Wekesa & 2 others v Munialo (Civil Appeal 28 of 2019)
[2025] KECA 679 (KLR) (11 April 2025) (Judgment)

Neutral citation: [2025] KECA 679 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT KISUMU

CIVIL APPEAL 28 OF 2019

HM OKWENGU, JM MATIVO & JM NGUGI, JJA

APRIL 11, 2025

BETWEEN

KENNEDY KILALI WEKESA ..... 1ST APPELLANT

LUSWETI FURAHA BKS ..... 2ND APPELLANT

DICKSON K KIRUI ..... 3RD APPELLANT

AND

PATRICK WANYONYI MUNIALO ..... RESPONDENT

(Being an appeal from the Ruling of the High Court of Kenya at Bungoma (Riechi, J.) dated 12th February, 2019 in Judicial Review Cause No. 1 of 2018)

JUDGMENT

1. The respondent herein filed an application dated 25th January, 2018 before the High Court in Bungoma. The application was brought under a certificate of urgency and sought the following orders:

    1. That this application be certified urgent and be heard ex-parte in the first instance.

    2. That the Applicant be granted leave to apply for an order of certiorari to remove into the High Court and quash the decision of the 3rd & 4th Respondent issued through the 1st and 2nd Respondents via their letter dated 8th January, 2018, suspending the Applicant as Managing Director of the Interested Party for no justifiable cause, without the legal authority or mandate to act as such and without giving the Applicant the right to be heard.

    3. That the Applicant be granted leave to apply for an order of prohibition restraining the Respondents either by themselves or by someone authorized by them from suspending, taking disciplinary action or otherwise terminating the Applicant's contract without strict

compliance with the Memorandum and Articles of Association of the Interested Party, applicable law and the *Constitution* of Kenya.

4. That the Grant of Leave do operate as stay of implementation of the impugned decision and all subsequent steps arising therefrom and in particular the Applicant to remain in his position pending the hearing and determination of the substantive motion.

5. That the costs of this application be in the cause.

2. The application was accompanied by the applicant's statutory statement as required under Order 53 of the Civil Procedure Rules and a verifying affidavit sworn on 25th January, 2018. The statutory statement listed the grounds for the application which in summary were that: the applicant was employed by Nzoia Water Services Company as a Managing Director on a 5-year contract with effect from 9th April, 2014 to 8th April, 2019; he was unlawfully and irregularly suspend with effect from 8th January, 2018, for a period of at least three (3) months pending investigations into alleged and unspecified cases of misconduct levelled against him, contrary to Article 7 of the *Constitution* and section 4(3) of the *Fair Administrative Action Act*; the decision to suspend him was made in violation of the rules of natural justice as he was not given written reasons nor afforded a hearing; the decision to suspend him was done in a discriminatory manner without following any set criteria; the 1st and 2nd Respondents were not part of the Board of Directors and had no power to take any actions against any member of staff, hence they acted ultra vires and their decision was null and void ab initio; and the respondents acted unlawfully by failing to acknowledge that his contract was still in force and any issue regarding his performance of service can only be handled through proper channels sanctioned by the law and the Company's constitution.

3. By an order dated 25th January, 2018, the High Court (Ali Aroni, J., as she then) granted leave to the respondent to commence Judicial Review proceedings as prayed in the application. Additionally, the learned Judge ordered that the leave so granted was to operate as a stay of implementation of the decision to suspend the applicant therein as Managing Director of Nzoia Water Services Company Limited.

4. Despite the existence of the orders dated 25th January, 2018, the respondent claimed that the employer refused to reinstate him to work. To make the matters worse, he received a letter dated 1st February, 2018 suspending him from his employment with Nzoia Water Services Company Limited. He finally received a letter dismissing him from service altogether.

5. Having concluded that the appellants had positively disobeyed the court orders of 25th January, 2018 in their actions, the respondent filed a Notice of Motion application dated 1st March, 2018 seeking the following orders:

    1. That this application be certified urgent and the same be heard on a priority basis.

    2. That the honourable court be pleased to cite Mr. Kennedy Kilali Wekesa, Lusweti Furaha B.K.S. and Mr. Dickson K. Kirui, acting for the Interested Party for being in contempt of a valid order of this honourable court issued in this matter on 25th January, 2018 and served on the Interested Party on 26th January, 2018.

