

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC PETITION NO. E050 OF 2025

CHARLES MACHARIA.....PETITIONER

VERSUS

GUARANTY TRUST BANK KENYA
LTD.....RESPONDENT

AND

JUBRIL ADENIJI.....1ST CONTEMNOR

MILKAH WAMAE.....2ND CONTEMNOR

CAROLINE TEGEK.....3RD CONTEMNOR

RULING

The Petitioner/Applicant filed a notice of motion application dated 2nd May 2025 seeking an order in the following terms:

1. Spent
2. This court be pleased to cite the Respondent's directors for contempt of the orders issued by this court on 2nd April 2025.
3. This court be pleased to cite the Respondent's directors (including Jubril Adenji, Maimuna Hassan, Milkah Wamae and Caroline Tegek) for contempt of the orders issued by this court on 2nd April 2025.
4. That the directors of the Respondent be committed to civil jail for a period of six (6) months or any other period or any other sanction as this Honourable Court may deem fit and appropriate.
5. That costs of this application be borne by the Respondent.

The application is based on grounds 1 to 19 set out on the face of the application and supported by an affidavit of the Petitioner/Applicant.

The basis of the application is that the court issued an interim order dated 2/4/2025 against the Respondent pursuant to an application dated 27/3/2025 in the following terms *inter alia*:-

“That pending the hearing of this application inter parties and so as to preserve the subject of the petition, this court be pleased to issue conservatory orders restraining the Respondent from harassing /further harassing/ discriminating, further discriminating or in any manner whatsoever interfering with the Claimant’s employment as Team Leader, Corporate Banking.”

That the named contemnors are in contempt of the court order by continuing to implement the Performance Improvement Plan (PIP) whose implementation has been stayed by the court.

That the Respondent continue to violate the Petitioner’s rights against discrimination by changing the Claimant’s reporting line and unwarranted interruption with his annual leave.

That the Petitioner had applied for annual leave from 14/4/2025 to 22/4/2025 which leave was declined by the Head of Human Resources and Petitioner was told to seek such approval from Ms. Maimuna Hassan, as she was the new supervisor. That the Petitioner previously reported to the managing Director and this was implied demotion.

That upon exhausting his batch of business cards, which bore the title of Team Leader, Corporate Banking that the Head of Human Resource to his surprise issued him with new cards which bore the title Senior Relationship Manager, Corporate Banking. That this was a direct violation of the court order which stopped the Respondent from interfering in any manner with the Petitioner's employment.

That the Petitioner received communication from the Head of Human Resources instructing him to vacate his office to make room for a recently appointed Head of Business Development, Caroline Tegek. The Claimant was sent to an open plan workplace adjacent to his new supervisor Maimuna Hassan who was significantly junior to him in both skill and experience and was currently ranked 3 job grades below the Applicant.

That the conduct by the Respondent constitutes continued discrimination, harassment and demotion in violation of the court order. That the court finds the named persons guilty of contempt of court.

Replying Affidavit

The Respondent replied to the application vide a replying affidavit of Milkah Wamae, Head of Human Resource of Guaranty Trust Bank (Kenya) Ltd dated 22nd July 2025.

The Respondent filed preliminary objection to this application dated 9/9/2025 stating that the application is defective for failure by the Applicant

to seek leave to the court to have the directors of the Respondent cited personally in contempt of the court order. That the parties entered into a consent order before Ongaya J. dated 20/5/2025 in which it was agreed by consent, that the orders of the court dated 2/4/2025 did not “amount to suspension of the contract of employment between the parties and the terms and condition of service therein.”

That the court granted the Petitioner leave to amend the Petition on 23/7/2025 and no amended petition had been filed. That this application has been overtaken by events after the Petitioner’s employment was terminated on 30/5/2025 and some of the prayers sought cannot be granted without the petition having been amended.

That the order granted by the court on 2/4/2025 as sought by the Petitioner/Applicant was ambiguous and vague as the Respondent/Applicant was uncertain what was preserved noting that by the time the Petitioner/Respondent filed the application he had already been placed on a 3 months performance improvement plan (PIP) on 21/2/2025 and the first PIP session was held on 20/3/2025.

That due to the orders as drafted and issued, the Respondent filed an application dated 13/5/2025 seeking *inter alia* the following orders:

1. The Honourable Court be pleased to review, set aside, vary and/or vacate the ex-parte order No.3 of the court order issued on 2nd April 2025 pursuant to the Petitioner’s/Respondent’s application dated 27th March 2025.

