



**Ewoton & another v Independent Electoral Board (IEB) of the Kenya National Chamber of Commerce & Industry & another; Ewoi & 11 others (Interested Parties) (Civil Case 10 of 2023) [2023] KEHC 21461 (KLR) (Civ) (10 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21461 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL**  
**CIVIL CASE 10 OF 2023**  
**AN ONGERI, J**  
**AUGUST 10, 2023**

**BETWEEN**

**PIUS EWOTON ..... 1<sup>ST</sup> PLAINTIFF**  
**JOSEPH LOSURU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**INDEPENDENT ELECTORAL BOARD (IEB) OF THE KENYA NATIONAL CHAMBER OF COMMERCE & INDUSTRY ..... 1<sup>ST</sup> DEFENDANT**  
**BENJAMIN ONKOBA ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**JUSTUS AMON EWOI ..... INTERESTED PARTY**  
**EDWARD OKUMU ..... INTERESTED PARTY**  
**MIACHEL NAKUWA ..... INTERESTED PARTY**  
**JAMES KIBELE ..... INTERESTED PARTY**  
**MARGARET JAMANI AMOIT ..... INTERESTED PARTY**  
**MICHAEL EMURIA ..... INTERESTED PARTY**  
**DOMINIC NGIKURUSHA ..... INTERESTED PARTY**  
**GABRIEL SIMON EWATON ..... INTERESTED PARTY**  
**BENSON EBELI LONGOR ..... INTERESTED PARTY**  
**EMANUEL LOKAI NYAI ..... INTERESTED PARTY**  
**JUSTUS AMON EWOI ..... INTERESTED PARTY**



**RULING**

1. The application coming for consideration in this ruling is the one dated 25/5/2023 brought under Section 5(1) of the [Judicature Act](#) and all other enabling provisions of the law.
2. The plaintiff/applicants are seeking the following orders;
  - i. That this application be certified as urgent and the service of the same be dispensed with in the first instance and the same be heard on priority basis.
  - ii. That this honourable court be pleased to find and hold that the 1<sup>st</sup> and 2<sup>nd</sup> contemnors are in contempt of the court orders issued on 11/5/2023 by Hon. Lady Justice J.W.W. Mongare and to be subsequently committed to civil jail for a period of six (6) months for disobedience of the court orders of this court.
  - iii. That this honourable court be pleased to declare the elections conducted on 24/5/2023 null and void ab initio.
  - iv. That this honourable court be pleased to declare the elections of Kenya National Chamber of Commerce and Industry (KNCCI) Turkana branch stands suspended and all interested parties numbering from 1<sup>st</sup> to 11<sup>th</sup> elected on 24/5/2023 are restrained from assuming the office pending the hearing and determination of this suit and/or further orders from his honourable court.
  - v. That this honourable court be pleased to grant such directions and other or further orders as it may deem fit to grant geared towards protecting the dignity and authority of this honourable court.
  - vi. That the costs of this application be provided for.
3. The application is based on the following grounds;
  - i. That on 11/5/2023 an order of stay of election process for Kenya National Chamber of Commerce and Industry (KNCCI) Turkana branch was granted by the Hon. Lady Justice J. W. W. Mongare pending the hearing of application inter-partes.
  - ii. The contemnors were served with both the application and court orders.
  - iii. On 18/5/2023 the matter was mentioned before the Hon. Lady Justice A. Ongeru and interim orders were extended.
  - iv. On 24/5/2023 the matter came up for directions before the Hon. Lady Justice Meoli and interim orders were extended.
  - v. That in all instances the contemnors avoided court attendances and proceeded to conduct the elections at Turkana University in Lodwar town despite knowledge of this suit.
  - vi. The 1<sup>st</sup> applicant personally informed the 2<sup>nd</sup> contemnor of court orders together with the O.C.S Lodwar but he ignored and continued with the elections.



