



Kenya County Government Workers Union Bungoma Branch v County Public Service Board of Bungoma & another (Petition 1 of 2019) [2025] KEELRC 2689 (KLR) (1 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2689 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
PETITION 1 OF 2019
DN NDERITU, J
OCTOBER 1, 2025**

BETWEEN

**KENYA COUNTY GOVERNMENT WORKERS UNION BUNGOMA
BRANCH PETITIONER**

AND

**COUNTY PUBLIC SERVICE BOARD OF BUNGOMA 1ST RESPONDENT
COUNTY GOVERNMENT OF BUNGOMA 2ND RESPONDENT**

RULING

I. Introduction

1. In a notice of motion dated 11th November, 2024 (the application) filed through James Oketch & Company Advocates the petitioner/applicant is seeking for the following orders –
 1. That the application be certified as urgent and service be dispensed in the first instance.
 2. That the respondents herein, their agents, and/or any persons acting under their authority cease threatening, profiling, discriminating and/or harassing the concerned members of the petitioner/applicant by virtue of them being members of the petitioner.
 3. That the petitioner’s members’ salaries and emoluments that are due and owing be paid to them by the respondents forthwith.
 4. That the following officers of the respondents:
 - a. Governor Bungoma County-Kenneth Lusaka
 - b. County secretary Bungoma County-William Nasongo;
 - c. Head of County Public Service Board Bungoma County-Jonathan Makata;



d. Chairman of the County Public Service Board-Joseph Namlala;

Be summoned before this honourable court to show cause why they should not be cited for contempt and committed to civil jail for blatantly failing to comply with the court orders given on 13th May 2020 and 25th September 2024.

5. That on failing to show necessary cause, the said officers be committed to civil jail for a maximum period of six (6) months for contempt of this Honourable court's orders given on 13th May 2020 and on 25th September 2024.
 6. That Officer Commanding Bungoma Police Station do execute Order 4 herein.
 7. Any other or further orders as this Honourable Court deems fit and appropriate.
 8. That costs of this application be borne by the respondents.
2. The application is expressed to be brought under Rule 81.4 of the Civil Procedure (Amendment No. 2) Rules, 2012 and is based on the grounds listed on the face of the application.
 3. The application is supported with the affidavit of Roba S. Duba, the national general secretary of the petitioner, sworn on even date with several annexures thereto.
 4. In response to the application the respondents through Makokha Wattanga & Luyali Associates filed two affidavits. One affidavit was sworn by Joseph Samita Makata, the chief executive officer of the 1st respondent, on 8th January 2025.
 5. The other replying affidavit was sworn by Kenneth Makelo Lusaka, the Governor and chief executive officer of the 2nd respondent, on 11th December 2024 with several annexures thereto.
 6. By consent, the application was canvassed by way of written submissions. Counsel for the petitioner filed written submissions dated 11th January 2025 while counsel for the respondents filed submissions dated 25th January 2025.

II. The Evidence

7. In the supporting affidavit it is deposed that on 13th May 2020 the court (Nduma J) delivered a judgment wherein paragraph 26 stated as follows – “The respondents have not succeeded to demonstrate that this long list of 463 employees are not in their employ as casuals for prolonged periods exceeding 7 years.”
8. In a ruling delivered on 28th July 2023 the court (Keli J) affirmed the above holding in the following words –

“The court finds no ambiguity as to the number of workers in the decision being 463 and that is the same number in the petition. A decree of the court flows from the judgment.”
9. A copy of the judgment and the ruling above are annexed to the affidavit. It is deposed that in the judgment the respondents were ordered to absorb all the 463 named employees into permanent and pensionable employment and to apply to each of them minimum terms and conditions of service provided for under the *Employment Act* (the Act). The respondents were adjudged to have violated Articles 27, 28, 41, and 232 of *the Constitution* and Sections 5, 35, and 37 of the Act.
10. It is deposed that after the judgment alluded to above the respondents attempted to carry out a “verification” process of the 463 employees but the report therefrom was subsequently dismissed in a



ruling delivered on 25th September 2024 and the respondents ordered to comply with the impugned judgment and the decree thereof. A copy of this ruling is annexed to the affidavit.

