

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E564 OF 2023

KENYA COUNTY
GOVERNMENT WORKERS UNION.....CLAIMANT/APPLICANT

VERSUS

SALARIES AND REMUNERATION

COMMISSION.....1ST RESPONDENT

COUNTY GOVERNMENT OF NAIROBI.....2ND
RESPONDENT

GOVERNOR COUNTY GOVERNMENT
OF NAIROBI.....3RD RESPONDENT

COUNTY SECRETARY COUNTY
GOVERNMENT OF NAIROBI.....4TH RESPONDENT

COUNTY PUBLIC SERVICE BOARD
COUNTY GOVERNMENT OF NAIROBI.....5TH
RESPONDENT

RULING

1. By a judgment delivered on 15th November 2025, the Court allowed the Claimant/Applicant's Claim in the following terms: -

- a) An order is hereby issued declaring the advisories by the 1st Respondent (SRC) as contained in the letters dated 8th April 2022 and 19th April 2023, unlawful in so far as the SRC overstepped its mandate*

- under Article 230(4) (b) of the Constitution and violated the Claimant's and the 2nd Respondent's right to engage in collective bargaining as guaranteed under Article 41(5) of the Constitution.*
- b) The 2nd Respondent is hereby ordered to resubmit the CBA negotiated with the Claimant for consideration by the SRC within 7 days from the date of this Judgment.*
- c) Within 30 days upon submission of the CBA, the SRC is to render its advice as envisaged under Article 230(4) (b) of the Constitution taking into account the guiding principles under Article 230(5) of the Constitution, Section 12 of the Salaries and Remuneration Commission Act and its Revised Guidelines on Collective Bargaining in the Public Service.*
- d) In default of the SRC complying with order (c) above, the Claimant and the 2nd Respondent shall be at liberty to present the CBA to Court for registration.*
- e) Each party to bear their own costs.*

2. Following the Judgment, the Claimant and the 2nd Respondent submitted to the Court a duly executed Collective Bargaining Agreement (CBA), which was subsequently registered on 28th May 2025.

3. However, the matter did not end with the registration of the CBA, seeing that the Claimant/Applicant has now moved this Court through a Notice of Motion dated 30th September 2025, seeking the following orders: -

1) Spent.

2) THAT the following officers of the Respondents:

a) Governor Nairobi County-Arthur Johnson Sakaja

b) County Secretary Nairobi County-Godfrey Akumali.

**c) County Executive Committee Member in-charge of Finance-
Charles Kerich.**

d) County Public Service Board:

i. Thomas Mweu Kasoa-Chairperson

ii. Violet Oyangi-Secretary

Be summoned before this Honourable Court to show cause why they should not be cited for contempt and committed to civil jail for blatantly failing to comply with the registered Collective Bargaining Agreement in ELRCCBA/121/2025.

3) THAT the failing to show necessary cause, the officers be committed to civil jail for a maximum period of six (6) months for

contempt for failure to implement the Collective Bargaining Agreement in ELRCCBA/121/2025.

4) THAT Officer Commanding Central Police Station do execute Order 3 above herein.

5) THAT any other or further orders as this Honourable Court deems fit and appropriate.

6) THAT costs of this application be borne by the Respondents.

4. The application is anchored on the grounds set out on its face and is supported by an affidavit sworn on 30th September 2025 by the Claimant's National General Secretary, **Roba Duba**.

5. Mr. Duba deposes that on 29th July 2025, the Claimant wrote to the 2nd Respondent demanding the immediate implementation of the CBA. He states that on 5th August 2025, the Claimant received a letter dated 31st July 2025 from the 4th Respondent indicating their intention to implement the CBA. The Claimant thereafter issued a further letter urging that the process be fast-tracked.