- vii. The contemnors being aware of the court orders and proceeded to go on with the elections is a total disregard of the rule of law which act amounts to disobedience of the court orders.
4. The 2<sup>nd</sup> respondent filed replying affidavit sworn on 2/6/2023 in which he stated that the application dated 25/5/2023 is full of falsehood and misinformation.
  5. The 2<sup>nd</sup> respondent also stated that he was not served with the order by the 1<sup>st</sup> applicant on 24/5/2023 as alleged and further that the 1<sup>st</sup> applicant was at Turkana and there was no way he would have served the 2<sup>nd</sup> respondent.
  6. The 2<sup>nd</sup> respondent also deposed in the replying affidavit that the order issued by the court on 11/5/2023 staying elections on 12/5/2023 was a misrepresentation as the 1<sup>st</sup> respondent has never gazetted 12<sup>th</sup> May 2023 as a date for Turkana elections and therefore the said order was a nullity.
  7. The 2<sup>nd</sup> respondent deposed that the Dispute Resolution Committee delivered a decision on May 18, 2023 directing on the number of delegates to participate on 24/5/2023 election and further directed that the said elections be held on 24/5/2023.
  8. He further stated that the applicants have not challenged the elections held on 24/5/2023.
  9. The 2<sup>nd</sup> Interested party also filed a replying affidavit dated 31/5/2023 opposing the application dated 25/5/2023. He deposed in that affidavit that the applicants filed the present suit while there was still a dispute pending before the Dispute Resolution Committee.
  10. Further that on 18/5/2023, the Dispute Resolution Committee delivered its determination directing the 1<sup>st</sup> respondent to include the names of 300 members in the list of its eligible members to vote on 24/5/2023.
  11. The parties filed written submissions in the application dated 25/5/2023 which I have duly considered.
  12. I find that it is not in dispute that when the plaintiff/Applicants moved to court, there was a dispute pending at the Dispute Resolution Committee and that the same was determined on 18/5/2023 and the elections were conducted on 24/5/2023 where the Interested parties were elected.
  13. I find no basis for declaring the elections conducted on 24/5/2023 null and void ab initio since the same were conducted pursuant to the judgment of the Dispute Resolution Committee which has not been challenged by the plaintiff/Applicants.
  14. The sole issue for determination in this ruling is whether the 1<sup>st</sup> and 2<sup>nd</sup> respondents should be jailed for 6 months for being in contempt of this court's order issued on 11/5/2023.
  15. Section 5(1) of the *Judicature Act*, (Cap 8) of Law of Kenya, which provide the procedure for institution of contempt proceedings and states as follows;
    - “(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.
    - (2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”



16. The plaintiffs filed the motion dated 10/3/2023 under certificate of urgency in the Civil Division of the High Court.
17. On 6/05/2023, the matter was transferred to the Commercial and Admiralty Division of the High Court. Again on 11/05/2023 the file was returned from the Commercial and Admiralty Division where Hon. Lady Justice Mongare gave the following orders;
  - i. That the file should be taken back to the Civil Division for proper assessment of issues and directions.
  - ii. That in the interest of justice an order do issue staying the process of elections due to take place on 12/5/2023 in the interim period.
  - iii. That mention on 18<sup>th</sup> May 2023 before the Civil Division.
18. The respondents in their replying affidavit deposed that they were not served with the order dated 11/5/2023 and further that there were no elections slated for 12/5/2023.
19. The law requires that in an application for contempt of court it has to be proved that the order was served upon the contemnor personally or that he was aware of the court order or that he was present when the order was made.
20. In the case of *Shimmers Plaza Limited v. National Bank of Kenya Limited* (2015) eKLR, the Court of Appeal had this to say on the issue of personal service;

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty. This standard has not changed since the old celebrated case of *Ex parte Langley* 1879, 13

Ch D. 110 (C.A), where Theisger L.J stated as follows. at p. 119:

“...the question in each case, and depending upon the particular circumstance of the case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice in fact of the order which has been made? And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt”

21. The terms of the order must also be clear and the order must contain a penal notice and it must also be proved that the said orders were brought to the attention of the respondents or that the respondents had knowledge of the same.
22. In Civil Case 69 of 2003, *Sam Nyamweya & 3 Others –v- Kenya Premier League Limited & 2 others* [2015] eKLR, R.E. Aburili J in dismissing the contempt application, held as follows;
 

“...it is trite clear that there must be a penal notice prominently displayed on the order, warning of the consequence of disobedience. In the instant case, the order...has no penal Notice. The rules mandate such penal notice being conspicuously displayed unless there is an undertaking by the Respondent not to do the act which he is restrained from doing.”
23. In the current case, I find that the plaintiffs have not proved to the required standard that the Respondents were served with the sad the order was stopping an election slated for 12/5/2023.



24. The applicants have not shown that there was such an election slated for 12/5/2023. The election which was held was on 24/5/2023.
25. I accordingly find that the said order was not accurate.
26. I therefore find that it has not been established that the respondents were in blatant breach of a court order forbidding elections to be held on 24/5/2023.
27. The other orders sought by the applicants have already been overtaken since the elections were lawfully conducted on 24/5/2023.
28. There is no basis for declaring the elections of Kenya National Chamber of Commerce and Industry (KNCCI) Turkana branch suspended or for restraining the interested parties numbering from 1st to 11th elected on 24/5/2023 from assuming office.
29. The application dated 25/5/2023 is accordingly dismissed.
30. In an attempt to bring this matter to a finality, I direct that each party bears its own costs of the Application.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 10<sup>TH</sup> DAY OF AUGUST, 2023.**

.....

**A. N. ONGERI**

**JUDGE**

In the presence of:

.....for the 1<sup>st</sup> Plaintiff

.....for the 2<sup>nd</sup> Plaintiff

.....for the 1<sup>st</sup> & 2<sup>nd</sup> Respondents

.....for the 1<sup>st</sup> to 10<sup>th</sup> Interested Parties

.....for the 12<sup>th</sup> Interested Party

