

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA

(Before Hon. Lady Justice Monica Mbaru)

CAUSE NO. E070 OF 2025

AMALGAMATED UNION OF

KENYA METAL WORKERS.....CLAIMANT

VERSUS

SPRINGTECH KENYA LIMITED..... RESPONDENT

RULING

The Claimant filed an application dated 2nd February 2026 under the provisions of Rule 18 of *The Employment and Labour Relations Court (Procedure) Rule, 2016* (since repealed), Rule 5(d) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, section 5 of the Contempt of Court Act and seeking orders:

1. *The managing director of Sprngtech Kenya Limited, one Mohammed Kamil Abdul Kadir Mughal, be cited for contempt of court orders and be committed to civil jail for a period of 6 months for his disobedience and contempt of the orders made on 8 December 2025.*
2. *The grievants whose employment was unfairly terminated and unjustifiably dismissed summarily be reinstated.*

3. *If, in the opinion of the court, reinstatement of the grievants is practically impossible, the court exercises its discretion and reduces the summary dismissal to redundancy or termination of employment and orders payment of terminal dues.*
4. *The court does exercise its discretion and order payment of compensation of 12 months' wages for the unfair termination of employment, subject to section 49(1)(c) of the Employment Act.*
5. *This court be pleased to make other orders as it deems fit in the circumstances in favour of the grievants.*
6. *Costs of the application be provided for.*

The application is supported by the Affidavit of Rose Omamo, the chief executive officer, who avers that the Claimant and her members, the grievants herein, will be prejudiced if the orders sought are not issued. On 8th December 2025, the court delivered judgment and ordered that the Claimant return to the shop floor for recruitment of members until it attains the simple majority, after which recognition can be granted. The Respondent was directed to allow the Claimant reasonable access to the shop floor. The grievants were allowed to resume their duties with the Respondent immediately and to be paid their wages from 15th July 2025.

The court also directed the Respondent to conclude the notices to show cause issued to the grievants on 1st July 2025 and, upon the check-off forms, to deduct

and remit trade union dues to the Claimant within 30 days.

Omamo avers that the Respondent has willfully disobeyed the court orders, save for the notices to show cause dated 1st July 2025. Despite a decree being sent to the Respondent for approval, the Respondent has refused to comply. Instead, the Respondent dismissed the grievants, and the loss of 11 members of the Claimant is critical, and it defeats the process of the Recognition Agreement with the Respondent.

Ms. Omamo avers that the Respondent has refused to comply with the court decree, and hence the orders sought should be issued to protect the dignity of the court and the rule of law.

In reply, the Respondent filed the Replying Affidavit of Mohamed Kamil Abdul Kadir Mughal, the managing director, who avers that the Claimant's instant application is an abuse of the court process. The Respondent is a limited liability company whose decisions are passed through the board, and he cannot be singled out for contempt proceedings. The application is irregular and has failed to adhere to the principles set out in **Kenya Human Rights Commission v Attorney General & another [2018] eKLR** that declared the Contempt of Court Act unconstitutional. The reliance on Rule 5(d) of the Constitution of Kenya (Practice and Procedure) Rules by the Claimant does not serve any purpose. This is not a constitutional petition.

The Respondent is keen to comply with the court's judgment and has initiated an internal disciplinary hearing under section 41 of the Employment Act. There is no decree in draft served by the Claimant to the Respondent or the advocates, as alleged.

In a letter dated 31st December 2025, the Respondent conducted a disciplinary hearing and found the subject employees liable to summary dismissal, and communicated this to the labour officer. Upon the service of the decree, the Respondent will comply as required. The Respondent has tabulated the final dues owed to the grievants.

The instant application is bad in law and should be dismissed with costs.

Both parties filed written submissions, which are analysed, and the issues for determination are:

- a) Whether there is contempt of court following judgment delivered on 8 December 2025;
- b) Whether the court should convert the summary dismissal of the grievants by the Respondent into termination of employment;
- c) Whether an order of reinstatement into employment should be issued;
- d) Whether the court should direct the Respondent to make a payment of 12 months' compensation to the grievants.

The application by the Claimant dated 2 February 2026 is anchored under repealed

provisions of the *Employment and Labour Relations Court (Procedure) Rules, 2016*. The essence of the orders sought and the rule relied upon are not in tandem.

Contempt of court proceedings are well addressed under different legal frameworks outside the *Employment and Labour Relations Court (Procedure) Rules, 2016* (since repealed).

Indeed, as submitted by the Respondent, the Contempt of Court Act was held to be unconstitutional. see **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR)** and **Kenya Human Rights Commission v Attorney General; Law Society of Kenya (Interested Party) [2018] KEHC 9656 (KLR)**.

Before the Claimant can invoke contempt-of-court proceedings, due process of execution is imperative. Hence, the instant application is premature.

On whether the court should convert the summary dismissal to termination of employment, the court has since addressed the claim herein with finality. It stands *functus officio*. Any emerging issues post the judgment delivered on 8 December 2025 should be addressed separately.

Further, the Respondent was directed to assess the wages unpaid to the grievants from July 2025 until the date of the judgment. Such payments are due. The choice to comply only with orders that require initiating disciplinary proceedings against the grievants is selective and not undertaken in good faith. This confirms that the Respondent is aware of the decree herein and that it remains valid and enforceable.

The Respondent has a duty to execute the judgment of the court in full, not only on aspects it finds convenient. Such does not foster peaceful industrial relations. On whether an order of reinstatement of the grievants who have since been dismissed from their employment by the Respondent should be issued, as outlined above, upon its judgment, the court has addressed the claim herein with finality. An order of reinstatement must stem from pleadings. It cannot be juxtaposed within an interlocutory application as herein sought by the Claimant. Such is a substantive order that should only issue on the merits of the case.

Ordering reinstatement at this stage of proceedings, post-judgment, will not secure justice.

Further, ordering payment of 12 months' compensation post-judgment would be outside the legal threshold the court is permitted to address on 8th December 2025. In this case, being *functus officio*, the court must stop.

Accordingly, the application dated 2nd February 2026 is without merit. The Claimant shall execute the decree of the court as appropriate. Each party to bear its costs.

Delivered in open court at Nairobi, this 23rd day of April 2026

**M. MBARŮ
JUDGE**

In the presence of:

Court Assistant: Catherine and Omar

..... and

.....