



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI COUNTY

COURT NAME: MILIMANI HIGH COURT

CASE NUMBER: HCCHRPET/E333/2026

KATIBA INSTITUTE VS STATE LAW OFFICE

RULING

BEFORE HON. LADY JUSTICE NYAUNDI PATRICIA MANDE, SC

1. This Court is invited to determine the 1st Petitioner's application dated 10th June 2026, supported by an affidavit sworn by Nora Mbagathi on the same date and a further affidavit sworn on 15th June 2026. The application is stated to be brought pursuant to Articles 10(2) and 159 of the Constitution of Kenya, 2010, as well as section 5(1) of the Judicature Act.
2. In that application, the Petitioner asks this Court to cite the 1st and 2nd Respondents for contempt of court on account of their alleged disobedience of the orders issued on 28th May 2026 and 2nd June 2026, and to impose appropriate sanctions for that contempt. The Petitioner further seeks a conservatory order compelling the Respondents to file, before this Court, a report or affidavit detailing the current status of construction of the Ebola-related facility in Laikipia and demonstrating their compliance, or lack thereof, with the Court's subsisting orders
3. The application is predicated on the grounds that the



Respondents have disobeyed this Court's orders issued on 28th May 2026 and 2nd June 2026, which expressly restrained them from establishing, operationalising, or approving any Ebola related quarantine, isolation, or treatment facility in Kenya pursuant to any agreement with the United States of America or any foreign government or agency, pending the hearing and determination of the Petition. Those orders further directed the 2nd Respondent to provide the Petitioners and the public, within seven days, with: the full terms of any agreement, memorandum, arrangement, or negotiations relating to the proposed facility; any public health, environmental, biosafety, or security assessments undertaken in relation thereto; any approvals from Parliament, relevant regulatory agencies, or county governments; and the protocols intended to govern the admission, handling, isolation, and treatment of exposed persons.

4. The 1st Petitioner asserts that these orders were clear, unambiguous, and self-explanatory, and were issued in the presence of counsel from the Office of the Attorney General. The orders were also widely reported and disseminated by major media outlets and leading newspapers in Kenya, and were duly served upon the Respondents by the Petitioner's process server.
5. The 1st Petitioner further states that the 2nd Respondent, while appearing on national television (Citizen TV) on 30th May 2026 and 3rd June 2026, and while addressing the National Assembly on 3rd June 2026, expressly acknowledged awareness of the Court's orders. On the same day, the United States of America, through a public notice on the Embassy's website, indicated that it was aware of the court action filed in Kenya and was actively engaging with the Kenyan Government to resolve any objections and communicate their shared objectives to the Kenyan people.
6. It is therefore the 1st Petitioner's case that, despite having both actual and constructive knowledge of the Court's orders, the Respondents have disobeyed them in three material respects. First, the 2nd Respondent publicly stated, both in Parliament and in media engagements, that construction of the quarantine centre at Laikipia would proceed notwithstanding what he



termed as “noise.” Second, credible media reports indicate that construction activities at the site are ongoing.

7. In that regard, the 1st Petitioner cites a Reuters report of 3rd June 2026 stating that, despite the Court’s orders, flights carrying medical equipment and specialised personnel had landed at the Laikipia Airbase. Reuters further reported that data showed at least six military aircraft, including C 130 and C 17 transport planes carrying technical equipment, physicians, engineers, laboratory experts, and construction workers, had landed in Nanyuki since 24th May 2026, with three of those flights arriving after the issuance of the Court’s orders.
8. On 4th June 2026, Reuters published a further story accompanied by a satellite image of the construction site, depicting structures, tents, and vehicles at Laikipia Airbase consistent with ongoing construction. On 9th June 2026, NTV broadcast a similar satellite image. On 10th June 2026, the Daily Nation reported that, despite the Court’s order barring construction, the United States had continued to build the quarantine centre, with several aircraft reportedly flying in equipment and personnel at the Nanyuki Airbase. That same day, the New York Times also reported that construction was ongoing despite the Court’s suspension and the public protests.
9. Third, the 1st Petitioner contends that the 2nd Respondent has refused to furnish the Petitioners and the public with documents within the Government’s custody and control that are essential to the determination of the Petition. The Petitioner asserts that such conduct violates the rule of law and the principles of good governance under Article 10(2)(b) of the Constitution, and therefore urges the Court to grant the application as prayed.
10. In the further affidavit, the 1st Petitioner maintains that the Respondents have continued to disobey this Court’s orders of 28th May 2026 and 2nd June 2026. The Petitioner refers to the 2nd Respondent’s own admissions in his replying affidavit, public statements by the United States acknowledging the construction of quarantine facilities at Laikipia Airbase for its citizens, and public statements made by the President of the Republic of Kenya in Wajir and South Africa.



