



Onyango v Speaker County Assembly of Migori & 3 others (Cause E088 of 2023) [2025] KEELRC 2829 (KLR) (23 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2829 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E088 OF 2023
JK GAKERI, J
OCTOBER 23, 2025**

BETWEEN

TOM OPERE ONYANGO CLAIMANT

AND

THE SPEAKER COUNTY ASSEMBLY OF MIGORI 1ST RESPONDENT

MIGORI ASSEMBLY SERVICE BOARD 2ND RESPONDENT

CLERK, COUNTY ASSEMBLY OF MIGORI 3RD RESPONDENT

COUNTY ASSEMBLY OF MIGORI 4TH RESPONDENT

RULING

1. Before the court for determination is the applicant’s Notice of Motion dated 7th July, 2025 filed under Certificate of Urgency seeking Orders that:
 1. Spent.
 2. Spent.
 3. The 1st respondent (Christopher Odhiambo Rusana), 3rd Respondent (Alfred Bala) and other members of the 2nd Respondent to wit: Ken Ngoro, David Sarara, Philip Olela and Lonah Aloo be punished for being in compt of the court by being jailed for period of 6 months for disobeying the Judgment delivered on 17th February, 2025 by deliberately removing the claimant’s name from the 4th Respondent’s payroll.
 4. The Respondents be Ordered upon conviction for contempt of court to pay a fine of Kshs.10 million.
 5. The Respondents be condemned to pay the costs of the proceedings.



2. The Notice of Motion is expressed under Section 5(1) of the Judicature Act Section 13 of the Employment and Labour Relations Court Act, Order 51 Rule I of the Civil Procedure Rules and Section 1A, 1B and 3A of the Civil Procedure Act and is based on the grounds set out on its face and the Supporting Affidavit of the applicant sworn on 7th July, 2025.
3. The affiant deposes that the court delivered a judgment in his favour on 17th February, 2025 and declared that revocation of his appointment as a Clerk of the Migori County Assembly was unfair and the respondents had blatantly disobeyed the Judgment and the 1st, 2nd and 3rd respondents removed the affiant's name from the 4th respondent's payroll in June 2025, thus revoking his appointment as Clerk of the 4th respondent without any court order which undermined the court's integrity.
4. The affiant further deposed that the respondents be Ordered to purge the contempt before being given audience and opportunity to mitigate upon conviction and upon conviction, the 1st, 2nd and 3rd respondents be committed to civil jail for 6 months for aggravation of contempt and fined the sum of Kshs.10million.
5. In their grounds of objection dated 25th July, 2025, in opposition to the Notice of motion, the respondents averred that the application was frivolous, misconceived and a gross abuse of the court process as the claimant was not an employee of the respondents and was aware that his engagement as Clerk of the County Assembly of Migori was revoked on 18th December, 2023 by the County Assembly and thus ceased to be an employee of the Migori County Assembly Service Board effective 18th December, 2023 and remained on the payroll by dint of conservatory Orders issued by the court pending determination of the suit.
6. The respondents further stated that the decree extracted from the Judgment dated 17th February, 2025 showed that the court made 3 Orders namely:
 - a. Revocation of his appointment as Clerk was unfair.
 - b. Equivalent of 2 months gross salary as compensation.
 - c. Costs of the suit.
7. That no Order directed the respondents not to remove the claimant's name from the payroll. In any case the claimant had ceased to be an employee and the court did not grant the Order of reinstatement which the claimant had sought and had lodged an appeal with the Court of Appeal Civil Appeal No. E109 of 2025 and named the respondents as parties.
8. The respondents averred that the claimant ought to understand that he ceased to be an employee of the Migori County Assembly on 18th December, 2023 in terms of the Judgment dated 17th February, 2025 and none of the respondents was guilty of contempt of court.

Applicant's submissions

9. As to whether revocation of the appointment of the claimant as Clerk of the 4th Respondent's Assembly, was declined by the court, counsel for the applicant cited the court's decree to urge that the court declared the revocation to have been unfair, and thus unlawful.
10. Concerning removal of the claimant's name from the payroll in June 2025, counsel submitted that the respondents disobeyed court Orders and the applicant was not paid the salary for June 2025.



11. On contempt of court, reliance was placed on the sentiments of Muriithi J in DKG V EG [2021] eKLR on the prerequisites of Civil contempt namely (i) Terms of the Order (ii) Knowledge of these terms by the respondent and (iii) Failure by the respondent to comply with the terms of the Order.
12. According to counsel, Order number one (1) of the decree was clear, the respondents were aware of the terms of the decree and removed the applicant's name from the 4th respondent's payroll as opposed to seeking the court's directions. That there was wilful disobedience of court Orders.
13. Counsel urged the Court to find that there was deliberate and intentional disobedience of its Orders and cite the respondents for contempt, convict, jail and fine them and award costs to the applicant.

