

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
ELDORET**

CAUSE NO. E087 OF 2024

KENYA ENGINEERING

WORKERS

UNION.....APPLICANT/CLAIMANT

VERSUS

M/S JINSEN INTERNATIONAL WOOD

INDUSTRY COMPANY

LIMITED.....RESPONDENT

RULING

1. This Ruling is in respect to the Claimant's application dated 14th December 2024 seeking the following orders:-
 - i. Spent
 - ii. That the Honourable Court deem fit and be pleased to issue an order against the Respondent's Personal/Administrative manager (Yu Pei Chao), Translator (Rugeiyamu Kamugisha) and Human Resource Manager (Diana Wakona) to appear in court to show cause why they should not be held in contempt

of Court Orders and or directions to the OCS of Matate Police Station to arrest and produce them in the Honourable Court for sentencing to civil jail

- iii. That the costs of this suit be provided for by the Respondent
- iv. Any other relief the Honourable Court may deem fit to grant

2. The Application is based on the following grounds: -

- i. That the honourable court did issue its orders on the 12th November 2024 in the following terms: -
 - i. THAT: This matter is certified urgent for hearing on 3rd December 2004
 - ii. THAT: An order against the Respondent herein to effect union dues deduction and remittance from all her employees who have duly signed the check off forms (Form S) in favour of the Claimant union is hereby issued pending the hearing and determination of this suit

- iii. THAT: An order is hereby issued against the Respondent from victimizing the Claimant's members by way of termination, dismissal and or redundancy both on fixed term contracts and implied permanent contracts
 - iv. THAT: Applicant to serve the Respondent
 - v. Respondent to file response to the application in 7 days from date of service
- ii. That the foresaid court orders were properly served upon the Respondent through the properly authorized court process server and acknowledged for by signing on the same.
 - iii. That in defiance of Order (2), the Respondent has not remitted any union dues to the Claimant to date
 - iv. That in defiance of Order (3), the Respondent has not paid the 15% of the basic salaries as house allowance as directed by the Honourable Court
 - v. That in defiance to order (4), the Respondent has terminated the implied permanent contract terms by

- issuing fixed term contracts backdated with a new salary at daily rate from monthly rate without paying the arrears
- vi. That after the service of the foresaid orders, the Respondent totally declined or refused to comply with court and continued to disobey the same with impunity without seeking for stay of execution or setting the said orders aside
 - vii. That the Orders sought should be granted to protect the dignity and integrity of the Honourable court and serve as an example to those who disobey court orders with impunity
 - viii. That if orders sought herein are not granted, the Applicant and its members shall suffer irreparable damages
3. The Application is supported by the affidavit of Wycliffee Amakombo Nyamwata, which reiterates the grounds upon which the Application is based.
 4. The Application is opposed. The Respondent filed a replying affidavit sworn by its director Yi Lei, on 17th March 2025. In his affidavit, Mr. Yi Lei depones that the Respondent adjusted employees' wages in accordance with the

prevailing Government General Wage Order and effected payment of housing allowance as ordered by the Court.

5. He further avers that the Respondent has a Recognition Agreement with the Kenya Building, Construction, Timber and Furniture Workers Union, to which it has been deducting and remitting union dues. He contends that under Section 5 of the Labour Relations Act, the Respondent is prohibited from imposing a union on its employees and that compelling deductions in favour of the Claimant would amount to a violation of the said provision. On this basis, the Respondent avers that it is awaiting the Court's directions on the issue of union representation.
6. The Respondent averred that the Applicant has failed to demonstrate wilful disobedience of the Court orders issued on 12th November 2024. The court was urged to dismiss the instant application with costs.
7. The Application was canvassed by way of written submissions. The Claimant's submissions are dated 13th June 2025, while the Respondent's submissions are dated 23rd October 2025.

