



Kioni & 3 others v National Disciplinary Committee of the Jubilee Party & 2 others; Chege (Contemnor) (Civil Appeal E630 of 2023) [2024] KEHC 11441 (KLR) (Civ) (30 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11441 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL APPEAL E630 OF 2023
JN MULWA, J
SEPTEMBER 30, 2024**

BETWEEN

**JEREMIAH KIONI 1ST APPELLANT
DAVID MURATHE 2ND APPELLANT
KAGWE GICHOHI 3RD APPELLANT
THE JUBILEE PARTY 4TH APPELLANT**

AND

**THE NATIONAL DISCIPLINARY COMMITTEE OF THE JUBILEE PARTY 1ST RESPONDENT
JOSHUA KUTUNY 2ND RESPONDENT
KANINI KEGA 3RD RESPONDENT**

AND

SABINA CHEGE CONTEMNOR

(Being an appeal from the majority judgment of the PPDT (Hons. Wilfred Mutubwa, Theresa Chepkwony, Abdirahman Abdi Abdikadir and Muzna Mohamed Yusuf Jin) delivered on 11th July 2023 in PPDT Complaint No. E010 of 2023)



RULING

(On motion dated 6/2/2024)

1. On 13th July 2023, Hon. Asenath Ongeru J issued conservatory orders directing that the status quo of the leadership of the Jubilee Party be maintained as outlined in Gazette Notice No. 3195 of 22nd March 2022, and staying the Gazette Notice No. 9131 of 2023, published in the Special Issue Vol. CXXV-161 on 12th July 2023, and any related instructions decisions or actions, pending the hearing and determination of the application dated 12th July 2023.
2. Before the court now is the 1st to 3rd Appellant/ Applicants Notice of Motion dated 6th February 2024 seeking to have Hon. Sabina Chege, the alleged Contemnor, cited for contempt of this court's orders of 13th July 2023 and committed to civil jail for a period of six (6) months. The Applicants further pray that the alleged Contemnor be directed to purge the offending communication failing which the Court should expunge all documents filed on her behalf in these proceedings. Additionally, the Applicants for such other or further appropriate reliefs as the court may deem fit and costs of the application.
3. The application is brought under Articles Sections 1A, 1B, 3A & 63(e) of the *Civil Procedure Act*, Order 51 Rule 1 of the *Civil Procedure Rules*, 2010, Section 5 of the *Judicature Act*, Cap 8 Laws of Kenya. It is based on the grounds on the face of the motion and supported by the Affidavit of the 1st Applicant Jeremiah Kioni, and the annexures thereto. The Applicants assert that pursuant to the conservatory orders of 13th July 2023, His Excellency Uhuru Kenyatta remains the Jubilee party leader, while the 1st Applicant is the bona fide Secretary General and official spokesperson of the Jubilee Party, with both continuing to exercise the powers conferred upon them by the Party's Constitution.
4. The Applicants further state that all the parties herein including the Contemnor who is a member of the Jubilee Party have been served with and are fully aware of the conservatory orders, which remain in force. However, the Applicants allege that in blatant defiance of these orders the Contemnor has been unlawfully presenting herself as the 'acting party leader' and spokesperson by holding press conferences and meetings in her assumed capacity. Additionally, the Applicants claim that despite demands to purge her contempt, she has openly vowed in a letter dated 30th January 2024 to continue her defiance.
5. The Applicants also assert that similar acts of contempt are already the subject of pending contempt proceedings instituted through their applications dated 2nd October 2023 and 21st November 2023. They further argue that if the contempt is not swiftly addressed and purged, it will cause irreparable harm to the administration of justice and render the appeal nugatory.
6. In opposition, Hon. Sabina Chege, the alleged contemnor, filed a Replying Affidavit sworn on 27th February 2024 asserting that she serves as the current Minority Whip of Jubilee Party in the National Assembly. She contends that she was not personally served with the said application contrary to the Court's orders for personal service. Further she denies disobeying the court orders stating that the orders were not directed at her as she is not a party to these proceedings. Additionally, she argues that the conservatory orders issued by Hon. Ongeru J are ambiguous and contain irregularities, illegalities and general misunderstanding of various legal provisions.
7. Hon Chege in her replying affidavit further explains that after the 2022 general elections, President William Ruto assumed office and by law, the retired President Uhuru Kenyatta ceased to hold any political party office as of 13th March 2023. Therefore, compliance with the court order directing that



the Jubilee Party leadership be maintained as per the Gazette Notice of 22nd March 2022 is, in her view, impossible.

8. Additionally, the alleged contemnor denies assuming the substantive leadership of the Jubilee Party in defiance of the court order and asserts that the party had been without a leader from 13th March 2023 until 22nd May 2022 when she was appointed as the Acting Party Leader by the National Executive Committee of the Jubilee Party pending the election for a substantive leader as well as Jubilee Party Whip in Parliament thereby making her the leader of the duly elected Jubilee Party Members of Parliament. Further, she accuses the Applicants of delaying the hearing of the substantive application and the appeal to the detriment of the legitimate members of the Jubilee Party, which requires a leader to function effectively. Finally she contends that she cannot be held responsible for the Applicants' misinterpretation of her statements or for what the media publishes as news stories.
9. The court has carefully considered the application the Affidavits sworn in support and in opposition thereto as well as the parties' respective written submissions from which the only issue for determination is whether she is in contempt of court orders issued by on 13th July 2023.
10. Contempt of court is conduct or action that defies or disrespects authority of court. Black's Law Dictionary 9th Edition, defines contempt as:

“The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.”