Respondent's submissions

14. Counsel submitted that the instant application was frivolous, misconceived and was a gross abuse of the court process as the applicant was not an employee of the respondents and the latter were not obligated to retain the applicants name on the payroll.
16. Counsel submitted that the court made no Orders against the persons the applicant wants convicted and punished for contempt and the motion was drawn as if they had been adjudged culpable and there was no evidence to show that Mr. Ken Ngoro, Alfred Bala, David Sarara, Philip Dela and Lonah Aloo were responsible for either inserting or removing names from the payroll.
17. Counsel further submitted that after revocation of the applicant's appointment as Clerk of the Migori County Assembly, he sought the Order of reinstatement among others, which the court declined to grant. Reliance was placed on the sentiments of Ndolo J in Walter Ogal Anuro V Teachers Service Commission [2013] eKLR where the court declined reinstatement and awarded compensation.
18. That in the instant case the court awarded compensation in lieu of reinstatement and is awarded discretionary where a termination of employment is found to have been unfair under the provisions of Section 49(i)(c) of the [Employment Act](#).
19. Counsel maintained that the applicant was aware that his appointment as Clerk was revoked, challenged the same, was awarded compensation and appealed the decision and as former public officer, he was also aware that being on the payroll of a public body and receiving remuneration was exclusive to those rendering services.
20. That the case for contempt, which is a very serious issue, was unfortunate.
21. Finally, as to whether the respondents were guilty of contempt counsel cited the decision in Teachers Service Commission V Kenya National Union of Teachers & 2 others [2013] eKLR, on the justification for punishing contempt and Mutitika V Bahari Farm Ltd [1985] KLR 229 on the standard of proof, to urge that no clear case of wilful disobedience of court orders had been made as the judgment neither addressed the issue of payroll or salary nor make an Order directed at the persons sought to be held culpable for contempt of court.
22. Counsel submitted that the instant application ought to be dismissed with costs.

Analysis

23. In order to contextualize the instant application, it is necessary to provide a historical background of the case since 2023 when it was filed together with a Notice of Motion dated 29th November, 2023 under Certificate of Urgency. The court did not certify the application urgent but directed service and inter partes hearing on 11th December, 2023 when the claimant sought leave to file a Further Affidavit and



- file a formal application to amend the claim. The application was slated for hearing on 20th December, 2023 but the same was withdrawn on the same day on account of other developments.
24. On January, 8th 2024, the respondents published an advertisement in the Standard Newspaper on the recruitment of a Clerk of Migori County Assembly, which the claimant opposed vide a Notice of Motion dated 15th January, 2024.
 25. The court granted temporary Orders to suspend the effect of the advertisement and stay of recruitment pending the hearing and determination of the motion.
 26. The court directed service and inter partes hearing on 13th February, 2024.
 27. By a Ruling delivered on 29th February, 2024 the court restrained the respondents from implementing the resolution dated 14th December, 2023, revoking the appointment of the claimant as Clerk of the County Assembly pending the hearing and determination of the claim.
 28. An application to cite Charles Owino Likowa, Vincencia Awino, Ken Ngaro David Sarara Philip Olela nad Lonah Aloo for contempt for advertising the position of Clerk was dismissed on 18th July, 2024. The claimant's case was heard on 3rd December, 2024 and judgment delivered on 17th February, 2025.
 28. The court granted three reliefs:
 - a. Declaration that revocation of appointment of the claimant as Clerk Migori County Assembly was unfair.
 - b. Equivalent of 2 months gross salary.
 - c. Costs of the suit.
 29. The instant application for contempt was precipitated by the respondents' removal of the claimant's name from the 4th Respondent's payroll.
 30. According to the Claimant/Applicant, the removal of his name from the 4th Respondent's payroll was in disobedience of the Judgment dated 17th February, 2025.
 31. Strangely, the applicant identified five individuals as the persons guilty of disobeying the judgment dated 17th February, 2025, yet the court made no Order directed at any of the named persons.
 32. The applicant appeared to be suggesting that the declaration that revocation of the claimant's appointment as Clerk Migori County Assembly was unfair rendered the resolution of the County Assembly dated 14th December, 2023 void or ineffectual thereby reinstating the claimant to his position as Clerk of the County Assembly.
 33. Put in the alternative, according to the applicant, the declaration revoked the resolution of the County Assembly.
 34. The courts find this argument convoluted and a misrepresentation of the court Order.
 35. This is simply because the claimant sought revocation of the 4th respondent's resolution dated 14th December, 2024 or reinstatement, which the court declined with reasons and awarded two (2) months gross in lieu for the unfair termination of employment under Section 49(1)(c) of the *Employment Act* as both reliefs are discretionary.
 36. The court is unable to fathom how the claimant whose appointment as Clerk of the Migori County Assembly was revoked on 14th December, 2023 could remain in employment post the judgment dated 17th February, 2025 and thus be retained on the payroll of the 4th respondent.



