



**Ministry of Trade, Industrialization and Tourism, Kakamega
County v Wambua & 2 others (Miscellaneous Civil Application
2 of 2024) [2024] KEHC 1694 (KLR) (21 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CIVIL APPLICATION 2 OF 2024
PJO OTIENO, J
FEBRUARY 21, 2024**

BETWEEN

**MINISTRY OF TRADE, INDUSTRIALIZATION AND TOURISM, KAKAMEGA
COUNTY APPLICANT**

AND

OMAR OSORE WAMBUA 1ST RESPONDENT

MALACK MISIKO ANAGWE 2ND RESPONDENT

GABRIEL OSUNDWA EKAYA 3RD RESPONDENT

RULING

1. This matter was initially filed at the Employment and Labour Relations Court and assigned serial number E016 of 2023 in that Court. It was initiated by the Notice of Motion dated 4.12.2023 essentially seeking revision of the orders of 27.11.2023 and stay pending determination.
2. By orders made on the 25.01.2024, the Judge of that Court, upon perusal of the matter, discerned it to fall for determination by this Court and transferred it accordingly.
3. When the parties appeared before me on the 7.2.2024, it was consensually agreed, on the basis of the prayers of the application, that the Court exercises its supervisory powers under article 165 (6) & (7), as read with Rule 42, of the *High Court (Organisation and Administration) General Rules*, 2016 calls for the file, peruses same and gives directions to the parties on the way forward.
4. The lower Court file has now been placed before the Court and the Court has had the benefit of perusing same in the context of the prayers in the Notice of Motion initiating the application before the Court seeking revision as a tool of supervisory jurisdiction of this Court. Once the file is placed before the Court for perusal, the Court must just deliver on its mandate.



5. On perusing the file, the first glaring anomaly is the fact that a dispute over allocation of stalls in a market was registered as an employment and labour relations dispute. That anomaly has been corrected by a Judge of that Court effecting the transfer. However, that order of transfer leaves the root of the anomaly as planted and intact.
6. To correct that irregularity it is directed that Kakamega CMC. ELRC No. E016 of 2023 be removed from the Register of Employment and Labour Relations Court Register and registered as Civil Case at the Magistrates Court. That be done forthwith.
7. There being a disclosure to Court that the stalls had been allocation to other parties who were not made parties to the suit and who are directly affected by the orders of 27.11.2023 demonstrates a violation of the right to be heard. The proceedings must be set aside to enable such parties be joined and heard.
8. Secondly, the Court was obligated to determine whether any deliberate conduct was done after service of the Court order. There was no evidence of such deliberate acts. Consequently, no willful disobedience was proved. Thirdly, even if there had been proved willful disobedience, all the Court was to do was convict the contemnor, as it did, then give him the opportunity to show cause why he could not be committed to civil jail. Being quasi criminal, one found in contempt is entitled to mitigate as an important aspect of fair trial before the sentence is imposed. That important step was not taken with the consequence that fair trial may not have been respected.
9. To the extent that there was no proof of contempt and the opportunity to show cause and mitigate, the Court find that there was an important step not taken by the Court. For that reason, the orders of 27.11.2023 are hereby set aside wholly. Having so set aside, and the order that the dispute be progressed towards conclusion, the same is remitted to the trial Court and allocated to another judicial officer who should handle the same expeditiously noting that it is a livelihood dispute.
10. No orders as to costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 21ST DAY OF FEBRUARY, 2024.

PATRICK J. O. OTIENO

JUDGE

In the presence of:-

Ms. Odek for the Applicant

Respondents present in person

Court Assistant: Polycap Mukabwa

