



Republic v Registrar of Trade Unions; Omar (Exparte Applicant) (Judicial Review E005 of 2023) [2024] KEELRC 13631 (KLR) (9 May 2024) (Ruling)

Neutral citation: [2024] KEELRC 13631 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
JUDICIAL REVIEW E005 OF 2023**

M MBARÚ, J

MAY 9, 2024

**IN THE MATTER OF AN APPLICATION BY THE
ABDUREHMAN OMAR FOR ORDERS OF MANDAMUS**

BETWEEN

REPUBLIC APPLICANT

AND

REGISTRAR OF TRADE UNIONS RESPONDENT

AND

ABDUREHMAN OMAR EXPARTE APPLICANT

RULING

1. The ex parte applicant filed an application dated 20 March 2024 under the provisions of Section 5(1) of the Judicature Act, Section 3A and 63 of the Civil Procedure Act seeking orders that;
 1. Spent.
 2. The respondent herein, Beatrice Mathenge be summoned before this court to show cause why she should not be cited for contempt and committed to civil jail for blatantly failing to comply with the court orders issued on 8 February 2024.
 3. Notice to Show Cause is issued to the respondent i.e. Beatrice Mathenge to show cause why she should not be committed to civil jail for being in contempt of court orders given on 8 February 2024.
 4. This court be pleased to order that Beatrice Mathenge be arrested and committed to civil jail for a period the court may determine for deliberately defying and violating the express, concise and unequivocal orders of this court on 8 February 2024.



5. The officer Commanding, Milimani/Capital Hill Police Station(s) do execute Order (4) herein.
 6. Costs of this application be awarded to the ex-parte applicant.
2. The ex parte applicant filed his Supporting Affidavit on the grounds that on 8 February 2024 this court delivered judgment and directed the respondent to;
 - d) The court is satisfied that the ex parte applicant has made a valid case for the grant of order of mandamus and hereby grants the same;
 - e) The court grants prayers in the Notice of Motion dated 4th December 2023;
 - f) The ex parte applicant is hereby granted costs of this suit to be borne by the respondent pursuant to article 265 of the *Constitution of Kenya*.
 3. The prayers in the Notice of Motion were that;
 1. An order of Mandamus do issued compelling the Respondent to:
 - a. Deregister Mr Obed Mwathi as a Kenya County Government Workers Union official of the National Executive Committee (NEC) member and Mr. Francis Nyongesa as a Kenya County Government Workers Union National Organizing Secretary as per the Form Q dated 30th May 2023.
 - b. Deregister Ms Christine Songa from as a member of the Kenya County Government Workers Union National Executive Committee (NEC) subject to the Form Q dated 7th October 2023.
 - c. Effect the change of officials in a Kenya County Government Workers Union Kakamega County branch Form Q dated 14th June 2023.
 - d. Effect the change of officials in the Kenya County Government Workers Union Narok Water and Sanitation branch Form Q dated 12th November 2022.
 2. The Court grants any further directions and orders as may be necessary to give effect to the foregoing orders, and/or favour the cause of justice.
 3. Costs of this application be provided for.
 4. The respondent was served with the subject judgment and orders of the court on 18 March 2024 through email addresses but has declined to comply as directed by the court. On 13 March 2024 the interested party herein, the Kenya County Government Workers Union also served the respondent with the Decree and extract of the judgment but there is no compliance. The respondent has continued to blatantly disobey court orders issued on 8 February 2024.
 5. The dignity of the court is at stake through the conduct of the respondent who has defied the sanctity of the orders issued on 8 February 2024. These acts of disobedience undermine the rule of law.
 6. In his Supporting Affidavit, the ex parte applicant aver that the contemptuous actions of the respondent are grave enough to warrant this court's immediate intervention. No reasonable justification has been presented by the cited officer for this disobedience. In the absence of legitimate grounds, this is contempt of court and should be punished by the respondent being cited for contempt and called to show cause why she should not be committed to a jail term, fine, or both.



7. Unless the court intervenes, the contemnor will continue to bring disrepute to this court because of disobedience of court orders to the detriment of the ex-parte applicant and the interested party members. It is fair and just for the orders sought to be issued with costs.
8. The respondent was served but failed to attend or file any responses.
9. The interested party filed a Replying Affidavit in support of the application dated 20 March 2024.
10. Parties were directed to attend for hearing on 24 April 2024, only the ex parte applicant and interested parties attended. The respondent remained absent.