    3. That this honourable court be pleased to order that Mr. Kennedy Kilali Wekesa, Lusweti Furaha B.K.S. and Mr. Dickson K. Kirui, acting for the Interested Party be punished for contempt of court by imprisonment for a term that this honourable court shall deem fit or pay fine or both for disobedience of the order this court made on 25th January, 2018.

4. That the costs of this application be provided for.

6. The application was supported by the affidavit of the applicant whereby he deponed as follows:

    1. That this court made specific orders on 25/1/2018 staying the Respondents' decision of suspending me from my position as the Managing Director of the Interested Party and directing that I continue serving as such pending the hearing and determination of the substantive application for Judicial Review.

    2. That the Respondents were duly served with the said court order on the 26/012018.

    3. That by virtue of the said order, the court directed that I remain in my position as the Managing Director of the Interested Party pending the hearing and determination of the substantive application for Judicial Review.

    4. That the substantive application for judicial review was filed on 30/01/2018.

    5. That the parties in this case were duly served with the said order on 26th January, 2018.

    6. That Mr. Kennedy Kilali Wekesa, Lusweti Furaha B.K.S. and Mr. Dickson K. Kirui, were served with the orders of 25/01/2018 on 26/01/2018 at the Interested Party's offices in Webuye.

    7. That Mr. Kennedy Kilali Wekesa has now installed himself as an acting Managing Director.

    8. That Mr. Lusweti Furaha B.K.S. has installed himself as the Chairman of the Board of Directors of the Interested Party.

    9. That the chairperson of the Board is Mr. Wambeye Marakia and not Mr. Lusweti Furaha B.K.S.

    10. That Mr. Dickson K. Kirui who formerly had a contract with the Interested Party ceased to act for the Interested Party as Company Secretary on 18/09/2017.

    11. That on 29/1/2018, I reported on duty at the Interested Party's offices at Webuye only to find goons hired by the said Kennedy Kilali Wekesa who prevented me from accessing the office and informed me that they had instructions from the said Kennedy Kilali Wekesa to ensure that I do not access my office or even the compound.

    12. That Mr. Kennedy Kilali Wekesa be barred from accessing my office so that I continue serving in my position as directed by the court.

    13. That on 1/2/2018 at 9a.m., Mr. Lusweti Furaha B.K.S. served my Advocate with a suspension letter suspending me indefinitely and barring me from accessing my office.

    14. That the purported meeting which resolved my suspension was allegedly held on 1/2/2018, and the said meeting was convened by Mr. Dickson K. Kirui though he is a stranger to the Interested Party having ceased to work for the Interested Party on 18/9/2017.

    15. That my counsel warned Mr. Kennedy Kilali Wekesa not to breach the court order vide her letter dated 30/01/2018 and served on 30/01/2018.

    16. That upon service of the letter dated 30/01/2018, Mr. Lusweti Furaha B.K.S. served my Advocates with an Internal Memo dated 26/01/2018 and addressed to the Acting Managing Director asking him to arrange an office for the Managing Director.

17. That in the same day of 31/01/2018, Mr. Kennedy Kilali Wekesa served an internal memo on my counsel. The Memo was from Head of Technical Services addressed to the Human Resource Manager to check at the gate if there were goons barring employees from accessing the Interested Party's premises.

18. That on 31/01/2018, my counsel sent an email to me and copied to Mr. Kennedy Kilali Wekesa, Lusweti Furaha B.K.S. and MR. WAMBEYE (chairman of the Board) asking them to avail the official driver of mine to pick me on the morning of 01/02/2018.

19. That Mr. Kennedy and Mr. Lusweti did not avail the driver as was requested.

20. That all the above were mere gimmicks by Mr. Kennedy Kilali Wekesa, Lusweti Furaha B.K.S. and Mr. Dickson K. Kirui to avoid complying with the court order served on them on 26/01/2018.

21. That the actions of Mr. Kennedy. Mr. Lusweti and Mr. Dickson not only bring into disrepute the authority of this court but are also tantamount to impunity and cannot be left unpunished.

7. The applicant filed a further affidavit dated 13th March, 2018, whereby he deponed that after his unlawful suspension, he was unlawfully dismissed on 7th March, 2018, vide a letter dated the same date.

8. The Notice of Motion application was opposed by the respondents/contemnors vide their replying affidavits as stated below.

