



**Mohammed v Teachers Service Commission; Macharia & another  
(Contemnor) (Employment and Labour Relations Petition E070 of 2023)  
[2025] KEELRC 2599 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2599 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E070 OF 2023  
MN NDUMA, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**MUMINA HIRBO MOHAMMED ..... PETITIONER**

**AND**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**AND**

**DR NANCY MACHARIA ..... CONTEMNOR**

**MOLLET SANGO ..... CONTEMNOR**

**RULING**

1. The court entered judgment dated 4/10/2024 in favour of the Petitioner directing the Respondent to reinstate the Petitioner to the position she held within 14 days of the judgment and to pay in full all the outstanding emoluments and benefits that she would otherwise have earned from the time she was unlawfully interdicted on 16<sup>th</sup> December 2021 upto the time of the order.
2. The respondent aggrieved by the decision of the court filed a notice of appeal dated 5/9/2024 and a notice of motion application dated 6/11/2024 seeking an order in the following terms:-
  1. Spent
  2. Spent
  3. That the Honourable Court be pleased to order stay of execution of the judgment of Hon. Mr Justice Mathews Nderi Nduma delivered on 24/10/2024 in ELRC Petition No. E070 of 2023 Mumina Hirbo Mohammed vs Tsc and all consequential orders pending the hearing and determination of the Applicant's Appeal;



4. The Costs of the Application be provided for
3. The Application is premised on grounds 1 to 10 set out on the face of the application the nub of which is that the judgment has serious financial implication and written approvals need to be sought from the National Treasury for personal expenditures in line with the judgment.
4. That a notice of appeal has been filed which raises substantial and weighty issues of law as demonstrated in the attached draft memorandum of appeal. That Respondent is likely to suffer irreparable loss and damage if judgment is enforced as reinstatement will disrupt internal processes of the Applicant and undermine its constitutional mandate. That execution proceedings are likely to be commenced and this would render the appeal nugatory. That the judgment may be used as a precedent and this would occasion injustice to the Applicant.
5. That application has met requirements of Order 42 Rule 6 of Civil procedure Rules 2010 and it be granted.
6. The Respondent/Petitioner filed application dated 6/11/2024 on the same date as the application filed by the Respondent aforesaid seeking an order in the following terms:
  1. Spent
  2. That the Honourable Court do cite the 2<sup>nd</sup> and 3<sup>rd</sup> Contemnors herein, Dr Nancy Njeri Macharia the CEO of the Respondent/1<sup>st</sup> Contemnor and M/s Mollet Sango the Acting director in charge of Human Resource Management & Development Directorate for willfully disobeying lawful orders of this Court issued on 24<sup>th</sup> October, 2024 after they deliberately failed to reinstate the applicant back to the Employment of the 1<sup>st</sup> contemnor within the timeline of 14 days ordered by the Court which lapsed on the 6<sup>th</sup> November 2024 at 5 pm.
  3. That upon granting prayer (2) here above the Honourable Court do find the Contemnors to be in contempt of the Orders of the Court issued on the 24<sup>th</sup> October, 2024, and upon being found guilty, Dr Nancy Njeri Macharia the CEO of the Respondent/1<sup>st</sup> Contemnor and M/s Mollet Sango the acting director in charge of human resource Management & Development Directorate be committed to civil jail for a period not exceeding 6 months while the Respondent/1<sup>st</sup> contemnor be fined a sum of ksh. 5 million or any other amount that this Honourable court may deem fit and appropriate for willfully disobeying Orders of this Court which were issued on 24<sup>th</sup> October, 2024.
  4. That the Honourable court be pleased to make any other orders within its inherent jurisdiction.
  5. That the costs of this application be provided for.
7. The application is premised on grounds set out in paragraphs 1 to 6 of the notice of motion the nub of which is that the order of the court directing the Respondents to reinstate the Petitioner/Applicant to the position she held and pay all arrear salary was duly served on the Respondent at the headquarters as set out in the affidavit of service. That in any event counsel for the Respondent was in court when judgment was delivered and so they are aware of the order. That Respondent has already filed an application for stay of execution of the said orders of the court which in itself is evidence that the Contemnors are in receipt and full knowledge of the judgment of the court and the order directing the Contemnors to reinstate the Petitioner/Applicant within 14 days. That this application has been overtaken by events since the Petitioner/Applicant ought to have been reinstated to her position within 14 days which lapsed on 11/9/2024. That the Petitioner/Applicant reported to work at head office on



