



Kioni & 3 others v National Disciplinary Committee of the Jubilee Party & 2 others (Civil Appeal E630 of 2023) [2024] KEHC 11409 (KLR) (Civ) (30 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11409 (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**

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

RULING

On Motion Dated 21/11/2023

1. On 13th July 2023, Lady Justice Asenath Ongeru 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. By a Notice of Motion application dated 21/11/2023 the 1st to 3rd Appellants/ Applicants sought to have the 2nd Respondent, Hon. Joshua Kutuny cited for contempt of this court's orders of 13th July 2023 and be committed to civil jail for a period of six (6) months. The Applicants further pray that the 2nd Respondent be directed to purge the offending communication failing which the Court should expunge all documents filed on his 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 Applicants assert that all parties were duly served with and are aware of the court orders of 13th July 2023, which affirmed Hon. Jeremiah Kioni, the 1st Applicant herein, as the legitimate Secretary General of the Jubilee Party, with the authority to issue correspondence and communication on behalf of the party. However, they aver that in defiance of the court's orders, the 2nd Respondent authored a letter dated 20th November 2023 addressed to the Nairobi City County Assembly Majority Chief Whip and Speaker, purporting to revoke the removal of Hon. Robert Mbatia, Hon. Fiu Nifu and Hon. Wanjiru Kariuki from various committees in the Nairobi City County Assembly. The Applicants further aver that the 2nd Respondent's action violates the court orders of 13th July 2023 and usurps the powers of Hon. Jeremiah Kioni. In addition, they aver that this is not the first instance of disobedience as similar acts of contempt are currently the subject of pending contempt proceedings instituted through their application dated 2nd October 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.
4. In opposition to the application, the 2nd Respondent filed a Replying Affidavit sworn on 5th December 2023, asserting that he serves as the Jubilee Party's Deputy Secretary General and is also a member of the National Executive Committee (NEC) of the Party. He contends that the orders sought by the Applicants are unclear, ambiguous and vague, as they fail to specify how he has breached the court orders issued by Lady Justice Asenath Ongeru on 13th July 2023. He points out that as per the said orders, he remains the Deputy Secretary General of the Jubilee Party in accordance with Gazette Notice No. 3195 of 2022 and avers that Article 10.6 of the Jubilee Party Constitution stipulates that the Deputy Secretary General deputizes the Secretary General, without any limitations on the functions he can perform in this capacity.
5. The 2nd Respondent further avers that the National Executive Committee (NEC) is the governing body of the Jubilee Party as per Article 8.2 of the Party's Constitution its functions include inter alia acting as the executive body of the National Delegates Convention (NDC) and ensuring that decisions made by all party organs are implemented; liaising with and overseeing the work of various groups within the Party; and appointing Party representatives to related organizations. Based on the foregoing, the 2nd Respondent asserts that he does not understand how violated the court orders of 13th July 2023 by communicating the NEC's resolutions to the Majority Chief Whip and the Speaker of the Nairobi City County Assembly via the letter dated 24th October 2023.
6. Moreover, the 2nd Respondent asserted that no court order has been issued preventing the NEC from discharging its constitutional functions, such as supervising the Party's administrative machinery and enforcing Party decisions and programs. Likewise, he averred that there is no order barring him from fulfilling his duties as the Deputy Secretary General of the Jubilee Party, which include issuing correspondence and communication as well as acting as the secretary to the NEC. Additionally, he avers that if the 1st Appellant believes that he acted beyond his powers in issuing the letter dated 24th October 2023 the dispute must first be referred to the Jubilee Party's Internal Dispute Resolution Mechanisms (IDRM) then the Political Parties Dispute Tribunal as required by Section 41 of the *Political Parties Act*, 2011.



7. Finally, the 2nd Respondent accuses the 1st Appellant of engaging on a smear campaign against him and filing frivolous applications in this and other related matters with the sole intention of delaying the hearing and determination of the 1st to 3rd Appellant's Application dated 12th July 2023 as well as the entire Appeal in an effort to prolong the interim orders in place to the detriment of the Jubilee Party.
8. The court has carefully considered the application, the Affidavits sworn in support and in opposition thereto as well as the parties' respective written submissions and flags the main issue for determination as to whether the 2nd Respondent is in contempt of orders issued by this court on 13th July 2023.
9. Contempt of court is conduct or action that defies or disrespects authority of the 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.”

10. 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.”
11. 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]”

12. The Hon. Judge proceeded to 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.”

13. 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).

14. In the instant case, the existence of the court orders issued by Onger J on 13th July 2023 and their purport and intent are not disputed by either the Applicants or the 2nd Respondent, who is the alleged Contemnor. The Applicants claim that the 2nd Respondent violated the said court orders by overstepping the 1st Applicant’s authority as the Jubilee Party Secretary General, specifically through authoring a letter dated 20th November 2023, addressed to the Nairobi City County Assembly Majority Chief Whip and Speaker, revoking the removal of Hon. Robert Mbatia, Hon. Fiu Nifu, and Hon. Wanjiru Kariuki from various committees in the County Assembly.

15. While the 2nd Respondent admits that he authored the said letter, he asserts that he did so in discharge of his duties as both the Deputy Secretary General of the Jubilee Party and as a member of the Party’s governing body, the National Executive Committee (NEC).

16. A careful review of the court orders of 13th July 2023 reveal that they did not expressly prohibit other qualified individuals within the Party’s leadership structure, such as the Deputy Secretary General from performing necessary administrative functions aligned with their roles. The court orders focused on preserving the then existing leadership titles and designations for the period stated but did not state that the functions associated with these roles could not be delegated to or performed by other qualified persons where necessary. Indeed, the 2nd Respondent’s letter dated 24th October 2023 and received by the Nairobi City Council Assembly on 20th November 2023, merely communicated the NEC’s resolutions.

Notably, the Applicants have not demonstrated how this action interfered with the leadership structure of the Jubilee Party or violated the court order. Additionally, they have not shown any provision in the Party’s Constitution or regulations that prohibits or bars the 2nd Respondent from authoring letters or communicating on behalf of the Party when necessary in his capacity as a member of the NEC and Deputy Secretary General. Furthermore, the Applicants did not provide any evidence that the 1st Applicant had been removed as the Jubilee Party’s Secretary General or that his authority was undermined by the 2nd Respondent’s actions.



17. It is imperative to note that contempt proceedings are quasi criminal in nature and require a high standard of proof due to the serious consequences involved such as loss of liberty. Since the Applicants are the ones who alleged contempt of the court orders, the burden of proof lay on them to demonstrate that the 2nd Respondent's act of authoring the letter violated the court orders of 13th July 2023. Upon consideration, the court finds that the Applicants have failed to sufficiently demonstrate that the 3rd Respondent willfully and deliberately disobeyed the said court orders, or at all.
18. For the foregoing, the court finds no merit in the 1st to 3rd Appellants' Notice of Motion dated 21st November 2023. The same is dismissed with an order that each party bears their own costs.

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

JANET MULWA

JUDGE.

