



**Republic v Principal Secretary, Ministry of Lands and Physical Planning
& 2 others; Ndambuki (Ex parte Applicant) (Miscellaneous Application
3 of 2022) [2026] KEELRC 169 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 169 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
MISCELLANEOUS APPLICATION 3 OF 2022
K OCHARO, J
JANUARY 29, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

**PRINCIPAL SECRETARY, MINISTRY OF LANDS AND PHYSICAL
PLANNING 1ST RESPONDENT**

**CABINET SECRETARY, MINISTRY OF LANDS AND PHYSICAL
PLANNING 2ND RESPONDENT**

THE ATTORNEY GENERAL 3RD RESPONDENT

AND

RACHEL MUTHEU NDAMBUKI EX PARTE APPLICANT

RULING

Introduction

1. By her Notice of Motion Application dated 27th June 2023, amended on 18th February 2025, the Ex parte Applicant seeks;
 - a. That the service of this application be dispensed with in the first instance, and the application be certified urgent and heard exparte in the 1st instance.
 - b. That this Court be pleased to order a stay of all disciplinary action and decisions initiated against the Ex parte Applicant by the Respondents or their officers, agents or assigns pending the hearing and determination of this application.



- c. That this Court be pleased to find the 2nd Respondent, Zacharia Mwangi Njeru and the 1st Respondent, Nixon Korir, to be in contempt of the orders of the Honourable Justice A. Nzei granted on 2nd March 2023.
 - d. This Honourable Court be pleased to order that the 2nd Respondent, Zacharia Mwangi Njeru and the 1st Respondent, Nixon Korir, be arrested and committed to civil jail for a term not exceeding six months.
 - e. That this Honourable Court be pleased to order that the Respondents should not be heard by the Court until they purge the contempt.
 - f. This Court be pleased to award damages, to be assessed, to compensate the Ex parte Applicant.
 - g. The costs of this be borne by the Respondent.
2. The Application is opposed through a Replying Affidavit sworn by Janerose Karanja, the Director, Human Resources Management & Development, Ministry of Lands and Physical Planning.
 3. This Court directed that the application be canvassed by way of written submissions. The parties complied with the directions; their submissions are on record.

The Applicant's Application

4. The Applicant states that she was employed as a Land Surveyor in 2006 and rose through the ranks to the Principal Land Surveyor and headed several survey offices in the Country.
5. In 2017, she was appointed as the in-charge of the Survey office in Taita Taveta County. Before his posting, a private landowner in the County had donated a large tract of land to settle squatters, which was known as the Ziwani Settlement Scheme.
6. Upon taking office, she noted irregularities in the Scheme's Phase 11. Genuine beneficiaries were not being allocated land in the Scheme. The matter was being handled by several officers from the Ministries of Lands and Physical Planning and of Interior and National Coordination.
7. In a surprising turn of events, in February 2019, the Cabinet Secretary issued her a letter transferring her to the Garissa Survey Office.
8. Aggrieved by this decision, she was prompted to initiate a Constitutional Petition vide ELRC No. 2 of 2019 against the Cabinet Service, Ministry of Lands and Physical Planning & 2 others. In the petition, she obtained conservatory orders on 22nd February 2019, staying the decision of the 2nd Respondent to transfer her to Garissa. The 2nd Respondent, in disobedience of the transferred one Kiprono Korir, Senior Land Surveyor from Ruaraka to Taita Taveta Survey Field Office in Charge, to replace her.
9. The said Mr Kiprono Korir illegally took over her position by breaking into the Taita Taveta offices of the Ministry of Lands and Physical Planning, Wundanyi, without the authorisation of, or notice to, the Director of Surveys or his representative, and without a handover of office equipment, accounting documents, office files, the vehicle and survey documents, amongst others.
10. Upon her application, the 2nd Respondent was held in contempt on 25th October, 2019, by the Court, which further directed the 2nd Respondent to issue a letter removing Mr Kiprono as the Officer in Charge of the Taita Taveta Survey Office, to communicate that she was the Officer in Charge, and to allow her to resume office.



