

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT NAKURU

ELRC MISCELLANEOUS APPLICATION NO. E002 OF
2025

*(Before Hon. Lady Justice Anna Ngibuini
Mwaure)*

JAMES WAIREGI WAMBUGU.....
APPLICANT

VERSUS

COUNTY GOVERNMENT OF
NYANDARUA.....1ST
RESPONDENT

COUNTY PUBLIC SERVICE BOARD
COUNTY GOVERNMENT
OF NYANDARUA.....2ND
RESPONDENT

COUNTY SECRETARY
COUNTY GOVERNMENT OF
NYANDARUA.....3RD
RESPONDENT

AND

FRANK KANJA MUCHINA.....1ST
CONTEMNOR

ALEX MWAURA.....2ND
CONTEMNOR

GLADYS KIMANDU.....3RD
CONTEMNOR

RULING

Introduction

1. The Respondents filed a Preliminary Objection (P.O.) dated 3rd July 2025 on the following grounds that:

1. *The Application for contempt is fatally defective, misconceived and an abuse of the court process, the same being sub judice as there is a pending application in this Honourable Court in ELRC/Misc/Application No. E025 of 2024 dated 6th December 2024, brought under certificate of urgency seeking that this Honourable court sets aside/reviews its orders issued on 24.10.2024, which applications is still pending before this Honourable court.*
2. *The filing of the present application offends the provisions of section 6 of the Civil Procedure Act, Cap 21 Laws of Kenya, which bars proceedings in respect of matters that are directly and substantially in issue in a previously instituted suit between the same parties or between parties or between parties under whom they or any of them claim, litigating under the same title.*
3. *The application seeks to pre-empt or undermine the outcome of the pending application, and*

amounts to forum shopping and duplication of proceedings, contrary to the overriding objective of the Employment and Labour Relations Court Act under section 3 of the Employment and Labour Relations Court Act and sections 1A and 1B of the Civil Procedure Act.

- 4. This Honourable Court lacks jurisdiction to entertain the current application during the pendency of another application before it on the same issues, and proceeding with the same shall occasion not only prejudice but will also confusion, and wastage of judicial time.*
- 5. The Applicant is improperly invoking the contempt jurisdiction of the court, which should be exercised judiciously, sparing and only in clear cases and wilful disobedience of court orders-which issues are already the subject of determination in the pending application.*

Applicant's ground of opposition

2. The Applicant, through his advocates Ndegwa Wahome & Co. Advocates, opposed the P.O. by filing grounds of opposition dated 7th July 2025 stating that the P.O. is legally baseless, incompetent, and intended to obstruct justice by shielding contemnors from accountability for disobeying a lawful court

order issued in Nyeri ELRC Misc. Application No. E025 of 2024. The Applicant argues that contempt proceedings are distinct from the substantive dispute and not subject to the *sub judice* rule under **section 6 of the Civil Procedure Act**. The Applicant asserts that the court retains inherent jurisdiction to enforce its orders and that the objection fails to raise a pure point of law capable of disposing of the contempt application without evidence.

3. The Applicant urged this Honourable court to strike out the preliminary objection with costs.
4. Parties disposed of the P.O. by way of written submissions.

Respondents' submissions

5. The Respondents submitted that contempt proceedings cannot be sustained where the underlying court order is subject to a pending review, as such proceedings would violate the principle of *sub judice* under **section 6 of the Civil Procedure Act**, which prohibits parallel litigation on the same subject matter. The Respondents relied on the case of ***Mumo Matemu V Trusted Society of Human Rights Alliance & 5 Others [2013] KECA 445 (KLR)***, where the Court

cautioned against concurrent processes that could render one moot.

6. Similarly, in ***L.T.K V C.N.K [2012] KEHC 5056 (KLR)***, Anyara Emukule J held that contempt may be deferred where an appeal or stay is pending, citing ***Hadkinson V Hadkinson*** principle in support of that proposition. In ***John Njoroge Gichora V Gideon Numa [2015] KEHC 5447 (KLR)***, the appellate court overturned a subordinate court's contempt ruling due to a pending High Court application, affirming that jurisdiction must await resolution of the superior matter. Given the quasi-criminal nature of contempt, as emphasized in ***Teachers Service Commission v Kenya National Union of Teachers & 2 Others [2013] KEELRC 656 (KLR)***, fairness demands restraint, especially where the legality of the order is actively contested. Proceeding with contempt in such circumstances risks unjust punishment for disobedience of an order that may ultimately be found defective or issued without jurisdiction, particularly where statutory remedies under laws such as ***section 74 of the Public Service Commission Act*** are available and form the basis of the review.