6. Mr. Duba contends that, four months after the CBA was registered, the 2nd to 5th Respondents have yet to implement it despite having full knowledge of, and having assented to, its terms. He adds that the Claimant has engaged in various communications with the said Respondents seeking implementation, but these efforts have been ignored.
7. It is Mr. Duba's further contention that the conduct of the 2nd to 5th Respondents continues to severely prejudice the Claimant's members, who had a legitimate expectation that the CBA would be implemented upon its registration. He maintains that the ongoing inaction has caused significant hardship to the members.
8. He further avers that the failure by the 2nd and 5th Respondents to honour and implement the CBA constitutes a grave injustice to the Claimant's members, undermines the authority of the Court, and amounts to contempt of Court orders. He asserts that the responsible officers should therefore be cited for contempt.
9. Mr. Duba further states that, despite a formal demand issued by the Claimant's advocates, the Respondents have not provided any justifiable response.

10. According to Mr. Duba, the contemptuous conduct of the cited officers is sufficiently serious to warrant the immediate intervention of this Honourable Court.

11. He asserts that the failure by constitutional office holders and public officers such as the 2nd and 5th Respondents, to comply with Court directives and uphold the dignity and authority of the Court amounts to insubordination.

12. Mr. Duba maintains that the cited officers, by disregarding the Court's orders without reasonable cause, are undermining the rule of law and the proper administration of justice.

13. In response to the Motion, the 2nd and 3rd Respondents filed a joint Replying Affidavit sworn on 24th November 2025 by the Acting County Secretary and Head of the County Public Service Board, Nairobi City County, **Godfrey Akumali**.

14. Mr. Akumali deposes that the 2nd and 3rd Respondents hold the utmost respect for all court orders. He asserts that at no time have they acted with disrespect, disregard, or indifference toward the authority of this Court.

15. He avers that the delay in complying with the Court's directions was neither willful nor deliberate, nor the result of negligence on the part of the Respondents. Rather, it was wholly occasioned by administrative delays at the Ministry of Public and Human Capital, an entity that operates independently of the Respondents.

16. Mr. Akumali further states that the CBA has not yet been uploaded into the Human Resource Information System (HRIS).

17. He avers that the Respondents have consistently acted with diligence, transparency, and documented effort to meet the Court's expectations.

18. According to Mr. Akumali, the primary impediment to compliance has been the Ministry of Public and Human Capital's failure, omission, or prolonged administrative delay in uploading, clearing, publishing, or releasing the approved CBA, an action indispensable to implementing the Court's directions.

19. He deposes that on 2nd July 2025, the Respondents wrote to the Ministry requesting that the CBA be implemented and uploaded into the HRIS to facilitate compliance with the Court's directive.

20. When no action was taken, further letters were issued on 28th July 2025 and 30th July 2025 reiterating the request for implementation and warning of possible industrial unrest arising from continued non-implementation.

21. He states that the Ministry of Public and Human Capital is the statutory custodian and approving authority for CBAs in the public service, and that the Respondents cannot file, operationalize, or rely on the CBA until the Ministry completes its part.

22. In his view, attributing blame to the 2nd and 3rd Respondents for the Ministry's administrative delay is misguided, unfair, and inconsistent with the actual sequence of events.

23. He asserts that the Respondents cannot lawfully or practically bypass the Ministry's mandate, as it is the sole entity authorized to finalize and publish CBAs for public service institutions.

24. Mr. Akumali is categorical that unless the CBA is uploaded into the HRIS, the Respondents remain unable to execute the Court's directive.

25. He maintains that the Respondents have exercised all reasonable diligence, including issuing multiple communications, yet the Ministry has not acted. These efforts, he argues, demonstrate the Respondents' good faith and lack of willful disobedience.

26. Mr. Akumali states that the Respondents' inability to comply is therefore not due to refusal, neglect, or disobedience, but is entirely attributable to external administrative delays beyond their control.

27. In his view, penalizing the Respondents for circumstances outside their control would amount to punishing an innocent party while leaving the true source of the delay unaddressed.

28. Mr. Akumali also swore a further Replying Affidavit on 25th November 2025 on behalf of the 4th and 5th Respondents, in which he reiterates the same depositions made in his earlier affidavit of 24th November 2025.