11. The 2nd Respondent ignored and defied the orders of 25th October, 2019, and on 13th March, 2020, the Court sentenced the 2nd Respondent to a fine of KShs. 250,000.
12. The petition was subsequently heard, and judgment was delivered in her favour on 6th October, 2020. To date, the interim orders of 22nd February, 2019, the contempt order of 25th October, 2020, the contempt sentence of 13th March, 2020, and the final judgment of 6th October, 2020 have not been complied with.
13. The Respondents appealed against both the contempt order and the final Judgment of this Honourable Court, in the Court of Appeal, Civil Applications No. 35 & 36 of 2020, the Attorney General vs Rachel Nambuki and Court of Appeal Civil Appeal No. 48 of 2020, Attorney General vs Rachel Ndambuki. The Court of Appeal dismissed the Applications. The Appeal was withdrawn.
14. On 18th February, 2022, the 1st Respondent directed that her salary be stopped.
15. She further states that on 27th June 2022, the 2nd Respondent illegally, arbitrarily and in abuse of power, unilaterally transferred her from the Ministry of Lands and Physical Planning to the Ministry of Petroleum and Mining.
16. On 6th October 2022, she filed a judicial review application seeking reinstatement to her office, reinstatement of her salary and stay of transfer to another Ministry. The Court granted the orders in her favour on 2nd March 2023.
17. The orders were served on the Respondents and their legal representatives. The Respondents have deliberately disobeyed the Court's orders. Instead, they commenced disciplinary proceedings against her for her absence from work. The disciplinary meeting was slated for 30th May 2023. She was required to attend.
18. The letter dated 18th May 2023, regarding the Respondents' decision to commence disciplinary action against her, was in breach of the judgment dated 6th October 2020 in ELRC Constitutional Petition No. 2 of 2019, which barred the Respondents from taking disciplinary action against her.
19. She states that her Advocates responded to the said letter.
20. After initiation of the contempt proceedings herein, on 12th July 2023, the Respondents dismissed her from employment. In her view, the dismissal was malicious, in bad faith and aimed at punishing her for agitating for her right to fair labour practices and against victimisation as a public officer for standing for the rights of squatters.
21. The dismissal on the ground of desertion, whilst she has been fighting in Court to be reinstated to her office, is in further contempt.
22. Unless this Court intervenes in the manner sought in the instant application, the Respondents will have defeated the decree and orders of judicial review issued herein. The letter of dismissal should be stayed.

The Respondents' Response

23. The Respondents state that they are aware that the Court's order was issued on 2nd March 2022, in which the Court made a number of orders against them.
24. The Court inter alia ordered that the decision to transfer the ex parte Applicant to the Ministry of Petroleum and Mining dated 27th June, 2022, be brought to court and quashed. That indeed, the Ministry, upon the order, rescinded the transfer, and the Ex parte Applicant was never required to



- move to the Ministry of Petroleum and Mining. The Ex parte Applicant was therefore expected to continue discharging her duties at Taita Taveta Survey office, her workstation.
25. On account of the failure by the Ex parte to declare her income, assets, and Liabilities in compliance with the *Public Officer Ethics Act*, 2003, the salary of the Ex parte was stopped with effect from 1st February, 2022 and consequently, a notice to show cause letter was issued to her through the Respondent's Advocates.
 26. The Respondents further state that upon compliance, the Ministry considered the matter and decided to reinstate her salary with effect from 1st February, 2022, being the date it was stopped, subject to the Applicant acknowledging the letter dated 28th September 2022 communicating the reinstatement of salary and a reprimand. She was required to acknowledge receipt of the letter and, within one month, confirm that she had understood its contents, including the reprimand.
 27. In light of the ex parte Applicant's failure to comply with the aforementioned requirements set forth by the Ministry, the decision to restore her salary was not executed. The suspension of salary was entirely unrelated to the court order; rather, it was intended to ensure adherence to the statutory obligations stipulated in the *Public Officer Ethics Act*, 2003. Consequently, the allegation of contempt is unfounded.
 28. It is further contended that for the purposes of meeting the service requirement of the citizenry, the Ministry deployed one Justice Kiprono Korir to the Taita Taveta Survey offices vide a letter dated 10th May, 2019, which decision did not go down well with the Ex parte Applicant, and as such, made the same one of the grounds upon which the contempt of court order proceedings against the 1st and 2nd Respondents are premised.
 29. Since Mr Kiprono was posted to the Taita Taveta Survey office, the Applicant never reported to work, claiming that her position and office had been taken over by him.
 30. The Respondents emphasise that the Ex parte Applicant took 90 days' maternity leave from 18th June, 2019, and that it became more practical to have another officer in the section providing services to the public.
 31. The Ex parte Applicant was expected to resume duty when her maternity leave ended. She, however, never reported for duty, continuing to claim that her position and office had been taken away, contrary to the true position that no one prevented her from accessing the office and offering her services.
 32. Her continued absenteeism from her place of work became a cause for concern; the Ministry was compelled to write to her on 7th March 2023, detailing her infraction[s] and requiring her to report to work. The letter further notified her that a default disciplinary process would commence against her.
 33. The Ex parte Applicant failed to resume duty and respond to the Notice to show cause. Consequently, the Ministry commenced its disciplinary process vide its letter dated 18th May, 2023, wherefore she was given notice to appear before the Ministerial Human Resource Management Advisory Committee on 30th May, 2023.
 34. She failed to attend as notified. As a result, the Ministerial Human Resource Management Advisory Committee, on 30th May 2023, held its sitting and deliberated on the disciplinary matter concerning the ex parte Applicant, thereby proceeding to dismiss her from service on account of absence from duty without permission and failure to obey lawful instructions, with effect from 16th September 2019.
 35. A letter dated 13th July, 2023, communicating the aforesaid decision of the Ministerial Human Resources Management Advisory Committee, was sent to her by registered post.