7. The Respondent urged this Honourable Court to allow the Preliminary objection as prayed.

Applicant's submissions

8. The Applicant submitted that the Respondents raised a Preliminary Objection citing the doctrine of *sub judice* under **Section 6 of the Civil Procedure Act**, which provides that ***“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties...”***.

9. However, the Applicant argues that the contempt application is distinct from the pending review, which challenges the validity of specific orders, while the contempt seeks enforcement of orders that remain valid and binding. The Applicant relied on the cases of ***Kenya National Commission on Human Rights V Attorney General & 2 others [2020] KEHC 2155 (KLR)*** and ***Thuo V Njuru NBI CA 278 of 1998(CA)***, the Applicant emphasizes that court orders must be obeyed until set aside.

10. The Applicant submitted that the legal threshold for contempt is met, as established in ***Christine***

Wangari Gachege V Elizabeth Wanjiru Evans & 11 Others [2014] KECA 840 (KLR) and **Kristen Carla Burchell v Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005**, requiring proof of a valid order, knowledge of the order, and willful disobedience.

11. The Applicant relied on the cases of **Econet Wireless Kenya Ltd V Minister for Information & Communication of Kenya & another [2005] KEHC 1767 (KLR)**, and **Republic V Kenya School of Law & 2 Others Ex-parte Juliet Wanjiru Njoroge & 5 Others [2015] eKLR** reinforces that respect for court orders is essential; without it, the authority and very foundation of the judiciary are at risk. Such orders must be treated with seriousness and not undermined by clever legal maneuvering or innovation.

12. The Applicant contends that the Respondents' conduct reflects bad faith and calculated evasion, and therefore prays for the dismissal of the P.O, prioritization of the contempt hearing, and immediate compliance with the subsisting orders.

Analysis and determination

13. The court has considered the Preliminary objection together with the submissions by both counsels; The court is to determine if the Preliminary objection is merited.

14. In ***Mukisa Biscuit Manufacturing Co. Ltd. v. West End Distributors Ltd [1969] E.A. 696.***

Law, JA in that case said on (p.700):

“I agree that the application for the suit to be dismissed for want of prosecution should have taken the form of a motion, and not that of a ‘preliminary objection’ which it was not. So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

And to the same effect Newbold, P stated (p.701):

***“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.*”**

15. In ***Hassan Ali Joho & another V Suleiman Said Shabal & 2 Others SCK Petition No. 10 of 2013 [2014] eKLR*** stated that:

“.....a Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit”.

16. **Section 6 of the Civil Procedure Act** provides that a court must not proceed with a case if the matter in question is already directly and substantially being litigated in a previously filed suit between the same parties or those claiming under them before a court with jurisdiction in Kenya. This rule helps prevent duplicative litigation and conflicting judgments. However, if the earlier suit is pending in a foreign court, it does not bar Kenyan courts from hearing the same matter.
17. The Black's Law Dictionary, 9th Edition defines *sub judice* as "Before the Court or Judge for determination." In ***Kenya National Commission on Human Rights V Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) (Advisory Opinion Reference 1 of 2017) [2020] KESC 54 (KLR)*** the Supreme Court gave its advisory opinion as follows:
- "The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with***

competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

18. In this instant case, the suit was initially filed in Nyeri as ELRC Miscellaneous Application No. E025 of 2024, accompanied by a certificate of urgency dated 6th December 2024. It was subsequently transferred to Nakuru for determination since the parties’ territorial jurisdiction is within Nakuru County. The application was seeking review or to set aside the orders issued by the court sitting in Nyeri on 24th October 2024. The orders granted

were to bar Respondent from taking a decision adverse on Applicant's employment.

19. The contempt application dated 4th June 2025 is quite different in content and prayers from the application for review/setting aside alluded herein above and dated 6th December 2024.

20. The court finds that the Preliminary objection therefore lacks merit, as the matters in question in the respective applications do not fall under the doctrine of *sub judice*. That doctrine is intended to prevent multiple suits involving the same parties or those claiming under them over the same subject matter, thereby safeguarding against abuse of the judicial process. The subject matters as demonstrated in the two applications are completely different.

21. Flowing from the foregoing, the court finds that the Preliminary objection lacks merit and therefore is dismissed and the contempt application should proceed to hearing and determination.

22. Each party to bear its own courts.

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru
this 11th Day of November, 2025.**

**ANNA NGIBUINI MWAURE
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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE

ORIGINAL