2ND AND 3RD RESPONDENTS' RESPONSE

11. The 2nd and 3rd Respondents jointly oppose the application through a replying affidavit sworn on 12th June 2026 by Hon. Aden Duale, EGH, Cabinet Secretary for Health. They contend that the 1st Petitioner has misconstrued both the scope of this Court's orders and the actions undertaken by the Government in compliance therewith.
12. The 2nd and 3rd Respondents assert that, immediately upon becoming aware of the conservatory orders issued by this Court, the Government suspended all activities being undertaken pursuant to the collaboration between the Government of Kenya and the Government of the United States of America relating to the proposed Ebola Quarantine and Isolation Facility. They maintain that the Court's orders halted only the implementation of that bilateral collaboration and nothing more.
13. The Respondents further urge that the orders did not restrain the Government of Kenya from continuing to discharge its independent constitutional and statutory obligations relating to public health preparedness, disease prevention, and national health security. They state that, wholly apart from the restrained collaboration, the Government continues to enhance the country's quarantine and isolation capacities at the Laikipia Airbase as part of precautionary measures undertaken in the ordinary course of its public health mandate.
14. The 2nd and 3rd Respondents also contend that the 1st Petitioner's allegations of non-compliance are grounded in rumours and unverified media reports, and are therefore unsubstantiated. They assert that they have furnished the Petitioners with the Agreement between the Government of the Republic of Kenya and the Government of the United States of America concerning Cooperation in Threat Reduction Biological Engagement Programmes, and have outlined the constitutional



and statutory processes to which that Agreement was subjected. They add that the Agreement is a public document accessible through the relevant platforms of both Governments.

15. In their view, the material before the Court demonstrates that the Government has complied with the orders issued while simultaneously continuing to discharge its constitutional and statutory obligations relating to public health preparedness and the protection of the people of Kenya. They therefore urge that the application be dismissed with costs
16. The 2nd petitioner and 1st, 4th and 5th interested parties support the application.

3RD INTERESTED PARTY'S CASE

17. The 3rd Interested Party likewise aligns itself with the application, relying on a replying affidavit sworn on 16th June 2026 by Derrick Mwangi. It contends, on the strength of both observable facts and the Respondents' own admissions, that the construction of the Ebola-related facility has not been halted. According to the deponent, residents living within and around the vicinity of the proposed site have continued to witness activities that bear all the hallmarks of ongoing establishment, preparation, and advancement of the facility. That observation is further reinforced by the 2nd Respondent's express acknowledgment that the Government is actively "enhancing the country's quarantine and isolation capacities at Laikipia Airbase," a statement that cannot be reconciled with any assertion that works have ceased. And on 9th June 2026, residents of Nanyuki, Laikipia East, and the broader Laikipia County took to the streets in protest—an unmistakable signal that, from the community's vantage point, the project remains very much alive and in motion.
18. The Application was canvassed by oral submissions on the 18th June 2026



SUMMARY OF THE PETITIONER'S SUBMISSIONS

19. The 1st Petitioner reiterates the averments contained in the affidavits sworn on 10th June 2026 and 15th June 2026. It submits that the 1st and 2nd Respondents are in contempt of the orders issued on 28th May 2026 and subsequently confirmed on 2nd June 2026. According to the Petitioner, the Respondents have continued with the construction of the Ebola-related facility at Laikipia Airbase and have further failed to comply with the directive requiring disclosure of specified documents to the Petitioners and the public within seven days.
20. The 1st Petitioner submits that sanctions are warranted to safeguard the integrity of these proceedings, noting that disobedience of court orders strikes at the very foundation of the rule of law. Relying on the 2nd Respondent's own affidavit, the Petitioner argues that the Respondents were fully aware of the orders, that the orders were clear and unambiguous, and that the Respondents have nonetheless elected to disregard them.
21. The 1st Petitioner further submits that the Respondents' assertion that construction supported by the United States was suspended and that any ongoing works are solely those of the Government of Kenya is unsupported by any contemporaneous communication or documentary evidence. It is noted that the President has publicly stated that the facility is being constructed at the expense of the United States. The Petitioner also notes that the Respondents have not addressed the allegation that equipment, materials, and personnel were delivered to Laikipia Airbase after the conservatory orders were issued. In the Petitioner's view, the 2nd Respondent has impermissibly interpreted the Court's orders to suit his preferred course of action, contrary to the principle articulated by the Court of Appeal in **Fred Matiangi, Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others [2018] KECA 789 (KLR)**, that a party in doubt as to the meaning of a court order must return to court for clarification rather than act on its own interpretation.