36. The order of the Court stopping the Ministry from transferring the ex parte Applicant from Taita Taveta to Garissa and the Ministry of Mining, did not, at any given time, relieve the ex parte Applicant from her duties, nor did it order that she be absent from her work station. On the contrary, she deliberately chose to display a contemptuous attitude, packaged in blatant disrespect and disobedience of her employer's lawful instructions.
37. The ex parte Applicant has since been paid KShs. 3, 500,000 on 24th November 2023 as ordered by the court.

The Rejoinder

38. In response to the Respondents' response, the ex parte Applicant contends that, contrary to the Respondents' assertions, her transfer to the Ministry of Petroleum and Mining was never rescinded. There was no correspondence requiring her not to report to the Ministry.
39. She further states that her salary was never reinstated and that she has not earned any salary since February 2022, in breach of the Court order of 2nd March 2023. She was never served with the alleged notice to show cause regarding failure to make a declaration of income, assets, and liabilities.
40. Despite the Court order that the Respondents reinstate her salary immediately, they blatantly defied the order. The deponent of the replying affidavit makes an explicit admission of this fact in paragraph 6 of the affidavit.

Analysis and Determination

41. I have carefully considered the application, the grounds upon which it is premised, the affidavit in support thereof, the further affidavit by the ex parte Applicant, the replying affidavit, and the submissions by the respective counsels for the parties, and the following issues emerge for determination;
 - a. Whether contempt proceedings can be brought for purposes other than seeking to punish for contempt of court.
 - b. Whether the instant application has met the legal threshold for success.
42. Contempt proceedings are unique and possess a punitive character. The jurisdiction over contempt is exercised to uphold the authority and dignity of the court, rather than to promote a litigant's interests. Any benefit gained by the successful party is incidental. They are not a substitute for execution, review, appeal, or enforcement proceedings.
43. Authorities on the necessity to punish for contempt are legion. I have considered those cited by the parties, and also cite the following useful on the point.
44. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another* [2005] 1KLR 828, Ibrahim J [as he then was] relied on the Court of Appeal decision in *Gulabchand Popatlal Shah & Another Civil Application No. 39 of 1990* [unreported], where the Court of Appeal stated as follows:

“It is essential for the maintenance of the Rule of law and order that the authority and dignity of the Courts are upheld at all material times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. In *Hadkinson v Hadkinson* [1952]2v All E.R 567 it was held that: It is the plain and unqualified obligation of every person against or in respect of whom an



order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”

45. In *Attorney General v Times Newspaper Ltd* [1974] AC. 273 Lord Diplock stated :

“There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity.”

46. The Court of Appeal in *A.B & Another vs. R.B.*, Civil Application No. 4 of 2016 [2016] eKLR, cited with approval the Constitutional Court of South Africa’s decision in *Burchell v Burchell* case No. 364 of 2005, where it was held:

Compliance with Court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The *Constitution* states that the rule of law and the supremacy of the *Constitution* are fundamental values of society. It vests the judicial authority of the state in the court and requires other organs of the state to assist and protect the court. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may impact negatively on the rule of law.

47. In *Carey vs Laiken*, 2015 SCC, the Supreme Court of Canada stated:

“36. The contempt power is discretionary, and courts have consistently discouraged its routine use to obtain compliance with court orders: see, e.g. *Hefkey v Hefkey*, 2013 ONCA 44, 30 R.F.L[7th]65, at para. 3. If contempt is found so easily, “ a court’s outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect.”: *Centre commercial Les Rivieres Ltée v Jean Bleu inc.*, 2012 QCCA 1163, at para. 7. As this Court has affirmed, “contempt of court cannot be reduced to a mere means of enforcing judgments”: *Videotron Ltee v Industries Microlec Produits Electroniques inc.*, [1992] 2 S.C.R.1065, at p. 1078, citing *Daigle v St-Gabriel -de-Brandon* [Paroisse], [1999] R.D.J. 249 [Que. C.A]. Rather, it should be used “cautiously and with great restraint”: *TG Industries*, at para.32. It is an enforcement power of last resort rather than first resort.....”

