



**Shabdin v Registered Trustees of the Sisters of Mercy (Kenya) t/a Mater
Misericordiae Hospital (Employment and Labour Relations Petition
E006 of 2025) [2025] KEELRC 2619 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2619 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E006 OF 2025
HS WASILWA, J
SEPTEMBER 29, 2025**

BETWEEN

DR. KHADIJA ESSA SHABDIN PETITIONER

AND

**THE REGISTERED TRUSTEES OF THE SISTERS OF MERCY (KENYA) T/A
MATER MISERICORDIAE HOSPITAL RESPONDENT**

RULING

1. The Petitioner/Applicant filed a Notice of Motion dated 10th June 2025 seeking orders that: -
 1. The Chief Executive Officer (CEO) of the Respondent be ordered to purge the contempt of court or be committed to civil jail for contempt of this Honourable Court's orders issued on 27th March 2025.
 2. Costs of this application be provided for.

Petitioner/Applicant's Case

2. The Petitioner avers that this court delivered a ruling on 27th March 2025 issuing conservatory orders restraining the Respondent from transferring the Petitioner and directing her reinstatement to her initial work station and work schedule.
3. The ruling and extracted order were duly served upon the Respondent and the orders have not been discharged, varied or set aside.
4. It is the Petitioner's case that the order contained a penal notice requiring strict compliance.



5. The Petitioner avers that the Respondent has wilfully refused to comply and reinstate the Petitioner. Therefore, it is in the interest of justice and to preserve the dignity of this court that the Respondent be ordered to purge the contempt and/or be committed to civil jail.

Respondent's Case

6. In response to the Application, the Respondent filed grounds of opposition dated 1st July 2025 on grounds:
 1. The Petitioner has before hearing, on the face of her notice of motion dated 10.6.2025 anticipated or pre-determined the guilt of the Chief Executive Officer of the Respondent for contempt of Court.
 2. The Chief Executive Officer of the Respondent has not engaged in wilful defiance of this Honourable Court's Orders made on 27.3.2025 and issued on 16.5.2025.
 3. The Chief Executive Officer of the Respondent has neither demeaned the authority and integrity of this Honourable Court nor derided the rule of law.
 4. The Petitioner has not established "under the standard of proof in contempt proceedings" that the acts or conduct of the Chief Executive Officer of the Respondent amounted to deliberate and wilful flouting of this Honourable Court's Orders.
 5. The Petitioner has averred in her Replying Affidavit on the act of courtesy and humility in approaching the Court on 4.4.2025, for discharge of the Orders made on 27.3.2025. and issued on 16.5.2025, upon having knowledge of the same.
7. In opposition to the application, the Respondent further filed a replying affidavit dated 1st July 2025 sworn by Sr. Dr. Mary Ngui, the Respondent's Chief Executive Officer (CEO).
8. She avers that on 3rd April 2025, the Respondent's advocate informed her of this court's ruling and orders delivered on 27th March 2025. The said advocate informed her that he had accessed the ruling from the Judiciary e-portal.
9. Subsequently, she notified her fellow Trustees about the matter and engaged them in deliberations on the same together with the Respondent's advocate.
10. The CEO avers that they then instructed the Respondent's advocate to approach the court under a certificate of urgency, and explain the prevailing circumstances or events that made it difficult for the Respondent to comply with the ruling and orders of the court.
11. The Respondent lodged a Notice of Motion dated 4th April 2025 under a certificate of urgency. The Court took jurisdiction, mentioned the same and issued directions to the parties. The same has been heard, and the court will deliver its ruling on 18th September 2025.
12. The Respondent avers that it neither delayed nor waited to be served with the said ruling and orders by the Petitioner before approaching the court with the Application praying for discharge of the same. The Petitioner served it a copy of the ruling dated 27th March 2025 on 3rd April 2025, at 4.03 p.m. By then, the Respondent had duly instructed its advocate to prepare and file the Application praying for discharge of the orders in issue.
13. The Respondent avers that extracted order was issued on 16th May 2025 and endorsed with the stamp of the Respondent's Human Resource Department on 19th May 2025 contrary to the Petitioner's allegation that it was served upon them on 3rd April 2025.