- 6/11/2024 at 8:30 a.m. which was within the 14 days the court had granted the Respondent to obey and implement the order of the court, that the Respondent being in contempt of court should not be heard until they fully comply with the court order.
8. That the conduct by the Respondents' is a mockery to the rule of law and the court should be loathe to entertain such a litigant before it and should instead punish it accordingly.
  9. The Petitioner/Applicant filed grounds of opposition to the application for stay of execution on 19/11/2025 to wit that the application by the Respondent has been overtaken by event from the 6/11/2024 when the Petitioner reported to duty as per the order of court at 8:30 a.m. and was turned away.
  10. That the application by the Respondent cannot therefore be entertained but they should be found in contempt of court in terms of the application by the Petitioner/Applicant.
  11. That the application by the Respondent is an afterthought and was only filed after the Petitioner had reported to office in terms of the order of the court that that application be dismissed and the application by the Petitioner be allowed.
  12. The parties made oral arguments before me on 13/12/2014 the Respondent/Applicant being represented by Mr. Sifuna with Mr. Langat Advocates while the Petitioner/Respondent was represented by Ms. Wachira Advocate. Mr. Sifuna agreed that they had filed a notice of appeal and annexed grounds of appeal. That the fact of the reinstatement cannot be undone and the Applicant would suffer irreparable damage if stay is not granted and the appeal is successful eventually. Once payments are done, it will be difficult to refund them. The reinstatement was not the most appropriate remedy. That the court should exercise its discretion to grant the application as prayed.
  13. Ms. Wachira stated that counsel was present in court when the judgment was delivered. The Respondent and Contemnors in particular are fully aware of the order to reinstate and pay full arrear salary to the Petitioner. That the Respondent clearly does not intend to obey the court orders. That Respondent waited since the 24/10/2024 and did not intend to appeal until the Petitioner reported for duty on 6/11/2024 at 8:30 a.m. That both applications be determined together. It was proper that the application for stay be determined first. Whereas Ms. Wachira emphasized that the Respondent was already in contempt and Mr. Sifuna applied to be allowed to file a response to the Petitioner's application for contempt which it proceeded to do in opposition thereof.
  14. Both parties then filed written submissions which the court has carefully considered together with the oral submissions made before court and deposition in respect of both applications.

### **Determination**

15. With respect to the application for contempt of court dated 6/11/2024, the court notes that the period within which the Respondent was to comply with the court order dated 24/10/2024 was to lapse on 27/11/2024 both dates inclusive. Clearly the application was filed prematurely. The filing of the application for stay of execution dated 6/11/2024 is evidence that the Respondent including the Contemnors had been properly served with the judgment of the court and the consequent order. However, the intention not to comply with the order of the court must be explicit and proved by the Applicant on a standard above a balance of probability but below beyond reasonable doubt. The Applicant by filing this application prematurely cannot be in a position to demonstrate blatant disobedience of the said court order before the period within which the order to comply had lapsed. Accordingly, the application by the Petitioner/Applicant lack merit and is dismissed.



16. With respect to the application for stay of execution pending the intended appeal, it is the considered decision of this court that an order for reinstatement if not implemented timeously is defeated by lapse of time in terms of section 12 of the *Employment and Labour Relations Court Act, 2014* and therefore whereas the Respondent/Applicant argues that reinstatement could render the appeal nugatory, it is more true that failure to implement reinstatement almost definitely renders the judgment obtained by the Petitioner nugatory and denies the Petitioner the fruit of her judgment.
17. The Applicant has in this respect failed to satisfy the court how reinstatement of an officer who had served it for above 38 years and had only one expired warning and was likely to retire in a short while would render the appeal nugatory.
18. Indeed, the balance of convenience or put in another way the justice of the case is in favour of refusing the stay order. The Petitioner has in any event earned significant if not substantive pension in the 28 years' service which the Respondent has neither processed nor paid since such submission has not been made by the Respondent in this application. This fact to the mind of the court defeats the argument by the Respondent that payment of salary to a reinstated officer would cause substantial loss and damage to the Respondent.
19. The argument that this judgment would become a precedent to be followed by others is neither here nor there. A judgment must be obeyed unless otherwise stayed or set aside.
20. The Respondent/Applicant has not satisfied the requirements of order 42 Rule 6 of the Civil Procedure Rules accordingly. The application has no merit and is dismissed.
21. Each party to bear costs in respect of their applications.

**DATED AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Ms. Wachira for Petitioner/Applicant

Mr. Sifuna & Langat Advocates for Respondent/Applicant

Mr. Kemboi – Court Assistant