48. In limb [d] of the instant application, the ex parte Applicant seeks an award of damages to be assessed in order to compensate her. Considering the principle outlined hereinabove, paragraph 42, the order cannot be granted under civil contempt proceedings, which is the nature of the present case. Furthermore, contempt proceedings cannot vary, enlarge, clarify or enforce rights beyond the four corners of the order allegedly disobeyed.

49. I now turn to consider whether the contempt application meets the legal threshold to succeed. It is settled in Kenyan law that the standard of proof in contempt proceedings. The standard of proof is higher than proof on the balance of probabilities, almost but not exactly beyond reasonable doubt.



50. In Republic v Mohammed and Another [2018] KESC51[KLR], the Supreme Court of Kenya stated:

“28. The standard of proof in cases of contempt is well established. In the case of Mutitika v Baharini Farm Limited [1995] KLR 229, 243, the Court of Appeal held that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not 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 be quasi-criminal in nature.”

29. The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power to commit a person to jail must be exercised with utmost care and only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the contemnor’s conduct was deliberate, in the sense that he or she wilfully acted in a manner that flouted the Court order.”

51. Kenyan jurisprudence clearly sets out the requirements for establishing civil contempt, of which I provide an overview, here below. Civil contempt has three elements, which must be established to the standard set out hereinbefore. These three elements, coupled with the heightened standard of proof, help to ensure that the potential penal consequences of a contempt finding ensue only in appropriate cases.

52. The initial element is that the order alleged to have been breached must explicitly and unambiguously specify what is expected and what is not. This clarity requirement prevents a party from being held in contempt due to an ambiguous order. An order may be considered unclear if it lacks critical details about where, when, or to whom it applies; if it uses excessively broad language; or if external factors have rendered its meaning obscure.

53. The 2nd element is that the party alleged to have breached the order must have been served with the same or had actual knowledge of it: It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the wilful blindness doctrine.

54. Finally, the party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

55. In its ruling dated 2nd March 2023, the Court ordered;

- a. An order of certiorari is hereby issued, bringing to this Honourable Court the decision of the 2nd Respondent to transfer the Ex parte Applicant to the Ministry of Petroleum and Mining dated 27th June 2022 for purposes of quashing, and the same is hereby quashed.
- b. An order of mandamus is hereby issued compelling the Respondents to pay the Ex parte Applicant her salary arrears accrued from February 2022 immediately, if the same has not been paid, and thereafter monthly.



- c. An order of mandamus is hereby issued compelling the Respondents to comply with and to satisfy this Court's decree dated 6th October 2020 in Mombasa ELRC Constitutional Petition 2 of 2019 within 14 days of this order.
 - d. An order of mandamus is hereby issued compelling the Respondents to handover the Survey Office, Taita Taveta, to the Ex parte Applicant as the In-charge under the supervision of the Director of Surveys.
 - e. An order of mandamus is hereby issued compelling the Respondents to pay the Ex parte Applicant the KShs. 3,500, 000 awarded and decreed as general damages in this Court's Mombasa ERLC Constitutional Petition No. 2 of 2019 within fourteen [14] days of this Court.
 - f. In default of compliance with the compelling orders herein, the Respondents shall be cited for contempt of Court.
56. In my view, the order was clear and unequivocal on what was and wasn't to be done. It embodied essential details about how, when, and by whom it applied.
57. I have carefully considered the affidavit filed herein by the Respondents in response to the instant application. Undoubtedly, the Respondents had knowledge of the order.
58. Having stated as I have hereinabove, [paragraphs 56 and 57], I now proceed to examine whether the Respondents deliberately disobeyed the order. I am unequivocally prepared to answer this question in the affirmative. The respondents' willingness and mala fides in failing to comply with the order are conspicuously evident.
59. The Respondents stated that they did not intentionally fail to comply with the order for reinstatement of the Ex parte Applicant's salary advances, citing the same reasons they provided in Abuta Tom's replying affidavit, sworn on 24th November 2022, during the judicial review proceedings. Those reasons were considered and rejected by the Court in its ruling on 2nd March 2023. Presenting the same reasons in these civil contempt proceedings indicates only one thing: the Respondents had no valid justification for continuing to withhold the salary in defiance of the order. Their action clearly speaks to wilful disregard.
60. Inarguably, the salary was never paid as was ordered by the Court.
61. In the upshot, I find the Ex parte Applicant's application merited. Consequently, I find the 1st Respondent [Nixon Korir] and 2nd Respondent [Zacharia Mwangi Njeru] guilty of contempt of the Court order.
62. The 1st and 2nd Respondents are hereby directed to appear before this court on thisday of2026, for mitigation and sentencing.
63. The Orders accordingly.

READ, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 29TH DAY OF JANUARY 2026.

OCHARO KEBIRA

JUDGE