29. The 4th and 5th Respondents also filed Grounds of Opposition dated 16th October 2025, in which they contend, *inter alia*, that: -

- a) *THAT the application is unmeritorious, hopeless, and incompetent as the Claimant herein has failed to serve the 4th and 5th Respondents herein with a notice of intention to institute contempt of court proceedings against them prior to the institution of the instant proceedings.*
- b) *THAT the Claimant herein has not sought the leave of this Honorable Court before instituting the contempt proceedings against, inter alia, the 4th and 5th Respondents herein, thereby rendering the same a non-starter and incurably defective.*
- c) *THAT, therefore, the Claimant's instant application violates the provisions of Order 52, Rule 2 of the Rules of the Supreme Court of England and the Contempt of Court Act 1981 of England, the law applicable to contempt proceedings in Kenya.*
- d) *THAT the Claimant herein has not demonstrated any mala fides and/or deliberate and intentional disregard of any specific orders of this Honorable Court by the 4th and 5th Respondents herein.*
- e) *THAT in any event, none of the orders of this Honorable Court issued on 15th November, 2024 was specifically and particularly directed to the 4th and 5th Respondents herein, and hence the*

allegation of contempt of the said orders is far-fetched, misconceived, and unfounded.

30. In a rejoinder, the Claimant filed a Further Affidavit sworn by **Roba Duba** on 3rd December 2025, in which he avers that from as early as July 2025, the Respondents showed no genuine commitment to the implementation of the CBA.

31. In Mr. Duba's view, administrative procedures cannot justify the continued and deliberate failure to implement the CBA, particularly because Section 59(5) of the Labour Relations Act expressly provides that once a CBA is registered, it becomes binding and must be implemented. He maintains that the Respondents have yet to comply.

32. He further avers that the Labour Relations Act recognises only the parties to the CBA, and that the involvement of the Ministry of Public Service and Human Capital Development should have been addressed during negotiations when agreeing on the effective date, not after the effective date had already been set and commenced. He maintains that this failure continues to greatly prejudice the Claimant's members.

33.Mr. Duba asserts that the employer has demonstrated no goodwill and that its conduct, as acknowledged by the Respondents themselves, amounts to disobedience of court orders.

34.He adds that there is a clear admission by the Respondents indicating that they are in contempt of court.

35.Mr. Duba avers that the memo dated 26th November 2025 is a mere afterthought, having been prepared and filed only after the Contempt Application had been lodged. In his view, this demonstrates that the Respondents have been lax in pursuing implementation and are attempting to mislead the Court regarding their efforts. He contends that this reflects a lack of good faith on the part of the employer.

Analysis and Determination

36.Upon considering the instant Notice of Motion, the Respondents' Grounds of Opposition, and the parties' respective affidavits, the Court has identified the following issues for determination:

- a) Whether leave of the Court was required before instituting the contempt of court proceedings;**
- b) Whether the officers of the Respondents named in prayer (2) of the Motion are in contempt of Court.**

The question of leave

37. In their Grounds of Opposition, the 4th and 5th Respondents contend that the instant Motion is a non-starter and incurably defective, as the Claimant did not seek leave of this Court before instituting the contempt proceedings.

38. Under Kenyan law, contempt of court proceedings are governed by the English law in force in England at the time the alleged contempt is committed. In this regard, **Section 5 of the Judicature Act** imposes a duty on the High Court, the Court of Appeal, and legal practitioners to ascertain the applicable law of contempt in the High Court of Justice in England at the time the application is made.

39. Previously, the Rules of the Supreme Court, made under the Supreme Court of Judicature Act, 1973, prescribed the procedure for initiating contempt of court proceedings. Under those rules, an application to the High Court of England for committal for contempt would not be granted unless leave to bring such an application had first been sought and obtained.

40. However, following the implementation of Lord Woolf's "*Access to Justice Report, 1996*," the Rules of the Supreme Court of England have gradually been replaced by the Civil Procedure Rules, 1999.

