



Kioni & 3 others v National Disciplinary Committee of the Jubilee Party & 2 others (Civil Appeal E630 of 2023) [2024] KEHC 11443 (KLR) (Civ) (30 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11443 (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 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 30/10/2024)

1. The 1st 2nd and 3rd Appellants' Notice of Motion dated 3rd October 2023 seek to have the 3rd Respondent Hon. Kanini Kega cited for contempt of this court's orders of 13th July 2023 and to be committed to civil jail for a period of six (6) months. The Applicants further pray for such other or further appropriate reliefs as the court may deem fit and costs of the application. 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 and all other enabling provisions of the law.

2. The application is based on the grounds on its face and supported by the Affidavit of the 1st Applicant Hon. Jeremiah Kioni. He avers that on 13th July 2023 Lady Justice Asenath Ongeru issued conservatory orders directing that 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. He asserted that pursuant to the conservatory orders, the treasurer and the Secretary General of the Jubilee party remain as Mr. Kagwe Gichohi and himself respectively.
3. Further, the 1st Applicant averred that the Order of 13th July 2023 was duly served on all parties who acknowledged receipt and filed their responses to the application dated 12th July 2023. However, in blatant disregard of the court's orders, he deposes that on 31st August 2023 the 3rd Respondent, Hon. Kanini Kega, wrote a letter in which he purported to nominate Hon. Dr. Rachael Nyamai, Kwenya Thuku, and Ruweida Mohammed as representatives of the Jubilee Party to the Annual General Meeting of the Centre for Multi-Party Democracy in Kenya, a role reserved exclusively for the party's Secretary General. He further states that the 3rd Respondent also published the financial position of the Jubilee Party for the financial year ending 30th June 2023 in local daily newspapers, thereby presenting himself as the party's Treasurer. The Applicants aver that these are deliberate collateral attacks on the adjudicatory authority of this court that unless immediately punished, will irreparably undermine the authority of this court and additionally that, unless the contempt is purged their appeal will be rendered nugatory.
4. In opposition to the application, the 3rd Respondent Hon. Kanini Kega filed a Replying Affidavit sworn by the party's Chairperson, Nelson Dzuya on 16th October 2023. He asserted that the letter dated 31st August 2023 is not genuine and was neither authored by the 3rd Respondent nor issued by the 4th Appellant. He pointed out that the letter lacks a stamp, and the signature thereon appears to have been electronically pasted. Further, he stated that on 31st August 2023 the 4th Appellant received an invitation from the Centre for Multiparty Democracy (CMD-KENYA) for an annual general meeting which was scheduled for 15th September 2023. Pursuant to the powers granted by Article 10.3 (7) of the Jubilee Party Constitution, he nominated Hon. Dr. Rachael Nyamai, Hon. Kwenya Thuku, and Hon. Ruwaida Mohamed as the Party's delegates to the AGM. Additionally, he denied that the 3rd Respondent published the party's financial statements stating that the same were published in compliance with the Jubilee Party's statutory obligations and did not bear the 3rd Respondent's name. He contended that the application is an abuse of court process and is intended to delay the hearing and determination of the Applicants' Application dated 12th July 2023 as well as the entire Appeal in an effort to prolong their enjoyment of the conservatory orders to the detriment of the Jubilee Party.
5. The 3rd Respondent further swore and filed his Replying Affidavit sworn on 16th October 2023, stating that he is the National Director of Elections and a member of the National Executive Committee of the Jubilee Party. His response largely reiterated the arguments made by the 4th Appellant hereinabove. In addition, the 3rd Respondent accused the 1st Appellant of engaging in a smear campaign against him.
6. The court has carefully considered the application, the Affidavits sworn in support and in opposition thereto as well as the parties' respective written submissions.
7. The main issue for determination is whether the third Respondent is in contempt of orders issued by this court on 13th July 2023.



8. 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.”

9. 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.”

10. 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 Issenberg & 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]”

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

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“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.”
12. 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 listed 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).
13. In the present case, it is disputed that on 13th July 2023, Lady Justice Asenath Ongeru issued orders directing that the leadership of the Jubilee Party remains 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 Applicants application dated 12th July 2023.
14. The Applicants allege that the 3rd Respondent disobeyed these court orders by performing duties reserved for the Secretary General and the Treasurer of the Jubilee Party. However, this allegation was rebutted by both the 3rd Respondent and the chairperson of the 4th Appellant. Notably, the 3rd Respondent's assertion that the letter dated 31st August 2023 was not genuine is supported by the Party's Chairperson, who confirmed that he was the one who nominated the members of the Party that attended the Annual General Meeting for the Centre for Multi-Party Democracy Kenya in accordance with the Party's Constitution. The chairperson provided his letter dated 31st August 2023, whose content is similar to the letter allegedly authored by the 3rd Respondent, save for the signature and the absence of the stamps thereon.
15. Additionally, the court notes that the 3rd Respondent's claim that he did not publish the Party's financial statements in the standard Newspaper is corroborated by the Party's Chairperson in his Replying affidavit who was categorical that the publication was done in compliance with the Party's statutory obligations and not by the 3rd Respondent. Indeed, the court confirms that there is nothing in that Newspaper publication to suggest that the financial statements of the Jubilee Party were published by the 3rd Respondent as alleged. The Applicants did not tender any further evidence to substantiate this allegation.
16. Further, the court notes that the Applicants did not challenge the assertions by the 3rd Respondent and the Chairperson of the Jubilee Party in any way whatsoever. As the Applicants are the ones who alleged contempt of the court orders, and given that contempt, if proved, can lead to serious consequences including loss of liberty, the burden of proof lay on the Applicants to provide sufficient evidence to demonstrate that the 3rd Respondent had violated the court orders of 13th July 2023 as provided at Sections 107-109 of the *Evidence Act*. The court therefore finds that the Applicants have failed to sufficiently demonstrate that the 3rd Respondent willfully or at all disobeyed the said court orders.



17. For the foregoing, the court finds no merit in the 1st to 3rd Appellants' Notice of Motion dated 3rd October 2023. It is dismissed.
18. On costs, the dispute arising from inter party wrangles on leadership of the Jubilee party, an order is issued that each party bears their own costs thereof.

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

JANET MULWA

JUDGE.