Determination

11. The ex-parte applicant is seeking that the respondent be punished for contempt of court for blatant disobedience of the judgment delivered on 8 February 2024.
12. Indeed, the court is mandated to address any contempt firmly and promptly. Where any person liable for contempt of court in any case by failing to act or attend in a manner that interferes or tends to interfere with the course of justice in relation to any judicial proceedings, such is contempt and liable to punishment.
13. Section 5(1) of the *Judicature Act* provides that:
 - (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 of England and that power shall extend to upholding the authority and dignity of subordinate courts.
14. The Court possesses inherent power to enforce compliance with lawful orders through sanctions imposed through contempt of court. The *Contempt of Court Act* having been declared unconstitutional in *Kenya Human Rights Commission v Attorney General & Another* [2018] eKLR the instructive provision remained in section 5 (1) of the *Judicature Act* which grants the court the power to punish for contempt.
15. In the case of *Githiga & 5 others v Kiru Tea Factory Company Ltd (Petition 13 of 2019)* [2023] KESC 41 (KLR) (16 June 2023) (Judgment), the Supreme Court acknowledged that Due to the quasi-criminal nature of contempt proceedings and the gravity of the consequences that flowed from contempt proceedings, courts are required to adhere to the principles of natural justice, procedural fairness, and the right to a fair hearing.
16. In this case, the Judgment herein was delivered on 8 February 2024. The ex-parte applicant served the respondent on 18 March 2024. There is evidence of service through an Affidavit of Service sworn by Ezra Nyariki, Advocate.
17. The respondent, aware of the judgment filed an application dated 21 March 2024 seeking to set aside the judgment herein. The court allocated a hearing date for this application on 24 April 2024. There was no attendance and the same was dismissed.
18. The gist of it, the respondent is aware of the subject judgment but has failed to comply as directed. The respondent is aware of these contempt proceedings but failed to respond or attend during the hearing. This further exacerbates the level of contempt for the court orders and directions.



Is there any reasonable cause established by the respondent for the blatant disobedience of the orders of 8 February 2024?

19. In the case of *Samuel MN Mweru & Others v National Land Commission & 2 others* [2020] eKLR the court addressed at length the sanctity of court orders and held that;

... If courts are to perform their duties and functions effectively and remain true to the spirit to which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will the Rule of Law and civilized life in society. It is for this purpose that courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside courts which tend to undermine their authority and bring them into disrepute and disrespect by scandalizing them and obstructing them from discharging their duties. When the court exercises this power, it does so to uphold the majesty of the law and the administration of justice. The foundation of the judiciary is the trust and confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working the edifice of the judicial system gets eroded.

20. It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors.

21. In the case of *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another* [2005] 1 KLR 828 the court held that it is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.

22. The authority of the court to punish any act of contempt is reiterated in the case of *Awadh vs. Marumbu (No 2)* No. 53 of 2004 [2004] KLR 458 that it is the duty of the court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with contemnors. See *B v Attorney General* [2004] 1 KLR 431.

23. These aspects put into account, the respondent served and is aware of the orders of 8 February 2024 but has failed to comply or attend these proceedings to explain her conduct, and I am persuaded that the ex parte applicant has demonstrated that the Respondent willfully failed, refused and neglected to obey the court orders.

24. Accordingly, for the reasons set out above, the Court makes the following orders:-

- i) The ex parte applicant's application seeking to cite the Respondent and person of Beatrice Mathenge for contempt of court dated 20 March 2024 is hereby allowed and the Respondent is found to be in contempt of Court for disobeying the Court's orders of 8 February 2024.
- ii) The Respondent is hereby directed to purge her contempt within the next five (5) days by;
 1. Deregister Mr Obed Mwathi as a Kenya County Government Workers Union official of the National Executive Committee (NEC) member and Mr Francis Nyongesa as a Kenya County Government Workers Union National Organizing Secretary as per the Form Q dated 30th May 2023.



2. Deregister Ms Christine Songa from as a member of the Kenya County Government Workers Union National Executive Committee (NEC) subject to the Form Q dated 7th October 2023.
 3. Effect the change of officials in a Kenya County Government Workers Union Kakamega County branch Form Q dated 14th June 2023.
 4. Effect the change of officials in the Kenya County Government Workers Union Narok Water and Sanitation branch Form Q dated 12th November 2022.
- iii) In default of compliance with order ii) above, a Notice to Show Cause is issued against the Respondent and person of Beatrice Mathenge to appear in person before the Court on 15 May 2024 to show cause why she should not be committed to civil jail for disobedience of this Court's orders of 8 February 2024.
- iv) The ex parte applicant is awarded costs.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 9 DAY OF MAY 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