41. In 2012, the Civil Procedure (Amendment No. 2) Rules came into force, with Part 81 effectively replacing Order 52 of the Rules of the Supreme Court in its entirety. Part 81 (Applications and proceedings in relation to contempt of court) provides distinct procedures for four different types of contempt, thus:

***Rules 81.4** relates to committal for "breach of a judgement, order or undertaking to do or abstain from doing an act."*

***Rule 81.11-** Committal for "interference with the due administration of justice" (applicable only in criminal proceedings)*

***Rule 81.16-** Committal for contempt "in the face of the court"), and*

***Rule 81.17-** Committal for "making false statement of truth or disclosure statement."*

42. Therefore, contrary to the Respondents' assertion that this application is improperly before the Court for want of leave, it is clear from Rule 81.4 above

that leave of the Court is no longer required before instituting an application of this nature. This position was affirmed in *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others* [2014] KECA 840 (KLR), where it was held that:

“An application under Rule 81.4 (breach of judgment, order or undertaking) now referred to as “application notice” (as opposed to a notice of motion) is the relevant one for the application before us. It is made in the proceedings in which the judgment or order was made or the undertaking given. The application notice must set out fully the grounds on which the committal application is made and must identify separately and numerically, each alleged act of contempt and be supported by affidavit(s) containing all the evidence relied upon.

The application notice and the affidavit or affidavits must be served personally on the respondent unless the court dispenses with service if it considers it just to do so, or the court authorizes an alternative method or place of service.

It is clear from this summary that leave, now called “permission” is not required where committal proceedings relate to a breach of a judgment, order or undertaking. That position must be contrasted with the requirement in Rules 81.12 – committal “for interference with the due

administration of justice” and 81.17 – Committal “for making a false statement of Truth or disclosure statement” underlined for emphasis

43. This position was subsequently reaffirmed by the Court of Appeal in *Shimmers Plaza Limited v National Bank of Kenya Limited (Civil Appeal 33 of 2012) [2015] KECA 945 (KLR)*, where it was held that:

“We find on the basis of the new Civil Procedure Rules (of England) which are now contained in the Second Supplement to the 2012 White Book, that no leave is required before bringing an application, like the one before us, for committal for contempt relating to breach of this court’s order.”

44. In view of the foregoing, I find that this application is properly before the Court, as it was not necessary for the Claimant to seek leave prior to filing it.

Whether the officers of the Respondents named in prayer (2) of the Motion are in contempt of Court

45. The crux of the Claimant’s Motion is that the 2nd to 5th Respondents have failed to implement the CBA, which was registered in Court on 28th May 2025, despite being fully aware of, and having agreed to, its terms. It is the Claimant’s

assertion that it has engaged in multiple communications with the Respondents seeking implementation, yet these efforts have consistently gone unheeded.

46. Opposing the Motion, the 2nd to 5th Respondents deny being in contempt of the Court's orders, contending that the delay in complying with the Court's directions was neither willful nor deliberate, but resulted entirely from administrative delays at the Ministry of Public and Human Capital.

47. The Respondents aver that the primary obstacle to compliance has been the Ministry's failure, omission, or prolonged administrative delay in uploading, clearing, publishing, or releasing the approved CBA, which is essential for implementing the Court's directions.

48. They further state that the Ministry of Public and Human Capital is the statutory custodian and approving authority of CBAs in the public service, and that the Respondents cannot file, operationalize, or act upon the CBA until the Ministry formally completes its mandated procedures.

49. Challenging the position of the 2nd to 5th Respondents, the Claimant contends that the Labour Relations Act recognises only the parties to the CBA. The Claimant further asserts that the role of the Ministry of Public Service and Human Capital Development should have been considered during negotiations

on the effective date, and not after the effective date had already been established and commenced.

50. In light of the rival arguments advanced by both sides, the question for determination is whether the officers named in the Claimant's Motion are guilty of contempt of Court.

51. The starting point is to consider the definition of contempt of Court, as set out in **Black's Law Dictionary (9th Edition)**, which provides as follows:

“The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.”

52. Contempt of Court may also be described as conduct or wrongdoing that defies or challenges the authority of the Court. Courts have consistently held that the purpose of contempt proceedings is to uphold the supremacy of the law. Accordingly, the rationale for punishing contempt is to protect the rule of law, which is fundamental to the proper administration of justice. This position was affirmed in ***Econet Wireless Kenya Limited v Minister for Information & Communication of Kenya & Another [2005] eKLR*** and ***Teachers Service Commission v Kenya National Union of Teachers & 2 Others (2013) eKLR***.

53. With that being said, the next logical question to ask is what elements are necessary to establish civil contempt of court.