2. There be a stay of proceedings pending the finalization of the Performance Improvement Plan initiated by the Respondent/Applicant on 21st February 2025 and the internal disciplinary dispute resolution in accordance with the Respondent/Applicant's Employee Handbook.

That the application was compromised vide a consent recorded before Hon. Ongaya on 20/5/2025 which states: -

“By consent of the parties, the understanding is that the orders of 2/4/2025 does not amount to suspension of the contract of employment between the parties and the terms and conditions of service therein.”

That the Petitioner continued to enjoy his employment as per the terms and conditions of service and the Respondent maintained the residual management powers to discipline and maintain managerial oversight over the Petitioner.

That the orders of 2/4/2025 did not injunct the Respondent and alleged contemnors from taking disciplinary action against the Petitioner including placing him and finalizing the Performance Improvement Plan (PIP).

That the Petitioner has not proved that the Respondent has in any way violated the order of 2/4/2025 as clarified by the order of 20/5/2025.

DETERMINATION

That the issues for determination are: -

- (i) Whether the application is fatally defective for failure to seek leave to cite the directors of the Respondent for contempt.
- (ii) Whether the Petitioner has proved the charge of contempt to the required standard.

In ***Geoffrey Katheri and 10 others versus East Africa Cement Co. Ltd and others [2021] KECA 1043 (KLR)*** the Court of Appeal settled the legal principle that leave must be sought for an applicant to cite directors or officers of a company for contempt. The court held,

“We also note that the 2nd to 6th Respondents cited for contempt are directors and officers of a corporate entity not cited in the application, which begs the question whether in such case the directors of a company will be personally liable for contempt committed by and in the name of the company. In the persuasive authority of *Katsuri Limited versus Kapurchand Depor Shah [2016] eKLR, the High Court (Mativo J.) in considering contempt by a director of a company observed and rightly so in our view that:*

“The alleged contemnor is a director of the company. He is not a party to these proceedings in his personal capacity. The company is a legal entity. The proper procedure for the Applicant was first to apply to lift the Corporate veil then go for the directors in their personal capacities.”

It follows therefore that failure by the Applicants to cite the 1st Respondent for contempt and to lift the corporate veil of the 1st Respondent denied them the chance to cite the 2nd and 6th Respondents for contempt as directors or accounting officers of the 1st Respondent.

Additionally, the above position in law was well stipulated in the case of Katsuri Limited versus Kapurchand Shah [2016] KEHC 6447 (KLR) where the High Court stated as follows:

“The other important aspect to mention is that the alleged contemnor is a director of the company. He is not a party to these proceedings in his personal capacity. The company is a legal entity. The proper procedure for the applicant was first to apply to lift the corporate veil then go for the directors in their personal capacities. As matters stand now, the director is not personally liable for debts, actions or omissions of the company, hence the application before me is misdirected.”

Accordingly, on this point alone, the application by the Petitioner is totally defective for want of leave.

Secondly, the order of the court dated 2/4/2025 and the application dated 27/3/2025 were compromised by the consent recorded by Hon. Ongaya J. on 20/5/2025 which consent varied and substituted the order of the court dated 2/4/2025. The application before court did not take into account the consent order dated 20/5/2025 and the orders sought in this application cannot be granted for want of proof of alleged contempt to the required standard. The prayers as crafted by the Petitioner/Applicant in the application dated 27/3/2025 were ambiguous and were reviewed by the consent order dated 20/5/2025.

The Petitioner has not proved that the court had enjoined the Respondents from exercising their managerial prerogative to implement the PIP under way at the time the order dated 2/4/2025 was issued nor did the said order as varied by the consent order dated 20/5/2025 enjoin the Respondent or its officers from implementing disciplinary action against the Petitioner or any other of its employees provided the same was done according to the contract of service between the parties and the statutory law applicable.

Accordingly, the applications dated 7th June 2025 and 18th July 2025 are without merit and are dismissed for want of mandatory leave to cite the directors for contempt of court and for lack of merit.

Dated at Nairobi this **18th Day of December 2025.**

Mathews Nduma
JUDGE

Appearance:

Dr. Okubasu for Petitioner/Applicant

Mr. Kigata for Respondent/Applicant

Mr. Kemboi – Court Assistant