14. The Respondent avers that it approached this court in humility and obedience and made representations on its disability to comply with the said ruling and orders dated 27th March 2025. The substratum of the said ruling and orders had dissipated as the Petitioner was summarily dismissed from service on 4th February 2025 with effect from 31st December 2024.
15. The Respondent avers that its Notice of Motion dated 4th April 2025 together with this replying affidavit constitutes its response to the Petitioner's application for contempt of court against the CEO. The Respondent urges the court to consider its explanations and those contained in the Notice of Motion dated 4th April 2025

Petitioner/Applicant Submissions

16. The Petitioner submitted on four issues: whether the orders issued on 27th March 2025 were clear and unambiguous; whether the Respondent had knowledge of the said orders; whether there has been wilful disobedience by the Respondent; and whether the Respondent's conduct amounts to contempt and warrants punitive orders.
17. On the first issue, the Petitioner submitted that orders issued on 27th March 2025 explicitly restrained the Respondent from effecting the Petitioner's transfer and directed reinstatement pending determination of the petition. It did not leave ambiguity whatsoever and the Respondent understood them very well hence their attempts to discharge them.
18. The Petitioner relied in the Court of Appeal case of Republic v Principal Secretary, Ministry of Defence Ex Parte George Kariuki Waitaha [2019] eKLR wherein it was held that clarity of an order is a precondition to a finding of contempt. Likewise, in Kenya Revenue Authority v Darasa Investments Ltd [2018] eKLR, the Court affirmed: "Orders of the court must be clear and unambiguous; there should be no room for doubt as to what is required."
19. On the second issue, the Petitioner submitted that there is no dispute here that the Respondent knew of the order. The Respondent concedes actual knowledge of the ruling on 3rd April 2025 and further acknowledges being served with the extracted order.
20. On the third issue, the Petitioner submitted that the Respondent did not reinstate the Petitioner and no steps were taken to comply even partially with the orders. The Respondent's explanation that it filed an application to discharge the orders does not suspend compliance as an application is not a stay.
21. The Petitioner relied in the Court of Appeal case of Teachers Service Commission v Kenya National Union of Teachers & 2 Others [2013] eKLR wherein it was emphasized: "Court orders must be obeyed unless and until they are set aside on review or appeal." It is the Petitioner's submission that in the instant suit, there has been deliberate, protracted noncompliance, causing grave hardship to the Petitioner.
22. On the final issue, the Petitioner submitted that the Respondent has failed to demonstrate any compelling justification for its continuing disobedience, thus, this Court should act decisively to preserve its authority and the rule of law. She relied in the Court of Appeal case of Eunice C. Kariuki v Director of Public Prosecutions & 2 Others [2017] eKLR where the court observed: "The purpose of contempt proceedings is to protect the authority and the dignity of the Court."

Respondent's Submissions

23. The Respondent submitted that it is apparent on the face of the record that the Petitioner has not prayed for the court to cite-and-find the CEO of the Respondent guilty of contempt of court. The



Petitioner has leap-frogged to the infliction of pain-and-penalties on the CEO of the Respondent. before hearing-and-finding of guilt on her part.

24. The Respondent submitted that Chief Executive Officer of the Respondent has not engaged in willful defiance of this Honorable Court's Orders made on 27th March 2025. and issued on 16th May 2025; and the Chief Executive Officer has neither demeaned the authority and integrity of this Honorable Court nor derided the rule of law.
25. It is the Respondent's case that willful disobedience of a judgment, decree or order constitutes contempt of court. It is, therefore, evident that not only do contemnors demean the integrity and authority of courts, but they also deride the rule of law. This must not be allowed to happen. It is such deliberate, intentional and/or willful defiance or disobedience of the orders of the court that cannot be countenanced. It is such derision of "the rule of law" that is punished as contempt of court.
26. The Respondent submitted that it is incumbent on the Petitioner to establish deliberate, intentional or willful disobedience on the part of the Respondent. The Petitioner has not established under the standard of proof in contempt proceedings, that the acts or conduct of the Chief Executive Officer of the Respondent amounted to deliberate, and willful, flouting of this Court's orders.
27. The Respondent relied in the Supreme Court decision in Republic v Mohammed & another (Criminal Application 2 of 2018) [2018] KESC 51 (KLR) held: "The standard of proof in cases of contempt of Court is well established. In the case of Mutitika v. Baharini Farm Limited [1985] KLR 229, 234 the Court of Appeal held that:

"In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature."