22. The 2nd Petitioner, for its part, submits that the Respondents have engaged in calculated, deliberate, and blatant defiance of this Court's orders. It argues that the application before the Court seeks to protect the dignity of the Court and vindicate constitutional authority. The 2nd Petitioner contends that the evidence of contempt meets the threshold set out by the Court in **Shimmers Plaza Limited v National Bank of Kenya Limited [2015] KECA 945 (KLR)**, and that the Respondents must be held accountable for their decision to disobey binding court orders.
23. The 2nd Petitioner further submits that, rather than move the Court to vary, set aside, or discharge its orders, the 2nd Respondent has chosen to reinterpret them in a manner that permits non-compliance. It argues that the 2nd Respondent's affidavit reflects a posture of defiance and that the Respondents are equally in contempt for failing to comply with the disclosure obligations imposed by the Court.
24. The 2nd Petitioner additionally submits that the Respondents' non-compliance violates the national values and principles of governance set out in the Constitution of Kenya, 2010. It therefore urges the Court to order a court-sanctioned site visit to ascertain the factual position on the ground.

SUBMISSIONS OF THE INTERESTED PARTIES

25. The 1st and 4th Interested Parties associate themselves with the submissions of the 1st and 2nd Petitioners.
26. The 5th Interested Party submits that the ongoing construction at Laikipia Airbase is in direct contravention of this Court's orders. It argues that no material has been placed before the Court demonstrating that the ongoing works are wholly separate from, or unrelated to, the facility that is the subject of the Petition.
27. It is further submitted that conservatory orders operate in *rem*, and the order issued by this Court is no exception. The 5th Interested Party contends that the Respondents' attempt to



recharacterise the ongoing activities at Laikipia Airbase does not absolve them from compliance with the Court's directive.

RESPONDENTS' SUBMISSIONS

28. Counsel for the Respondents argued the case for the 1st and 2nd Respondents separately. He submits that the Attorney-General participates in these proceedings solely in her capacity as the legal adviser to the 2nd and 3rd Respondents and therefore cannot be cited for contempt on account of the actions of her clients. It has not been demonstrated, counsel argues, that the 1st Respondent has disregarded any order of this Court, and she ought not to be condemned unheard.
29. With respect to the 2nd Respondent, counsel submits that the allegations of contempt rest entirely on unsubstantiated media reports which, on the authority of the Court of Appeal decision in **Communications Authority of Kenya v Okoti & 8 others [2020] KECA 754 (KLR)**, have no probative value, the makers of those reports not having been subjected to cross-examination. Such material, it is urged, is inadmissible and cannot ground a finding of contempt.
30. Counsel further relies on the 2nd Respondent's replying affidavit, in which he depones that construction under the collaborative agreement with the United States was suspended immediately upon receipt of the Court's orders, and that any ongoing construction forms part of the national response to the Ebola pandemic. The 2nd Respondent asserts that he is constitutionally and statutorily mandated, under Article 152 of the Constitution and the Public Health Act, to undertake such measures. Given the magnitude of the national risk, counsel submits, it was necessary for the Government to proceed with the erection of a facility intended to serve Kenyan military personnel deployed in the Democratic Republic of Congo and other Kenyans who may be exposed to the Ebola virus in the course of duty.
31. On the question of documents, counsel submits that the Respondents have already availed to the Petitioners the



documents under which the facility is being constructed. He argues that, in these adversarial proceedings, the burden lies with the Petitioners to prove the existence of any additional documents they seek to compel production of.

32. Counsel further submits from the bar that the satellite images relied upon by the Petitioners do not tell the full story. Being still images, he argues, they cannot conclusively establish that construction is ongoing. It is equally plausible, he suggests, that the images depict activities necessary to preserve the construction site pending further orders of the Court, as one cannot simply abandon a site without undertaking measures to secure it.
33. Counsel maintains that the Court's orders did not bar the 2nd Respondent from undertaking his statutory obligations relating to public health preparedness and national security.
34. In rejoinder, the 1st Petitioner urges that the Attorney-General was sued in her personal capacity and is therefore amenable to sanction. The Petitioner further submits that the annexures relied upon should not be rendered inadmissible merely because they emanate from the media; rather, the Court should consider the weight to be accorded to them. It is also argued that the 2nd Respondent's right to be heard has not been violated, as he filed a response to the application. The burden, the Petitioner contends, lies on the Respondents to demonstrate compliance with the Court's orders.
35. The Petitioners and the 4th Interested Party further submit that the Respondents remain in contempt because the documents supplied are not those ordered by the Court. The 4th Interested Party additionally asserts that the proceedings before this Court are not strictly adversarial but are *sui generis* in nature, given the constitutional issues at stake



ANALYSIS AND DETERMINATION

36. Having considered the pleadings and the submissions of all parties, I am satisfied that the issues for determination may be distilled into a single overarching question, with two constituent limbs:

a. Whether the conduct of the 1st and 2nd Respondents, viewed against the Orders issued on 28th May 2026 and affirmed on 2nd June 2026, amounts to contempt of court, specifically in relation to—

i. the alleged continuation of construction or preparatory activities at the Laikipia Airbase facility; and

ii. the alleged failure to disclose documents and information that the Court expressly directed be furnished to the Petitioners and the public.

37. The legal threshold for civil contempt is well settled. In **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR)** the Court enunciated the elements as follows:

[40]. It is an established principle of law that 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. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated:-

"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:-

- i. the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;**
- ii. the defendant had knowledge of or proper notice of the terms of the order;**
- iii. the defendant has acted in breach of the terms of the order; and**
- iv. the defendant's conduct was deliberate.**

38. In this matter, the first two elements are not contested. The 2nd Respondent acknowledges that he was aware of the Court's Orders and understood them to require suspension of construction at the Laikipia Airbase and disclosure of the relevant framework and protocols.
39. He asserts that he complied with the disclosure limb by furnishing all documents in his possession relating to the collaboration between the Governments of Kenya and the United States on Ebola preparedness.
40. I turn first to the disclosure limb. The conservatory order required the 2nd Respondent, within seven days, to disclose:
- a. the full terms of any agreement, memorandum, arrangement, or negotiations relating to the proposed facility;
 - b. any public health, environmental, biosafety, or security assessments undertaken;
 - c. any approvals obtained from Parliament, regulatory agencies, or county governments; and
 - d. the protocols intended to govern the admission, handling, isolation, and treatment of exposed persons.
41. This obligation attached solely to the 2nd Respondent. The 1st Respondent was not the subject of this directive, and to impose liability upon her would be to condemn her unheard.
42. The Petitioners dispute the sufficiency of the disclosure but



have not demonstrated the existence of additional documents that were withheld. In the absence of contrary evidence, I accept the Cabinet Secretary's representation that the documents furnished constitute the full extent of the material available to him.

43. On this basis, the charge of contempt in relation to the disclosure limb cannot succeed.
44. I now turn to the first limb: whether the Respondents are in contempt for continuing construction at the Laikipia Airbase. The 2nd Respondent contends that construction under the bilateral collaboration was suspended, and that any ongoing works are undertaken solely by the Government of Kenya as part of a national response to the Ebola pandemic.
45. As I understand it, what the 2nd Respondent seeks to do, is to avoid compliance by recasting or recharacterising the ongoing construction. He concedes that he understood the Court to have required suspension of construction. Yet, dissatisfied with the practical consequences of that directive, he adopted a narrower interpretation, one that permitted him to continue the very activities the Court had restrained, provided only that he proceeded without the United States.
46. Knowing full well that the Court required all construction activities at Laikipia Airbase to cease, he persuaded himself that he could continue by altering the composition of the actors rather than the substance of the conduct. His public statements, widely reported and never disavowed, reinforce the conclusion that he intended construction to proceed notwithstanding the Court's Orders.
47. The inference is unavoidable: the 2nd Respondent believed he could insulate himself from liability by shifting from joint action to unilateral action. That position is untenable. An order of the court is not to be outflanked by semantics or evasion. The duty is to obey the order as issued, not as one might wish it had been framed.
48. It bears repeating, a court order is not an invitation to ingenuity; it is a command to be obeyed. Attempts to re-label or



re-describe conduct so as to place it outside the reach of an order do not assist a respondent; the court looks to the substance of what was done, not the gloss placed upon it

49. The obligation to comply attaches to the office holder personally, and it is the substance of the restrained conduct, not the identity of the collaborators, that determines contempt. To suggest that one may circumvent a binding order by altering the configuration of actors is to trivialise the authority of this Court and to elevate form over constitutional fidelity. The Court cannot permit its orders to be rendered hollow by such manoeuvres.

50. It has been said before, court orders are not suggestions; they are not invitations to negotiation. As Hon Ibrahim J (as he then was) observed in **Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828**,

It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of 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 void

51. On account of the foregoing, I find that in commissioning the ongoing construction of the facility at Laikipia, the 2nd Respondent is in continuing contempt of the Orders of the Court that issued on 28th May 2026 and confirmed on 2nd June 2026, the consequence of that finding is that the said contempt will attract the sanction of the 2nd Respondent by this Court.

52. Accordingly, the 2nd respondent is required to attend Court on the 23rd June 2026 at 11am for mitigation and sentencing



SIGNED BY: HON. LADY JUSTICE NYAUNDI PATRICIA MANDE, SC



THE JUDICIARY OF KENYA.
MILIMANI HIGH COURT
HIGH COURT CONSTITUTION AND HUMAN RIGHTS
DATE: 2026-06-22 15:17:21+03