11. It is deposed that the respondents have adamantly failed, refused, and or neglected to comply and or obey the impugned judgment, decree, and the orders mentioned in the foregoing paragraphs in vagrant and willful contempt of the court.
12. It is in those circumstances that the petitioners are seeking that the named officers and officials of the respondents be summoned in court to show-cause why they should not be cited and punished for contempt of court.
13. In the replying affidavit by Joseph Samita Makata it is deposed that the respondents filed a review of the impugned judgment and a ruling on the same was delivered on 28th July 2023 and a verification exercise carried out on 14th August 2023 as per the orders of the court.
14. However, the resultant report following the verification was set aside on 25th September 2024 following an application by one Moses Maelo Muyundi. It is deposed that the respondents have filed an appeal against that ruling and that the application herein for contempt is premature as the petitioners ought to have waited for the outcome of the appeal pending in the Court of Appeal.
15. In the replying affidavit by Hon Kenneth Makelo Lusaka the deponent acknowledges the judgment delivered by court on 13th May 2020 and the subsequent rulings and the contents thereof as alluded to herein above.
16. It is deposed that due to confusion on who the 463 employees named in the judgment were, the Governor directed that an audit be carried out to verify on their identities and employment status. He constituted a human resource taskforce which compiled a report upon completion of the verification process.
17. It is further deposed that the respondents applied for review of the impugned judgment in an application dated 30th January 2023 and the same was dismissed in a ruling delivered on 28th July 2023.
18. It is deposed that a verification exercise was carried out on 14th August 2023 and a report filed in court on 27th October 2023. However, the report was challenged in an application dated 23rd January 2024 and in a ruling delivered on 25th September 2024 the report on the verification process was dismissed and expunged from the court record.
19. It is deposed that the respondents appealed the above ruling vide a notice of appeal dated 27th September 2024 and received in the Court of Appeal on 30th September 2024. It is thus deposed that the application herein is premature as the petitioners should await the outcome of the said appeal.
20. There is an affidavit sworn by Moses Maelo Muyundi sworn on 7th February 2025 in response to the replying affidavit by Hon Kenneth Makelo Lusaka above. The said affidavit is improperly on record as no leave was sought before the filing. The said deponent is not a party in this petition and as such the same is hereby expunged from the court record.

III. Submissions by Counsel

21. In the submissions for the petitioner, Mr. Oketch reiterates the history of the proceedings and the chronology of the judgment by Nduma J and the two rulings by Keli J, all alluded to in the foregoing part of this ruling.



22. It is submitted that after all the court proceedings alluded to above, the judgment, and the rulings above, counsel for the petitioner wrote to respondents on 3rd October 2024 demanding that they comply with the judgment and decree. It is submitted that the respondents did not heed to the demand and have failed, refused, and or neglected to comply with the orders of the court arising from the judgment and the decree.
23. It is submitted that no reasonable or probable cause has been offered by the respondents for their failure to comply with the judgment of 13th May 2020 and the ruling of 25th September 2024. It is further submitted that the officers/officials of the respondents named in the application are responsible for enforcing the said court orders but they have been contemptuous and are guilty of contempt and hence the orders sought in the application.
24. Counsel for the petitioner identified the following issues for determination –
 - a. Whether the respondents and the cited officers are in contempt of the court orders?
 - b. Whether the orders sought by the applicant should be granted?
 - c. Whether the application dated (6th November 2024 in some pages and 11th November 2024 in some pages) by the respondent ought to be dismissed?
25. On the first issue, it is submitted that since the nullification of the *Contempt of Court Act* by the High Court (Mwita J) in Kenya Human Rights Commission V Attorney General & Another (2018) eKLR, the law applicable in Kenya for contempt of court proceedings is as stated by the Court of Appeal in Christine Wangari Gachege V Elizabeth Wanjiru Evans & 11 Others (2014) eKLR. It was held by the appellate court that the statutory basis for contempt proceedings is Section 5 of the *Judicature Act* and Section 63(c) of the *Civil Procedure Act*. It was further held that the superior courts in Kenya have the same powers to punish for contempt as the High Court of Justice in England. Counsel extensively cited the provisions of the English Civil Procedure Rules (Amendment No. 3) of 2020 on the procedure applicable in contempt proceedings.
26. It is submitted that the evidence on record, both from the petitioner and the respondents, confirm that indeed the respondents have not complied with the judgment and decree of the court and the subsequent orders alluded to above.
27. It is further submitted that the contemnors have confirmed that they are aware of the judgment and the decree and the subsequent and consequential orders. It is submitted that in that regard the petitioner need not prove personal service as that position is supported by the decision in Kontoine Koilel & 2 Others V Kanin Krsai Koilel & Another (2022) eKLR.
28. It is submitted that the petitioner has demonstrated and proved the existence of valid court judgment, decree, and orders, service and or knowledge of the said orders by the cited contemnors, and failure by the contemnors to obey the said orders.
29. On the second issue, it is submitted that the orders from the court contained penal notice and the respondents were aware of the same. The court is urged to find that the respondents are in violation of Article 41(1) of *the Constitution* and apply Article 23 to remedy the breach.
30. The court is urged to stamp its authority and punish the contempt. Counsel cited Republic V Ahmad Abolfathi Mohammed & Another (2019) eKLR in laying emphasis that court orders must be obeyed and where a party acts in contempt it should be punished to uphold rule of law and protect the dignity and authority of the court.



