

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
MISC.APPLICATION NO. E198 OF 2024

LUCY WANJRU NJOROGE.....
CLAIMANT

VERSUS

THE COUNTY GOVERNMENT OF KIAMBU.....
RESPONDENT

RULING

1. Before the Court is the Claimant's undated Motion application seeking that the Governor of the County Government of Kiambu, the Secretary of the County Public Service Board, Kiambu County, and the County Secretary, Kiambu County, be committed to civil jail for a period not exceeding 6 months for contempt of court. The Claimant further prays that the costs of this application be provided for.
2. The application is supported by the grounds on the face of the motion and the undated affidavit sworn by the Claimant. The Claimant avers that the Respondent has disobeyed the court orders issued on 13th May 2009, and that an earlier application seeking permission to cite them for contempt was granted by Justice Marete on 30th July 2014.

3. She avers that despite extensive correspondence, the Respondent has openly indicated that it will not comply with the court's directives. It is her position that she and other retirees received retirement notices in accordance with a court award, and the application is being filed on behalf of all affected retirees.
4. She states that they completed clearance forms to facilitate payment of their full retirement benefits, but no payments have been made, despite several letters from the retirees and their advocates requesting payment, which have all gone unanswered.
5. The Claimant avers that the retirees have been waiting between 5 and 20 years since retirement, and many are elderly and suffering from serious illnesses requiring urgent financial support. She avers that due to the respondents' persistent refusal to pay the retirees their final benefits, she prays an application to have the Governor of Kiambu County, the County Secretary, and the Secretary of the Public Service Board committed to civil jail for up to six months for disobeying court orders.
6. The Respondent opposed the motion by way of grounds of opposition dated 11th November, 2024. It avers that the commencement of the suit by way of a miscellaneous Application offends the provisions of Clause 7(1) of the

Employment and Labour Relations Court (Procedure) Rules 2024, and the Application ought to be struck out.

7. The Respondent further states that the Court cannot enforce orders arising from ELRC Cause 115 of 2006 of the Kenya County Government Workers Union -Vs- County Government of Kiambu & 5 Others under the instant Suit, noting it would be unprocedural and an abuse of the Court process.
8. It avers further, the Applicant was not a party to **ELRC Cause 115 of 2006 of Kenya County Government Workers Union -Vs- County Government of Kiambu & 5 Others** and therefore has no locus standi to file the instant application and seek the orders sought herein.
9. The Respondent states that the entire application is fatally defective, an abuse of the Court process, therefore ab initio incompetent, and cannot stand in law before this Honourable Court.
10. The Respondent prays that the application be dismissed in its entirety with costs to the Respondent.
11. Parties filed submissions, which have been duly considered.

Determination

12. The issues that arise for determination are: -
 - i. Whether the application, as drawn, is competent

- ii. Whether the Applicant/Claimant has locus standi to seek enforcement of orders issued in ELRC Cause No. 115 of 2006.
- iii. Whether the Respondents are in contempt of court orders issued on 13 May 2009.

Whether the application, as drawn, is competent

13. The Respondent argues that the application herein is incompetent for having commenced as a miscellaneous application, and not under the original file where the orders sought to be enforced were issued.
14. As correctly submitted by the Respondent, the Claimant herein lodged this application as a new suit instead of filing the contempt motion under the original file where the court granted the orders that are sought to be enforced. A contempt application must be anchored on an existing suit from which the order emanated. This position was affirmed in ***Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others [2014] eKLR***, where the Court of Appeal held that contempt proceedings must be brought within the existing cause, not as a new miscellaneous cause. Further in ***Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County ex parte Stanley Muturi [2017] eKLR***, the court held that a party cannot enforce an order by initiating a new and separate miscellaneous cause.

15. In this matter, the Applicant did not file the contempt application within **Cause No. 115 of 2006**, where the orders were issued, but instead chose to initiate a fresh miscellaneous application. This, without doubt, renders the application procedurally defective, and so I hold.

Whether the Applicant/Claimant has locus standi to seek enforcement of orders issued in ELRC Cause No. 115 of 2006

16. The Respondent's further position is that the Applicant was not a party to **ELRC Cause No. 115 of 2006**, where the orders she seeks to enforce were issued. A party seeking to enforce or cite for contempt must either be a party to the proceedings in which the order was issued or demonstrate that the order was directed at them or conferred rights upon them.

17. The Court of Appeal in **Kenya Bus Service Ltd v Minister for Transport & Others [2012] eKLR**, held that a stranger to a suit cannot seek enforcement of orders issued therein unless they demonstrate a direct legal interest. Similarly, in **Teachers Service Commission v Kenya National Union of Teachers & 2 Others [2013] eKLR**, the Court held that a litigant must establish that he/she was either bound by, or intended to benefit from the subject order.

18. From the record, it is clear that the Applicant herein is not a party to **Cause No. 115 of 2006**. Her position is that she is

filing the application "on behalf of retirees," without demonstrating that she has the authority to do so, not having placed before this court evidence that she either has a union mandate, power of attorney, or court approval for representative action to act for the parties in whose favour the orders were granted.

19. I, in the circumstances, find and hold that the Applicant lacks locus standi to enforce the 2009 order.

Whether the Respondents are in contempt of court orders issued on 13 May 2009

20. The essential elements in a contempt application are the existence of a valid court order, knowledge of the order by the Respondents and the deliberate disobedience of the order.

21. The Applicant asserts that there were orders issued in 2009, and that there was correspondence with the Respondent in respect of the said orders. The Applicant further argues that the Respondents openly indicated they will not comply with the court orders.

22. The applicant, however, did not exhibit a certified copy of the alleged order and did not demonstrate personal service or proof that the Respondents were aware of the order. It is also evident from the record that the persons sought to be committed (Governor, County Secretary, PSB Secretary) were not parties to the 2006 suit, and are not parties to the instant application.

23. In whole, I find and hold that the Applicant's application is incompetent, misconceived, and fails to satisfy the threshold for contempt, and is hereby dismissed with costs to the Respondent.

24. It is ordered.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 4TH DAY OF DECEMBER, 2025.

**C. N. BAARI
JUDGE**

Appearance:

Ms. Waithera Mwangi present for the Claimant.

Mr. Okech present for the Respondent

Ms. Esther S - C/A