

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

(Before Hon. Lady Justice Monica Mbarũ)

CAUSE NO. 877 OF 2017

HUMPHREY ASHUBWE.....CLAIMANT

VERSUS

KWALE INTERNATIONAL SUGAR

COMPANY LIMITED..... RESPONDENT

AND

LOUISIANA KHAPWOYA KAYIKA..... 1ST CONTEMNOR

MBEJA OBONYO JOSEPH..... 2ND CONTEMNOR

SALOME MORAA AYUNGA..... 3RD CONTEMNOR

SALLY MALEMBA.....4TH CONTEMNOR

REAL PROCURMENT SOLUTIONS LIMITED..... 5TH CONTEMNOR

NYANDWAT ODUNDO T/A NYANDWAT ODUNDO AND

COMPANY ADVOCATES..... INTERESTED PARTY

RULING

The Respondent, Kwale International Sugar Company Limited, filed an application dated 16 February 2026 under the provisions of Order 40 Rule 3 of

the Civil Procedure Rules, section 5 of the Contempt of Court Act, section 5(1) of the Judicature Act and seeking orders:

1. *Spent.*
2. *The court be pleased to find the Contemnors to be in contempt of court for disobedience of the court orders issued on 20 January 2026. The Contemnors be summoned to appear before this court or show cause why they should not be punished for deliberate contempt of court orders issued on 20 January 2026, directing that a sum of Ksh. 750,000 be withheld from the Claimant's salary arrears for the months of August and September 2025, being monies due and owing to the Respondent, and that the said amount be disposed of into the Respondent's advocate account.*
3. *Upon granting of prayers 2 and 3 above, the court be pleased to order that the Contemnors be committed to civil jail for a period of 6 months or until they purge their contempt and comply with the orders of this court on 20 January 2026.*
4. *Costs be provided for.*

The application is supported by the affidavit of Benson Nzuka, head of the legal department, who avers that the Contemnors are in disobedience of the court orders issued on 20th January 2026, having failed to remit the sum of Ksh. 750,000 to the Respondent upon deduction from the Claimant's salary arrears in August and September 2025. The order issued on 20th January 2026 was

unambiguous; the Contemnors were served on 23rd January 2026 and thus, by operation of law, were deemed to have knowledge of the court orders.

Nzuka avers in his affidavit that the Contemnors have not sought to have the orders issued on 20th January 2026 reviewed or varied, and thus they remain in force. In the interests of justice, the orders sought should be issued.

The Claimant was employed by the 5th Contemnor, and the 1st to 4th Contemnors constitute the management of the company. All the Contemnors were served on 23rd January 2026, and on 27th January 2026, they replied that they were unable to comply with the court orders, alleging that the Claimant had since resigned from his employment with effect from 31st October 2025.

The orders of 20th January 2026 required that the Claimant's salary for August and September 2025 be remitted to the Respondent. The order remains unsatisfied.

In reply, the Contemnors filed the Replying Affidavit of the 4th Contemnor, Sally Malemba, the Chief of Staff of the 5th Contemnor. She avers that the 5th Contemnor was employed and then issued with a notice to show cause regarding his absence from duty following his approved paternity leave on 13th September 2025. He did not submit a response within the required time.

Malemba avers that on 17th September 2025, the Claimant was placed on suspension without pay pending further disciplinary proceedings and determination of the matter, but he declined to accept the notices. Under the 5th Contemnor policy, an employee on suspension is not entitled to a salary.

Malemba avers that on 1st October 2025, the Claimant tendered his resignation, giving one month's notice and indicating his last day would be 31st October 2025. The employment relationship has since ended.

The 3rd Contemnor, Salome Moraa Ayunga, passed away on 3rd October 2025.

The Contemnors have seen the court order dated 20th January 2026 requiring the withholding of Ksh. 750,000 from the Claimant's salary arrears for August and September 2025. The Claimant was not entitled to a salary from 17th September 2025 as he was on suspension without pay. The salary, if at all due, would relate to the period before 17th September 2025.