31. It is submitted that the respondents have admitted full knowledge of the court orders in the judgment and the ruling of 25th September 2024 yet no reason(s) whatsoever has been advanced as to why they have not obeyed and implemented the same. The court is urged to punish that blatant and willful contempt and thus summon the cited officers to show-cause why they should not be punished.
32. On the third issue it is submitted that the application by the respondents dated 6th and or 11th November, 2024 has no merits as the orders sought to be stayed as issued on 25th September 2024 are negative orders incapable of being stayed. In any event, it is submitted that the application does not indicate what orders it is seeking to be stayed.
33. It is further submitted that the allegation that an appeal has been filed is a fallacy as no notice or memorandum of appeal has been annexed to the application. It is submitted that the application does not meet the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules and counsel cited *Ndungu V Mutua (2024) KEHC 6276 (KLR)* in support of that argument.
34. It is submitted that the application for stay of execution has been filed in bad faith as the respondents have failed, refused, and or neglected to comply with the judgment of 13th May 2020 and the ruling of 28th July 2023. It is further submitted that the orders of 25th September 2024 were clear that the respondents were to unconditionally comply with the foregoing.
35. The court is urged to allow the application by the petitioner and dismiss the application for stay by the respondents.
36. Counsel for the respondents identified the following three issues for determination –
 - a. Whether there are valid orders the respondents have refused to comply with and or obey
 - b. Whether the respondents are personally aware of the orders of the court they have allegedly ignored to obey.
 - c. Whether the petitioner is entitled to the orders sought.
37. On the first issue, it is submitted that the standard of proof in contempt proceedings should be beyond balance of probabilities but below beyond reasonable doubts. It is submitted that the respondents have applied for stay of the orders in the ruling of 25th September 2024 by way of an application dated 6th November 2024 and the court is urged not to make orders that defeat that application hence condemning the respondents unheard.
38. It is submitted that there is no evidence on record confirming service upon the named contemnors. It is further submitted that the deponent to the supporting affidavit to the application, Roba S. Duba, has not provided an authority from the petitioner to swear the same.
39. On the third issue, it is submitted that it is the petitioner who has made it impossible for the respondents to comply with the orders for failing to provide the list of the 463 affected employees.
40. It is submitted that the application by the petitioner is premature for the reasons advanced above and that the same ought to be dismissed with costs.

IV. Issues for Determination

41. The application is seeking for orders set out in the introductory part of this ruling. It is an application seeking to punish the respondents for contempt of the specific orders enumerated on the face of the application. Since the respondents are juridical persons, the petitioner is seeking to punish the natural



- persons, officers and officials named, who are supposedly expected to enforce the court orders for and on behalf of the respondents.
42. The petition herein has been pending in court since 2019. Upon hearing of the same the court (Nduma J) delivered a judgment on 13th May 2020 with the following orders –
- a. The court declares that the continued employment of the listed 463 grievant/members of the petitioner by the respondents on casual basis is in violation of Sections 5, 35 and 37 of the Employment Act, NO.11 of 2007 and violates Articles 27, 28, 41 and 232 of the constitution of Kenya 2010.
 - b. The court directs the respondents to place all the affected employees, referred to above on payroll and apply to each one of them the minimum terms and conditions of service provided under parts II, III, IV, V and VI of the Employment Act, 2007.
 - c. The respondents to compute, file and pay arrear salary due and owing to all the grievants, named on this petition under their employment within 60 days.
43. In a ruling of 28th July 2024 in regard to an application that sought for review of the above judgment, the court (Keli J) directed the respondents to obey and comply with the orders in the judgment in 60 days. An alleged report of verification of the 463 affected employees filed by the respondents was expunged from record in a ruling delivered on 25th September 2024 and the respondents were again ordered to comply with the impugned judgment.
44. It is the petitioner’s case that the respondents have deliberately and willfully failed, refused, and or neglected to comply with the judgment in blatant contempt of the court.
45. The respondents fully acknowledge the judgment of 13th May 2020 but claim that they are unable to comply for alleged lack of budgetary allocation and a pending appeal of the order of 25th September 2024.
46. The court has gone through the application, the supporting affidavit, the replying affidavits, the documents filed by both sides, and the submissions by counsel for both sides, as summarized in the foregoing parts of this ruling. In the considered view of the court the following issues need to be determined –
- a. Does the application meet the threshold necessary for grant for the orders sought?
 - b. What orders should the court issue?
 - c. Costs.
47. As correctly submitted by counsel for the respondents, contempt has to be proved beyond balance of probabilities but not beyond reasonable doubts. This is so because an application for contempt of court interrogates alleged quasi-criminal conduct of the persons cited in such an application purportedly amounting to willful and deliberate disobedience of a court order.
48. For a successful prosecution of such an application an applicant has to demonstrate and prove –
- a. The existence of a valid court order,
 - b. That the cited contemnors or agents are aware of the order,
 - c. That the contemnors or agents have willfully and deliberately failed and refused to act on or obey the order.