37. As correctly submitted by the respondents' counsel, the claimant's name was retained on the 4th respondent's payroll by dint of the court's ruling on the Notice of Motion dated 18th December, 2023 which restrained the respondents from implementing the resolution of the Migori County Assembly dated 14th December, 2023 pending the hearing and determination of the main suit, simply because the suit would determine the issues raised by the parties and award appropriate reliefs.
38. To allege that removal of the claimant's name from the 4 respondents' payroll amounted to disobeying the Judgment dated 17th February, 2025 is to overstretch imagination.
39. Contempt of court is a very serious quasi-criminal conduct which is an affront to judicial authority. It undermines the integrity and dignity of courts and the rule of law and progressive judiciary's the world over deal with it firmly.
40. An allegation that a person(s) have disobeyed court orders should only be made when the allegation is supported by sufficient evidence of the deliberate or wilful disobedience of court orders.
41. The need to punish, contempt of court has been underscored in legions of decisions including Republic V Ahmed Abdulfathi Mohamed & another [2018] eKLR, Econet Wireless Kenya Ltd V Ministry for Information and Communication of Kenya & another [2005] KLR 828, Gulabchand V Popatlal & another Civil App. No.39 of 1990 Josephine Mueni Mutunga V Energy Regulatory Commission & another[2016] eKLR, Praxes Namoni Sisi V Geothermal Development Co. Ltd. & another [2016] eKLR, Mwaniki Silas Ngare V John Akama & another [2016] eKLR and Teachers Service Commission V Kenya National Union of Teachers & 2 Others [2013] eKLR, Republic V Mohammed & another [2019] KESC 47 KLR among others.
42. As submitted by the respondent's counsel, the elements or requirements for contempt are well settled.
43. In Samuel M. N. Mweru & 2 Others V National Land Commission and 2 others [2020] eKLR 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. Upon proof of these requirements the presence of wilfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities...”
44. The court proceeded to itemise the four elements that must be proved to make a case for civil contempt as summarised by scholars. The last requirement is that the respondent or defendant's conduct must have been deliberate or intentional.
45. In Newton Kagira Mukuha V Charles Mukuha Gashwe & 14 others [2023] KECA 1482 (KLR) the Court of Appeal held:
46. It is trite that the refusal to obey should be both wilful and mala fides and that unreasonable non-compliance provided it is bona fide does not constitute contempt.
47. The applicant must show that the offence is committed not by mere disregard or a court order, but by the deliberate and intentional violation of the court's dignity, repute or authority”.
48. Finally, and as enunciated by the Court of Appeal in Mutitika V Baharini Farm Ltd [1985] KLR 234 the standard of proof in contempt cases is higher than the typical balances of probabilities in civil cases. The court held:



49. In our view, the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, almost but 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 quasi-criminal in nature...”

See also Joseph Kinyua & 2 others V Robert Kimathi Mati Nyeri Civil App. No. 139 of 2018.

50. I will now proceed to determine whether the applicant has established his case on the basis of the principles set out above.

52. It is common ground that the Judgment allegedly disobeyed by the respondents delivered on 17th February, 2025 did not make any Order requiring the respondents to undertake any activity or take any step other than pay the claimant the equivalent of two months gross salary and costs of the suit for the unfair termination of his employment by the Migori County Assembly on 14th December, 2023.

53. Equally, and as emphasized by the respondents in the grounds of objection and submissions, it is trite that the court did not reinstate the claimant as Clerk of the Migori County Assembly and his tenure ended on 17th February, 2025 and as adverted to elsewhere in this Ruling, the only reason the applicant’s name remained on the 4th respondent’s payroll was because by its ruling delivered on 29th February, 2024, the court granted an Order of injunction restraining the respondents from implementing the resolution dated 14th December, 2023 revoking the applicant’s appointment as Clerk of the Migori County Assembly pending the hearing and determination of the claimant’s case.

54. The effect of the Order was that the applicant remained the Clerk of the Migori County Assembly as long as the case was pending determination and the status quo would have been maintained if the court revoked the resolution dated 14th December, 2023, which it did not.

55. Consequently, nothing prevented the respondents from removing the applicant’s name from the 4th respondent’s payroll on any day after 17th February, 2025 as no court order barred them from doing so.

56. For the foregoing reasons it is the finding of the court that the applicant has failed to demonstrate that the removal of his name from the 4th respondent’s payroll constituted an act of contempt of court by any of the respondents.

57. In conclusion, the applicant’s Notice of Motion dated 7th July, 2025 is without merit and it is accordingly dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 23RD DAY OF OCTOBER, 2025.

DR. JACOB GAKERI.

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty



of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

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