11. Section 5 (1) of the Judicature Act Cap 8 Laws of Kenya confers on this court the jurisdiction to punish for contempt in the following terms: -

1. 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.”
12. Courts punish for contempt to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts: See *Sheila Cassatt Isenberg & another v Antony Machatha Kinyanjui* [2021] eKLR. Additionally, in the case of *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR cited by the 3rd Respondent herein, Mativo J. pronounced himself as follows:

“46. Contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest. ^[49]”

13. In the case of *Samuel M. N. Mweru Case (Supra)*, Mativo J. set down the test for contempt as follows:

“40. It is an established principle of law that ^[45] in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of



the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. ^[46] Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* ^[47] 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: -

- 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.”

14. Further, in the *Sheila Cassatt Issenberg case* (supra) the court cited with approval the decision of the Supreme Court of India in *Mahinderjit Singh Bitta v Union of India & Others* 1 A NO. 10 of 2010 (13th October, 2011) where it was stated that:

“In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is lis before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution.” (Emphasis).

15. In this case, it is evident that the alleged Contemnor is not a party to the appeal or the dispute between the parties herein. However, this does not preclude the court from holding her liable or punishing her for contempt if it is established that she wilfully and deliberately disobeyed a court order. In *Halsbury's laws of England* at para 463 Vol 9(1) (Re-issue) 3, the authors stated thus: -

“...a person not a party against whom any judgement or order may be enforced is liable to the same process for enforcing obedience to it as if he were a party”.

16. Notably, given the serious consequences that flow from contempt proceedings such as fines or imprisonment, it is essential that the Court Order be properly served upon the alleged Contemnor and that it is established that she has personal knowledge of its terms. The 1st Applicant claims that all the parties herein including the alleged Contemnor were served with and are fully aware of the conservatory orders issued on 13th July 2023. The alleged Contemnor disputes being personally served with the application and order.

17. The court notes that the Applicants did not annex to their application any Affidavit of Service to substantiate their claim of service. Additionally they have not filed any Supplementary Affidavit to refute the alleged Contemnor's assertions or provided evidence to show that she had actual knowledge of the Court Order, despite not being served, if at all, and what it required her to do or refrain from doing but wilfully disobeyed the court order. While Hon. Sabina Chege may be a member of the Jubilee Party, service of the court order upon the Party or its representatives does not automatically equate to personal service upon her given that a political party as a legal entity is distinct from its individual members.



18. In the premises the court finds that the Applicants have not established or demonstrated that the alleged contemnor was personally served with the motion and the court order, or had knowledge of the court order to the requisite standard and thus there can be no contempt on her part.
19. Moreover, a careful review of the court order of 13th July 2023 reveals that it did not explicitly prohibit other individuals within the Jubilee Party's leadership from performing functions aligned with their designated roles. The court orders primarily focused on preserving the existing leadership titles and designations for the period that it remains in effect. The alleged Contemnor has availed a decision made by the Speaker of the National Assembly on 25th October 2023 appointing her as the Jubilee Party Whip in the National Assembly on an interim basis. This appointment has not been challenged set aside or stayed, and it was not within the scope of the court orders issued on 13th July 2023.
20. The court notes that the print media extracts submitted by the Applicants as exhibits do not contain any direct statements attributed to Hon. Sabina Chege on the alleged press conferences, nor were video recordings of any actions she may have taken in defiance of the court order provided to the court. The court upon perusal of some of the media reports notes that some date back to 8th February 2023 before the issuance of the court orders while others were published after Hon. Sabina Chege had already been appointed as the Party Whip. Without further corroborating evidence, the court cannot rely on mere news reports to conclude that Hon. Chege engaged in any contemptuous actions.
21. Additionally, the Applicants have failed to demonstrate how Hon. Chege's conduct interfered with the Jubilee Party's leadership or undermined the authority of the 1st Applicant as the Secretary General and official spokesperson of the Party.
22. Upon reviewing the letter dated 30th January 2024 from Hon. Chege's advocates, the court notes that it simply communicated her intent to continue fulfilling her responsibilities as the elected Party Whip in Parliament. This role is distinct from the matters covered by the court orders of 13th July 2023, and there is no indication that she claimed any authority beyond what was lawfully assigned to her.
23. It is important to reiterate that contempt proceedings are quasi criminal in nature and require a high standard of proof due to the serious consequences involved. As the Applicants are the ones alleging contempt, the burden of proof lay on them to demonstrate that Hon. Sabina Chege violated the court orders of 13th July 2023. However, the court finds that the Applicants have failed to discharge that burden.
24. For the foregoing, the court finds no merit in the 1st to 3rd Appellants' Notice of Motion dated 6th February 2024. The same is dismissed with an order that each party bears their own costs as is very clear to the court that these proceedings arose from leadership wrangles within and by members of the Jubilee party.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2024.

JANET MULWA

JUDGE.