54. In *Sheila Cassatt Issenberg & Watoto World Centre v Antony Machatha Kinyanjui [2021] KEHC 5692 (KLR)*, the Court outlined the elements that must be established in civil contempt proceedings as follows:

“The Cromwell J, writing for the Supreme of Canada in Carey v Laiken, 2015 SCC 17 (16th April 2015), expounded on the three elements of civil contempt of court which must be established to the satisfaction of the court, thus:

i) The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be found in contempt where an order is unclear.

An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.

ii) The party alleged to have breached the order must have 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 willful blindness doctrine.

iii) The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.”

55. Likewise, in *Samuel Mweru & Others v National Land Commission & Others* [2020] KEHC 9233 (KLR), the Court held that:

“It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove

(i) the terms of the order

(ii) Knowledge of these terms by the Respondent

*(iii) Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements, the presence of wilfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand*, who succinctly stated:- "There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-*

a.the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;

b.the defendant had knowledge of or proper notice of the terms of the order;

c.the defendant has acted in breach of the terms of the order; and

d.the defendant's conduct was deliberate.

56.Back to the present case, it is an undisputed fact that this Court registered the CBA between the Claimant and the 2nd Respondent on 28th May 2025 and that the Respondents were fully aware of its terms. It is equally evident that the provisions of the said CBA have not been complied with. The question that follows is whether the Respondents can be said to have acted in contempt of Court.

57.To counter allegations of contempt of Court, the Respondents rely on letters dated 2nd July 2025, 28th July 2025, and 30th July 2025, issued by the Acting County Secretary and Head of the County Public Service to the Principal Secretary, Ministry of Public and Human Capital, requesting that the CBA be implemented in the Human Resource Information System.

58.What is apparent to the Court that the Respondents have made efforts to implement the CBA. Nonetheless, the involvement of the Ministry of Public

and Human Capital as an implementing party has caused delays in finalizing the process.

59. From the authorities referenced above, it is evident that a fundamental requirement for a successful contempt application is proof that the alleged contemnor acted in willful or deliberate disobedience of a Court order.

60. Further, in ***Mahinderjit Singh Bitta v Union of India & Others 1 A No. 10 of 2010 (13th October 2011)***, the Supreme Court of India held that in exercising its contempt jurisdiction, the Court's primary concern is to enquire whether the alleged contemnor has intentionally and willfully violated a Court order, even for the purpose of establishing civil contempt.

61. In the present case, taking into account the efforts made by the Respondents to implement the CBA, the Court is not persuaded that the Respondents have willfully and deliberately disobeyed its orders.

62. In so finding, I am mindful that contempt of Court is quasi-criminal in nature; consequently, the standard of proof required is higher than that on a balance of probabilities. This is because an individual's liberty may be at stake, and the applicant must establish willful and deliberate disobedience of a Court order to succeed (see ***Gatharia K. Mutikika v Baharini Farm Limited [1985] KLR 227***

and Peter K. Yego & Others v Pauline Nekesa Kode Nakuru HCCC No. 194 of 2004).

63. What's more, it would not be improper to find an alleged contemnor guilty of contempt without conclusive proof of the essential elements to the required standard. Consequently, unintentional disobedience is insufficient to warrant a finding of contempt.

64. It is clear to the Court that the involvement of the Ministry as an implementing party of the CBA was not envisaged by the Claimant and the 2nd Respondent during negotiations, particularly with respect to the effective date. Accordingly, the delay in implementing the CBA cannot be attributed entirely to the Respondents.

65. In light of the foregoing, this does not constitute a clear case of willful disregard of the Court's order, and therefore does not warrant a finding of contempt.

66. For the foregoing reasons, the Notice of Motion dated 30th September 2025 is disallowed with an order that each party shall bear its own costs.

DATED, SIGNED and DELIVERED at NYERI this 17th day of February 2026.

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STELLA RUTTO
JUDGE

In the presence of:

For the Claimant	Mr. Oketch
For the 1 st Respondent	No appearance
For the 2 nd and 3 rd Respondent	Ms. Ang’iela instructed by Mr. Okatch
For the 4 th and 5 th Respondent	Mr. Odinga
Court Assistant	Ndati

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 had 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.

STELLA RUTTO

JUDGE

ORIGINAL