The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor's conduct was deliberate, in the sense that he or she wilfully acted in a manner that flouted the Court Order."
28. It is the Respondent's submission that the line of action it took upon becoming aware of the ruling of this court and the orders made on 27th March 2025, cannot be perceived as intentional, deliberate or willful disobedience of this court's orders. The Respondent undertook a well-considered measure of deference to the Court. The Respondent approached the court and invoked the court's jurisdiction to consider the difficulty it faced to comply with the orders.
29. I have examined all the averments and submissions of the parties herein. The applicants have averred contempt of this court's order of 27th March 2025 which restrained the respondent from transferring the petitioner and directing her reinstatement to her initial work station and work schedules. The applicants aver that the orders of the court were served upon the respondents and have not been discharged, varied or set aside.
30. The respondents on their part have averred that the alleged contemnor have not engaged in any willful defiance of this courts orders of 27/3/2025 and issued on 16/5/25. The respondents CEO aver that their advocates informed the respondent of this court's ruling and orders delivered on 27th March 2025



from the judiciary e portal. That she informed fellow trustees of the matter and further engaged them in deliberation on the same together with their advocates.

31. That the CEO instructed their advocates to approach the court under certificate of urgency and explain the circumstances prevailing or events that made it difficult for the respondents to comply with the ruling and orders of the court. They aver that they were served with a copy of the ruling dated 27th March 2025 on 3rd April 2025 at 4.03pm and by then the respondents had asked their counsel to prepare and file the application for discharge of the orders in issue. The gist of the respondent's response was that the petitioner had been summarily dismissed from service on 4th February 2025 with effect from 31/12/24 and therefore the orders of the court of 27/3/25 were incapable of being implemented.
32. I have considered the order issued by this court on 27/3/25 in which this court directed as follows:
 1. A conservatory order is hereby issued restraining the respondent from effecting the transfer of the petitioner from Mater Misericordiae Hospital in Nairobi to Thika Medical Centre pending the hearing and determination of the petition.
 2. The respondent is directed to reinstate the petitioner to her initial workstation and work schedule pending the hearing and determination of the petition.
 3. The costs of this application shall be in the petition.
33. The application in question was one dated 10th January 2025 and which was responded to by the respondents on 22/1/25 opposing the application for being unambiguous. This court considered the application and allowed it.
34. At the time of responding to this application, the respondents did not indicate that they had dismissed the petitioner from employment with effect from 31/12/2024. The orders as granted prevented the respondents from transferring the petitioner applicant from her duty station to Thika and also ordered her reinstated to her work station. The order was therefore unambiguous. On issue of its service, the respondents have denied being served but that they learnt of the same on the e filing portal. The applicants on their part exhibited APP KEM 1 showing service of the order of court upon the respondents on 3/4/25 at 4.03pm.
35. The respondents contend that the orders were incapable of being implemented as they had already been overtaken by events the petitioner applicant having already been dismissed. The respondents exhibited a letter dated 4/2/25 summarily dismissing the petitioner from work. The letter however lacks any evidence that it was served upon the petitioner and the manner in which she was served with the said letter if at all. The letter contain neither the postal address or email address to show that it was served upon the petitioner. There is no delivery book to show even personal service. In absence of the said evidence then it follows that the petitioner applicant was never notified of her alleged summary dismissal and failure to implement orders of this court of 27/3/2025 was in contempt of this courts directions and is liable to punishment by the contemnor respondent. Costs of this application will borne by the respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE

