



**Chelimo v Director General National Intelligence Service & another;
Haji (Contemnor) (Employment and Labour Relations Cause
256 of 2016) [2025] KEELRC 2916 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2916 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 256 OF 2016
HS WASILWA, J
OCTOBER 28, 2025**

BETWEEN

VINCENT KONGA CHELIMO CLAIMANT

AND

**DIRECTOR GENERAL NATIONAL INTELLIGENCE SERVICE 1ST
RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

AND

NOORDIN MOHAMED HAJI CONTEMNOR

RULING

1. The Claimant/Applicant filed a Notice of Motion dated 5th February 2025 seeking orders that: -
 1. this Honourable Court be pleased to cite and punish by issuance of order of committal to civil jail against the Contemnor for disobeying court orders issued by this Honourable Court on 6th March, 2018.
 2. this Honourable Court be pleased to direct that the alleged Contemnor do remit immediately to the Applicant withheld salary and benefit due to him from 30th June, 2015, plus interest accrued thereon and the subsequent months not remitted for as long as the Claimant/Applicant is under the employment of the Respondent.
 3. this Honourable Court be pleased to direct the 1st Respondent and the Contemnor, to continue remitting to the Applicant his monthly salary and dues as per his pay slip and grant the Applicant unlimited access to his work place as ordered by the Court.



4. the cost of this application be borne by the Contemnor.

Claimant/Applicant's Case

2. The Applicant avers that vide a judgment dated 6th March, 2018 this court made orders that the Claimant's claim is allowed and an order of immediate reinstatement of the Claimant with no loss of benefits from the date of dismissal on 30th June, 2015. The orders were for immediate compliance by all the parties to the proceedings.
3. The Applicant avers that being aggrieved by the decision, he filed an appeal in Civil Appeal No. 645 of 2019; Director General, National Intelligence Service Another v Vincent Chelimo. The Court of Appeal held that the appeal was devoid of merit and the same was dismissed. Additionally, the Court of Appeal ordered that the stay issued on 8th November, 2019 be vacated with immediate effect.
4. It is the Applicant's case that the Respondents have not been complied with as directed. Despite several correspondences imploring the Respondents to comply; the Applicant has since not been reinstated to his work station, and his accrued benefits have not been disbursed to him as ordered by the court.
5. The Applicant avers that the Respondent's action amount to a direct and wilful contempt of court orders. The alleged Contemnor has continuously ignored and disobeyed the existing orders by continuing to deny the Applicant the fruits of his judgment.
6. The Applicant avers that it is trite law that court orders are not made in vain but are meant to be obeyed, and the Contemnor has intentionally ignored to implement the court orders of this court issued on 6th March, 2018 and upheld by the Court of Appeal on 24th May, 2024.
7. The Applicant avers that it is trite law that court orders are not made in vain but are meant to be obeyed. The dignity and integrity of the court is under attack and continues to be prejudiced by the Contemnor's actions, consequently, there is no other way of enforcing the orders other than through the Courts.

Respondents' Case

8. In response to the Application, the Respondents filed a replying affidavit dated 7th July 2025 sworn by the Head of Legal in the National Intelligence Service, Carol Sigei.
9. It is the Respondents' case that the Applicant failed to follow due process by failing to serve the Intended Contemnor with a penal notice and the court order as required under Rule 81.9 of the UK Civil Procedure (Amendment No. 2) Rules, 2012 as adopted in Kenya and therefore, the contempt application is defective and unsustainable in law.
10. The Respondents aver that contempt proceedings are quasi-criminal in nature and the standard of proof is higher than that of ordinary civil proceedings. In the absence of wilful disobedience and in view of the administrative and legal constraints, the threshold for contempt has not been met.
11. The Respondents aver that the Claimant has been out of employment for a period of ten years calculated cumulatively from the date of dismissal which was 30th June 2015 to date. The extended period of absence renders reinstatement challenging due to significant changes in the workplace structure, systems and the need for re-integrating the Claimant back to work and to also allow him to fit into the current operational requirements. The 1st Respondent is a security organization and the prolonged absence of the Applicant would definitely be a cause of concern.



12. The Respondents aver that the integrity of the Claimant/Applicant is in question as he committed acts amounting to gross misconduct hence the determination by the Service to dismiss him.
13. It is the Respondents' case that as a prerequisite to any engagement in a National Security Organ, the Claimant would be required to undergo a thorough vetting process to determine his suitability which is an engaging process to undertake and will take time to finalize. Given the prolonged absence and the unresolved integrity issues, the vetting process would take considerable time noting that the Applicant is soon going to reach retirement age.
14. The Respondents aver that given the lengthy period that has elapsed since the Claimant's separation from the Service and the fact that his terminal benefits were processed and paid out, it would now be highly impractical to reinstate him to the payroll in a manner that is administratively sound and legally accurate.
15. It is the Respondents' case that any forced reintegration after a prolonged separation risks undermining workforce cohesion, morale and public confidence in the institution especially where the separation arose from allegations of gross misconduct.
16. In light of the alleged gross misconduct, the Respondents aver that the Claimant is unsuitable to serve in a national security institution requiring high levels of integrity.

Claimant/Applicant's Submissions

17. The Applicant submitted that the main issue for determination is whether the Court orders have been complied with by the 3rd contemnor as an accounting officer of the 1st Respondent. The litigation has come to an end and no further facts finding by the 3rd contemnor in this matter as an order of reinstatement should be implemented immediately.
18. It is the Applicant's submission that Court of Appeal vide its judgment dated 24th May 2025 vacated stay orders and he was to resume work and reinstated on payroll but to-date the 3rd contemnor has neither approved nor issued reinstatement letter to the claimant/Applicant despite the applicant being eager and anxious to resume duties.
19. The Applicant submitted that Section 5 of the *Judicature Act* confers jurisdiction to punish contemnors for contempt of court. He further cited Samuel M.N. Mweru & others v National Land commission & 2 others (2020) eKLR wherein the court held:

“It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order (ii) Knowledge of these terms by the respondent (iii) failure by the respondent to comply with the terms of the order.”
20. It is the Applicant's submission that the 3rd contemnor has been aware of the terms, knowledge of the terms of the orders and has deliberately failed to honour them for unknown reasons to the Applicant and as such renders this application necessary. At one point, the 3rd contemnor had indicated wilfulness to issue reinstatement letter to the Applicant and subsequently failed to fulfil it for unknown reasons to both court and to the Applicant. This demonstrates bad faith on the part of the contemnor.
21. The Applicant submitted that in the absence of repercussions for contempt, there would be anarchy which would be a serious threat to the rule of law and administration of justice. All through the appointment of the 3rd contemnor as Director General of the 1st Respondent he has been aware of this litigation and no any excuses he can raise in terms of court orders.



22. The Applicant submitted that that the contemnor is unwilling to obey the court orders despite being an accounting officer of the 1st Respondent. The Applicant has satisfied the elements and principles of contempt as enumerated hereinabove and do pray the 3rd contemnor should be punished unless he purges it as Court orders are not granted in vain.

1st Respondent and Contemnor's Submissions

23. The Respondents submitted on three issues: whether the 1st Respondent's affidavit should be expunged from the record; whether the Application lacks merit; and whether the 1st Respondent willfully failed, refused and or neglected to obey the court order.
24. On the first issue, the Respondents submitted that Order 19 Rule 3 (1) of the Civil Procedure Rules provides that affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove and it may also contain statements of information and belief showing the sources and grounds thereof.
25. It is the Respondents' submission that the 1st Respondent's affidavit was sworn by its legal officer who had personal knowledge of the matters in dispute. The legal officer confined her response to the application to the facts that she is able of her knowledge to prove. Therefore, she was competent enough to swear the affidavit and adequately addressed the issues raised in the application. Additionally, Section 9(3) of the National Intelligence Service empowers the Director General to delegate any power or assign any function to a member of the Service; the Legal Officer is a member of the Service.
26. The Respondents submitted that the affidavit should not be expunged merely because it was not sworn by the 1st Respondent's Accounting officer since the contents of the said affidavit remain within the permissible scope of the deponent's personal and official knowledge and she is able to prove the same.
27. On the second issue, the Respondents submitted that Rule 81.9 of the Civil Procedure (Amendment No. 2) Rules, 2012 (Laws of England) provides that judgment or order to do or not do an act may not be enforced under rule 81.4 unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Section, a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets.
28. The Respondents submitted that the Applicant served the 1st Respondent with the orders on 17th July 2024. However, the Applicant failed to annex a notice of the penal consequences of disobedience to the order as required by the Rules. This renders his application incompetent and should therefore be dismissed.
29. The Respondents cited *SMEC International Property Limited v Principal Secretary, Ministry of East African Community and Regional Development & another* (2023) eKLR wherein the court held:
- “One of the salient features of these rules is captured in rule 81.9 that there shall be permanently displayed on the front copy of the judgment or order served a warning to the person required to do or not to do the act in question that disobedience to the order would be contempt of court punishable by imprisonment, a fine or sequestration of assets. Without this display, the judgment or order may not be enforced unless it is an undertaking contained in a judgment or order.”
30. The Respondents submitted that it is common knowledge that the current Director General was not in office at the time judgement was delivered in this suit.



31. The Respondents submitted that service of the penal notice is a necessary step in any contempt of court application. The notice is meant to warn the person being served, who may not be aware of the proceedings leading to the order in question that failure to comply with the order will attract punitive consequences. Failure by the Applicant to serve the Contemnor herein with the penal notice is fatal rendering his application incompetent and should therefore be dismissed.
32. The Respondents submitted that the Applicant has failed to seek the courts leave for a notice to show cause against execution since the execution is being made more than one year after the date of the decree. This procedure is mandatory but the Applicant chose to ignore the same.
33. On the second issue, the Respondents submitted that in *Samuel M. N. Mweru & Others v National Land Commission & 2 Others* (2020) eKLR the court held that the test for when disobedience of a civil order constitutes contempt is whether the breach was committed deliberately and mala fide. That casual, accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy, would amount to a contempt in theory only and does not render the contemnor liable to punishment. In the instant application, 1st Respondent did not act deliberately or with malice in failing to reinstate the Applicant.
34. It is the Respondents' submission that the Director General cannot personally settle the decretal amount, and the obligation lies with the institution as a legal entity, subject to budget cycles. The 1st Respondent is bound by the [Public Finance Management Act, the Constitution](#) and institutional budgetary procedures. Funds can only be disbursed pursuant to budgetary approval by the National Assembly. Thus, the Contemnor has no unilateral authority to divert or create funds outside of appropriated channels.
35. The Respondents submitted that there is an existing moratorium on recruitment and implementation of any new human resource policies within government institutions that was imposed by the government. As a result, the 1st Respondent can only reinstate the Applicant the approval of the National Treasury.
36. The Respondents submitted that the 1st Respondent's annual budget has already been finalized and operationalized. Reinstating the Applicant and remitting to him any benefit due to him from 30th June 2015 will require fresh budgetary allocation to cover the Applicant's salary, statutory contributions, allowances, and related benefits; and this can only be made through following the due process and getting the requisite approvals.
37. It is the Respondents' submission that the 1st Respondent's inability to reinstate the Applicant is not due to willful disobedience of the court orders, but rather reflects the legal and financial constraints under which it is operating, constraints that are beyond its immediate control.
38. I have examined all the averments and submissions of the parties herein. The applicant has averred that the respondents are guilty of contempt of court for not implementing the orders of the court as per the court's judgment of 6/3/2018.
39. The respondents on their part aver that the applicant was its employee but ceased working on 30/6/2015 to date which is a period of over 10 years. That in view of the extended period of absence, there are significant changes in the workplace structure and there is need for re integrating the claimant back to work. The respondent aver that they are a security agency and due to the prolonged absence of the applicant from work they have concerns which must be locked into.



40. The respondents aver that as a prerequisite to his engagement, the applicant would need to undergo a thorough vetting process to determine his suitability in the re-engagement process and this will take time to finalize.
41. They also aver that after the dismissal, his terminal dues were calculated and paid out and it becomes impracticable to re engage the applicant. Considering the submissions made by the respondents and in view of the fact that the respondents are indeed a security organization and the length of time the applicant has been out of employment the explanation given seems plausible. This however does not exonerate them from acting towards vetting or retraining the applicant in order to come out with the best possible solution given the orders of this court.
42. In the circumstances whilst not finding the respondents guilty of contempt, the court would expect a resolution of the issue in the shortest time possible with possible timelines agreeable in the circumstances. Costs in the claim.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF OCTOBER 2025.

HELLEN WASILWA

JUDGE