Malemba avers that the order dated 20th January 2026 refers to August and September 2025 without distinguishing the period during which the Claimant was on suspension without pay. The order was served upon the Contemnors in January 2026 when the Claimant had ceased employment with the 5th Contemnor. No salary was being processed or disbursed to the Claimant at the time, allowing for deductions. Communication to the Respondent's advocate was issued immediately to this effect. There is no contention that the

employment relationship has ceased, and the alleged Contemnors have not failed to treat the court orders with seriousness.

Nzuka filed his Further Affidavit and avers that the court orders of 20th January 2026 were clear in that the Contemnors were to deduct and remit the salary for August and September 2025. The fact of service is not denied. The Contemnors have been represented in court, and before confirming the consent, there was no submission that a suspension or notice to show cause had been issued against the Claimant. The sole ground raised for non-compliance is that the Claimant has since resigned. Such new evidence has not been addressed in light of the contempt-of-court application.

The Claimant filed his Affidavit and averred that he resigned from the employment of the 5th Contemnor by notice dated 1st October 2025, taking effect on 30th October 2025. At the time, the 5th Respondent owed him salary arrears for August to October 2025. The court order on 20th January 2026 directed the Contemnors to deduct and remit to the Respondent the sum of Ksh. 750,000 is the Claimant's salary arrears for August and September 2025. Such are the salary arrears that were payable before the resignation.

The Respondent filed written submissions, which are analysed.

Determination

The matter herein presents a unique scenario. Judgment has since been entered against the Claimant to pay the Respondent the sum of Ksh. 750,000.

Post-judgment, through a consent dated 13th October 2025, the Claimant and the Respondent agreed that the alleged Contemnors would settle the judgment debt by making payments directly to the Respondent.

The consent thus directs the alleged Contemnors under an amendment Order that they should pay the sum of Ksh. 750,000 for the Claimant's salary for August and September 2025, directly to the Respondent.

The consent order was adopted in court on 16th October 2025.

The consent was between the Claimant and the Respondent in the absence of the alleged Contemnors.

At the time, 16th October 2025, the Claimant did not disclose to the court or to the Respondent that he had tendered his resignation from the 5th Respondent's employment, taking effect on 30th October 2025. Further, the Claimant did not disclose to the court that, at the time subject to the consent order (August to September 2025), he was suspended from 17th September 2025.

These are details relevant to the consent order. The material non-disclosure becomes relevant.

The Claimant is the judgment debtor.

The Claimant had not enjoined the alleged Contemnors in these proceedings until the court confirmed the consent order on 16th October 2025. This then

nullifies the entire consent order. It was obtained through material non-disclosure. It cannot stand against third parties unrelated to the suit and the subject debt that accrued from the proceedings herein.

The Claimant must resolve the matter and pay the Respondent the due amount of Ksh. 750,000.

The Claimant cannot circumvent the judgment debt herein and allow the alleged Contemnors to carry his burden without being accountable and responsible for their debts.

Where the Claimant seeks any employment or terminal dues from the alleged Contemnors following termination of his employment by resignation through notice dated 1st October 2025, such should be addressed separately from the suit herein to avoid marring the issues. Where the alleged Contemnors have a policy that an employee on suspension should not be paid, that policy can be addressed in such a suit.

The question of whether the alleged Contemnors have withheld salaries from the Claimant must be determined before the same can form a legal basis for the demand and consent herein.

Introducing new issues in a matter that has since concluded would not foster the rule of law. This will suffice.

In the fullness of the application dated 16th February 2026, the following orders are issued:

- a) The court finds no contempt of court against the alleged Contemnors.**
- b) The consent order dated 13th October 2025, adopted in court on 16th October 2025, is hereby set aside.**
- c) The Claimant shall meet costs due to the alleged Contemnors 1st to 5th, with the exception of the 3rd alleged Contemnor (deceased).**
- d) The Claimant shall also meet costs due to the Respondent.**

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

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Catherine and Omar

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