interfered with the petitioner's performance of duty as the County Secretary. The petitioner's

account is that on 13.05.2015 at around 11.00am the 2nd respondent instructed the petitioner's official driver one Humprey Mawira to remove the petitioner's personal effects such as bags and clothes from the said motor vehicle and for the driver to park the motor vehicle outside the 2nd respondent's office which was a half kilometer from the main offices where the petitioner's office was located. Further the 2nd respondent did not explain to the driver or the petitioner why the motor vehicle was being withdrawn and for how long it would remain withdrawn. The petitioner further stated that the driver interrupted business at the petitioner's office at about 11.00am and handed to the petitioner the petitioner's items that had been withdrawn from the car. The court has examined the affidavit of Humphrey Mawira in reply to the motion dated 30.09.2015 and filed on 21.10.2015. He denies that the 2nd respondent gave him instructions to withdraw the motor vehicle. He denies that the petitioner had left his personal effects in the car. He denies that he went to the petitioner's office to hand to him his jacket, bags or personal effects as alleged. Further, that day he remained at the 1st respondent's headquarters and the motor vehicle remained parked until 5.07pm when he closed the work ticket because he had not received instructions from the petitioner. The court has weighed the evidence, upon the standard of the grey between beyond reasonable doubt and balance of probability, and finds that the petitioner has not established that the respondent or the respondent's agents or servants withdrew the motor vehicle on 13.05.2015. In so finding, the court considers that the petitioner did not witness the 2nd respondent giving the driver instructions as alleged. The petitioner's account would therefore depend upon the driver's evidence but who has denied the petitioner's account. Accordingly, on account of alleged withdrawal of the motor vehicle on 13.05.2015, the court finds that the petitioner has not established that the 2nd respondent interfered with the petitioner's performance of duty.

The petitioner has lamented that his secretary and driver were withdrawn. The 2nd respondent has stated that the redeployment was normal within the functions of the County Public Service Board and that redeployment was within the responsibilities of the Principal Human Resource Officer. First, there is no doubt that the driver and the secretary were withdrawn. Second, by the 2nd respondent's own evidence, the withdrawal was by the Principal Human Resource Officer, an agent of the 2nd respondent because the 2nd respondent is the chief executive officer of the county government and being aware of the court order, he was bound to stop the redeployment or to cause the replacement of the redeployed officers. **Accordingly the court returns that by reason of redeploying or taking away the staff supporting the petitioner's work and without the prompt replacement or any replacement, the 2nd respondent, and in view of order (4) of 12.05.2015, the 2nd respondent indeed disobeyed the court order because the withdrawal of the staff amounted to interfering with the petitioner's discharge of statutory duty as the county secretary.**

The petitioner was concerned that the 2nd respondent had appointed one Ahmed Hemed the acting county secretary to act as the county secretary. The 2nd respondent did not deny making such acting appointment and he justified it as necessary in view of the 2nd respondent's action of suspending the petitioner from duty and the petitioner's consequential absence from duty. The court holds that there cannot be an acting appointment in circumstances whereby the substantive office holder, the petitioner, was in office especially in view of the court orders. The court finds that if the respondents had a genuine difficulty in implementing the court orders, nothing precluded them from coming back to court to seek a variation as would have been necessary and appropriate. The court further finds that the authority under which the 2nd respondent suspended the petitioner and appointed another person to act as the county secretary or to perform the statutory duties of the county secretary has not been established. It is the court's considered view that by appointing an acting county secretary or another person to perform the statutory duties of the county secretary, albeit, temporarily as was said, the 2nd respondent was in disobedience of the court order, constructively declaring a vacancy in that office. The court finds that such actions essentially amounted to unlawful designs calculated to unlawfully bring the petitioner's employment to an end. **Accordingly, the court finds that the petitioner has showed that the 2nd**

respondent by his own actions of suspending the petitioner and appointing another person as the acting county secretary or to perform the statutory duties of the county secretary amounted to disobedience of the court order that the 2nd respondent would not interfere with the petitioner's discharge of the statutory duties of the office of the county secretary and, that the 2nd respondent would not take actions calculated to cause unlawful termination of the petitioner's employment with the 1st respondent.

Thus, the court returns that the 2nd respondent disobeyed the court orders of 12.05.2015 as extended by the orders of 8.06.2015 by:

a. **breaching the petitioner's contract of service of 22.08.2014 as the salaries and allowances were not paid as was agreed between the parties to the contract;**
b. **redeploying or taking away the staff supporting the petitioner's work and without the prompt or any replacement, thereby interfering with the petitioner's discharge of statutory duty as the county secretary;**
c. **his own actions of suspending the petitioner and appointing another person as the acting county secretary or to perform the statutory duties of the county secretary which amounted to disobedience of the court orders that the 2nd respondent would not interfere with the petitioner's discharge of the statutory duties of the office of the county secretary and, that the 2nd respondent would not take actions calculated to cause unlawful termination of the petitioner's employment with the 1st respondent; and**
d. **by failing to provide to the petitioner a motor vehicle to enable him to discharge his duties.**

The court further considers that for avoidance of doubt and in furtherance of the court orders of 12.05.2015 and 8.06.2015, the petitioner shall be entitled to forthwith report at work at the earliest possible opportunity being not later than Monday 14.03.2016 at 8.00am with full pay and benefits, including release of all withheld pay as the case may be.

While making these findings, the court upholds **Hadkinson-Versus-Hadkinson [1952] 2 ALL ER 1952 at 569** that it is the plain and unqualified obligation of every person against or in respect of whom an order by a court of competent jurisdiction is made to obey it unless and until the order is discharged. The 2nd respondent failed to come back to court for clarification, if at all he was in any doubt, and the orders having not been varied or otherwise set aside, the 2nd respondent is hereby found guilty of contempt of court. Thus, to answer the 5th issue for determination, the court returns that in view of the cited culpability, the 2nd respondent is liable as prayed for in the application filed on 01.10.2015 and dated 30.09.2015.

It is in the best interest of the rule of law, good order and good governance that the authority and dignity of our courts is upheld at all times. This court will frown at and punish established contemnors. The court will exercise its contempt jurisdiction fairly and firmly. In the present case the 2nd respondent Samuel M. Ragwa while purporting to be a law abiding citizen who would not disobey court orders and would uphold the dignity of the court, has been found by the court guilty of disobeying court orders, he has not given any apology and there are no mitigating factors before the court.

The court has taken all the circumstances of this case into account and orders that the 2nd respondent Samuel M. Ragwa shall attend court in person or by his advocate on Friday 18.03.2016 at 9.00am to show-cause why the court should not issue warrants or orders for his arrest and committal in civil jail until he has purged or is desirous of purging the contempt.

In conclusion, the applications filed for the petitioner dated 3.08.2015 and 30.09.2015 respectively are hereby determined with orders as follows:

1. That the applications are hereby dismissed as against the 1st and 3rd respondents with no orders on costs.
2. That the 2nd respondent Samuel M. Ragwa shall attend court in person or by his advocate on Friday 18.03.2016 at 9.00am to show cause why the court should not issue warrants or orders for his arrest and committal in civil jail until he has purged or is desirous of purging the contempt.
3. That the 2nd respondent to pay the petitioner's costs of the applications.

Signed, dated and delivered in court at Nyeri this Friday, 11th March, 2016.

BYRAM ONGAYA

JUDGE