49. The orders alleged to have been disobeyed and or ignored by the respondents are those issued by the court in the judgment of 13th May 2020. As at the time of delivery of this ruling the judgment shall be over five years old. The fact of that judgment and the orders made therein has not been denied by the respondents and to that extent the existence of a valid court is a non-contested issue.
50. The contents of the said order(s) have been reproduced elsewhere in this ruling and there is no ambiguity in the same and none has been alluded to by either party and more so the respondents.
51. The respondents are juridical bodies that may only act through natural persons. It is for this reason that the petitioner is seeking to pursue the persons named in the application in their official capacity. Hon. Kenneth Makelo Lusaka admits that he is the Governor and the CEO of the 2nd respondent and the other named contemnors have not denied their official designations as ascribed in the application.
52. It is the finding and holding of the court that it is the named individuals who are responsible for enforcing the orders as issued by the court in the impugned judgment. The court also finds and holds that no lawful reasons have been advanced by the named contemnors for not obeying and implementing the orders of the court.
53. In the replying affidavits it is alleged that an appeal has been filed challenging the ruling of 25th September 2024. It is important to note that this is the ruling that expunged the verification report that had been filed by the respondents. While the alleged appeal is not said to be challenging the judgment of 13th May 2020, it is important to note that no notice or memorandum of appeal is annexed to the replying affidavits. In the circumstances, the court finds and holds that the allegation that an appeal has been filed as claimed is false and or misleading.
54. In any event, an appeal or an intended appeal is not and does not amount to an order for stay of execution. Further, even if the alleged appeal ultimately succeeded, it shall not affect the judgment delivered on 13th May 2020. In that regard that ground holds no water.
55. The other reason advanced for the failure by the respondents to obey, comply, and enforce the judgment is lack of budget. No audited accounts were availed by the respondents to demonstrate how complying with the judgment shall impact on their budget. In any event, the respondents have not demonstrated any efforts made to comply with the judgment since 13th May 2020.
56. The impugned judgment and the ruling of 28th July 2024 are clear and specific on the list of the 463 affected employees. There is no ambiguity or lack of specifics in that regard and hence the allegation by the respondents that there is confusion or obscurity in that regard is mere hot air.
57. The court finds and holds that instead of complying with and implementing the judgment the respondents through the named contemnors, and or others who may have held the same positions over the time, engaged in back-and-forth delaying tactics and protracted litigation aimed at denying the affected members of the petitioner the right of enjoying the fruits of the lawful judgment.
58. Litigation has to come to an end and it is incomprehensible that the respondents have failed, refused, and or neglected to comply with the impugned judgment for the last five years. Such conduct amounts to contempt of court and the named officers/officials should answer for the contempt.
59. In the circumstances, the court finds and holds that the application by the petitioner dated 11th November 2024 has merits and the same is allowed as hereunder.

V. Orders

45. For all the foregoing reasons, the court makes the following orders –



- a. For good measure and to preserve status quo the respondents, their agents, servants, officers, officials, employees, and or others howsoever are hereby restrained from threatening, profiling, discriminating, or harassing the named 463 members of the petitioner or in any manner interfering with their employment.
- b. The named contemnors shall appear in court on an appointed date to show-cause why they should not be punished for the established and proved contempt.
- c. Failure to appear as ordered shall render the contemnors amenable to arrest and the court shall issue orders accordingly in that event.
- d. Costs of the application to the petitioner in any event.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT BUNGOMA THIS 1ST DAY OF OCTOBER, 2025.

.....

DAVID NDERITU

JUDGE