The Claimant's submissions

8. In its submissions, the Claimant contended that it complied with Court Order No. (iv) by serving the application and court orders upon the Respondent on 20th November 2024, and that the 1st cited contemnor, Mr. Yu Pei Chao, was personally served and he acknowledged receipt by signing on the copy of the Court order. The Claimant further submitted that service was effected through a duly authorized Court Process Server, whose Affidavit of Service was filed in Court.
9. It is the Claimant's submission that when the matter came up for inter partes hearing on 3rd December 2024, the Respondent had not filed a response as directed by the Court, and instead sought 14 days to do so. That further, the Respondent failed to file a response within the extended timeline and only filed the Replying Affidavit dated 17th March 2025, sworn by Mr. Yi Lei, who is not among the

persons cited for contempt and without disputing service upon the cited contemnors.

10. The Claimant contended that although the Respondent alleged that one Kevin Sakwa was still in employment, it did not deny the existence of the termination letter dated 18th December 2024 whose contents clearly demonstrate termination on account of trade union activities and the pendency of this suit.
11. The Claimant submitted that the alleged continued presence of Mr. Sakwa at the workplace did not negate the termination, as he may have been rehired, noting that no payroll or petty cash vouchers for December 2024 and January 2025 were produced.
12. It was further submitted that the Respondent admitted non-deduction and non-remittance of union dues, thereby conceding disobedience of Order (ii).
13. The Claimant asserted that the Respondent continued to victimize its members by converting implied permanent contracts into casual contracts contrary to Court Orders, as

evidenced by letters dated 21st November 2024 issued one day after service of the Court orders.

14. In this regard, the Claimant submitted that the cited contemnors acted deliberately and with full knowledge of the orders and have not filed any response to the instant application.
15. The Claimant thus asserts that the Court orders issued on 12th November 2024 remain in force, no stay or setting aside having been sought and that the disobedience was deliberate despite the Respondent having legal representation.
16. The Claimant urged the Court to summon the cited contemnors to appear in person for sentencing and proposed penalties of six (6) months' imprisonment, a fine of Kshs. 200,000/= each or both.
17. The Claimant also prayed that the application dated 14th December 2024 be allowed as prayed, together with throw-away costs of Kshs. 100,000/=.

The Respondent's submissions

18. On its part, the Respondent submitted that the orders of 12th November 2024 were directed at the Respondent company, which is a limited liability company with a distinct legal personality. The Respondent further submitted that the said orders were not personally served upon the Respondent's Personal/Administrative Manager (Yu Pei Chao), Translator (Rugeiyamu Kamugisha), or Human Resource Manager (Diana Wakona), and therefore contempt proceedings against them were defective. In support of this position, reliance was placed on the case of **Ronoh & 2 Others v Consolidated Bank of Kenya Ltd; Kigen & 2 Others (Interested Parties) (Civil Suit No. E017 of 2018) [2025]**, for the proposition that personal service is a prerequisite in contempt proceedings.
19. In the end, the Respondent urged the Court to dismiss the application dated 14th December 2024 with costs

DETERMINATION

20. Upon considering the application, the affidavit filed in response and the submissions on record, I find that the only

issue for determination is whether the cited alleged Contemnors are in contempt of the orders of this court.

21. A brief background to this case is that the Claimant approached this court by way of a Memorandum of Claim dated 8th November, 2024 claiming that the Respondent had refused to sign the recognition agreement; had refused to deduct and remit union dues; had refused to pay its employees house allowance and was victimizing the Claimant's members on account of trade union affiliation.
22. Together with the Memorandum of Claim, the Claimant filed a Notice of Motion dated 8th November 2024 under Certificate of Urgency seeking the following injunctive orders against the Respondents: -
 - i. THAT, this Application be heard ex-parte in the first instance and certified as urgent and heard on priority basis.
 - ii. THAT, the Honourable Court do and hereby issue an Order against the Respondent herein to effect union dues deduction and remittance from all her employees who have duly signed the check off forms (Form 'S) in favour of

- the Claimant union pending the hearing and determination of this suit.
- iii. THAT, the Honourable Court does and hereby issue an Order against the Respondent to adjust the salaries of all her unionisable employees to the current Government General Order and 15% of the basic salaries as House allowance pending the hearing and determination of this suit.
- iv. THAT, the Honourable Court do and hereby issue an Order against the Respondent from victimizing the Claimant's members by way of termination, dismissal and or redundancy both on fixed term contracts and implied permanent contracts.
23. The court considered the application on 12th November 2024 and issued the following temporary injunctive orders: -
- i. THAT: This matter was certified urgent for hearing on 3rd December 2004
 - ii. THAT: An order against the Respondent herein to effect union dues deduction and remittance from all her employees who have duly signed the check off forms

(Form S) in favour of the Claimant union is hereby issued pending the hearing and determination of this suit

- iii. THAT: An order is hereby issued against the Respondent from victimizing the Claimant's members by way of termination, dismissal and or redundancy both on fixed term contracts and implied permanent contracts
- iv. THAT: Applicant to serve the Respondent
- v. Respondent to file response to the application in 7 days from date of service

24. It is these orders that the Claimant alleges to have been disobeyed by the Respondent.

25. The law governing contempt of court is settled. A party seeking to cite another for contempt must establish, to the required standard, that:

- i. The Court issued clear, precise and unambiguous orders capable of compliance;

- ii. The alleged contemnor had knowledge of the said orders;
 - iii. There was wilful and deliberate disobedience of the orders.
26. On the first limb, it is not disputed that this Court issued orders on 12th November 2024 directing the Respondent, inter alia, to deduct and remit union dues in respect of employees who had signed check-off forms and restraining the Respondent from victimising the Claimant's members pending hearing of the suit.
27. The Court has considered the terms of the orders and is satisfied that they were clear, precise and capable of compliance.
28. It is a settled principle that court orders must be obeyed as issued, whether or not a party agrees with them, unless they are stayed, varied, or set aside by a Court of competent jurisdiction. In this case, no such application was made by the Respondent.
29. On the second limb whether the alleged contemnors had knowledge of the said court orders, I have perused the

annexed Affidavit of Service and it is clear that the Court orders were served upon the Respondent on 20th November 2024, and that the Personal/Administrative Manager, one of the cited contemnors, acknowledged receipt.

30. The Respondent did not file any affidavit sworn by the cited contemnors denying service or knowledge of the orders. In addition, the Replying Affidavit was sworn by a Director who did not dispute that the orders were brought to the attention of the Respondent's management.
31. Consequently, I find that the cited contemnors had actual knowledge of the Court orders issued on 12th November 2024.
32. Lastly, on the third limb regarding whether there was wilful and deliberate disobedience of the said orders, the Respondent in its Replying Affidavit admitted that it did not deduct and remit union dues to the Claimant, asserting that it had a Recognition Agreement with another union and that compliance would offend Section 5 of the Labour Relations Act.

33. The Respondent produced documents demonstrating that indeed it has a recognition agreement with the Interested Party Kenya Building Construction Timber & Furniture Employees Union. It was therefore not possible for it to make deductions of union dues for a second union as the issue of representation ought to have been determined before the issue of deduction of union dues is resolved.
34. The Respondent has pleaded in its defence that it informed the Claimant of the existence of the recognition agreement with the Interested Party which according to the Respondent, did not sit well with the leadership of the Claimant.
35. The Respondent further pleaded that it was deducting and remitting union dues in favour of the Interested Party.
36. Vide its ruling dated and delivered on 5th June 2025 in respect of an application dated 5th December, 2024, this court permitted the Interested Party to be joined as a party to this suit on the basis that it had a valid recognition agreement with the Respondent.
37. In the circumstances I find that the noncompliance with the orders of this court issued on 12th November 2024 was not

wilful as there was valid reason for the same being that the Respondent had a recognition agreement and was deducting and remitting union dues to another union, Kenya Building Construction Timber & Furniture Employees Union, the Interested Party herein.

38. I further find that there was material non-disclosure by the Claimant when it obtained the court orders as it did not inform the court that there was another union already representing the employees of the Respondent to whom union dues were being remitted by the Respondent.
39. In the circumstances I find no merit in the application herein. The same is accordingly dismissed with each party bearing its costs of the application.
40. Orders accordingly.

**DATED, DELIVERED AND SIGNED
THIS 22ND DAY OF JANUARY, 2026.**

**M. ONYANGO
JUDGE**