9. In his replying affidavit dated 3rd April, 2018, Kennedy Kilali Wekesa (the 1st respondent/contemnor) averred that: he was competently appointed to the position of Acting Managing Director by the Interested Party's Board of Directors meeting and/or resolution held on 11th October, 2018; the applicant never attempted to report to work as alleged and his allegations that he hired goons to prevent him from accessing his office were false and could only lead to an inquiry as to how he learnt that the goons had been hired and by whom; the applicant was advised to seek alternative means of transport and seek reimbursement of the cost accrued as is provided under the company policy and his employment contract; the applicant did not demonstrate how the court order was not complied with and/or how his efforts to gain access to his office were frustrated; and none of the actions alleged by the applicant therein were proven.

10. In his replying affidavit dated 4th March, 2018, Lusweti Furaha B.K.S. (the 2nd respondent/contemnor) averred that: the respondents/contemnors were not parties to the proceedings in their individual capacities but rather, that the respondents were the County Executive Committee (CEC) Member – Water & Natural Resources Bungoma County, County Executive Committee (CEC) Member – Water & Natural Resources Trans- Nzoia County, County Government of Bungoma and County Government of Trans-Nzoia; the applicant did not raise a reasonable cause of action against the respondents/contemnors to warrant their inclusion in the proceedings; the interested party being a legal entity is distinct from its Directors and contractors; the applicant did not demonstrate how his efforts to gain access to his office were frustrated; the honourable court issued orders on 25th January, 2018 and directed that the leave granted was to operate as stay of the impugned decision being contested in court and further, the respondents were prohibited from taking out any disciplinary action without strict compliance with the Interested Party's Memorandum and Articles of association, the applicable law and the *Constitution*; the applicant did not demonstrate how the said court orders were compromised; he instructed the Acting Managing Director (the 1st respondent/contemnor) to immediately arrange and/or organize the office for the Managing Director (the applicant), which directive was issued immediately after the court order was served upon the Interested Party; Mr.

Kennedy Kilali was competently and procedurally appointed to the position of Acting Managing Director by the Interested Party's Board of Directors meeting and/or resolution held on 11th January, 2018; he was duly elected as chairperson of the Interested Party's Board of Directors in place of Mr. Wambeye vide its meeting and/or resolutions held on 11th January, 2018 and the allegations made by the applicant against him in this regard were frivolous, baseless, malicious and prejudicial as there was no evidence demonstrating that he held the position unlawfully or otherwise; the Interested Party's Board of Directors have the ultimate power and mandate to appoint, dismiss and/or extend the contracts and/or services of contractors and/or service providers, the Company Secretary being one of them and in which regard Mr. Dickson Kirui's contract was extended vide a meeting held on 25th October, 2018 whereby the applicant was present and therefore cannot pretend to be unaware of the same; the applicant's suspension from work was competently and properly issued by the Interested Party's Board of Directors who reviewed its ad hoc committee's report with regard to the company's performance and based on the findings of the report resolved to suspend the applicant from work for 21 days; the applicant was required vide the said suspension letter to show cause why he should not be summarily dismissed from work; the applicant did not respond to the said suspension letter and/or show cause letter which was adequately considered during the applicant's disciplinary hearing; the disciplinary proceedings which involve employer- employee relationship fell outside the purview, ambit and/or jurisdiction the honourable court and all the required and necessary legal and constitutional safe guards and procedures were observed while taking disciplinary action against the applicant; therefore, the Interested Party was not prevented from carrying out disciplinary action against the applicant as long as there was justifiable cause, legal authority and mandate; by principle of law, the honourable court cannot interfere with the internal disciplinary mechanisms and/or procedure of a company unless there is blatant breach of the law which did not occur in as far as the applicant's disciplinary proceedings were concerned; and that none of the allegations made by the applicant has been proven and neither can they withstand the weight evidentiary rules and/or requirements.

11. In his replying affidavit dated 4th April, 2018, Dickson K. Kirui (the 3rd respondent/contemnor) averred that: despite his wish not to have his contract for provision of secretarial services extended, the Interested Party's Board of Directors convened and on 25th October, 2017, unanimously passed the resolution to retain and/or extend his services and the applicant who was then the Interested Party's Managing Director sat in the Board session that approved to retain and/or extend his services; pursuant to the said approval, he has participated in the Interested Party's activities as its Company's Secretary with full approval and authority of the applicant thus he cannot renounce his participation in the Interested Party's activities in the execution of his mandate; he is not involved in the day to day running of the Interested Party's activities and/or operations and therefore his inclusion as a contemnor in the proceedings was misconceived, ill-advised and uncalled for as no cause of action arises and/or has been established against him; the proceedings being a contempt of court application, the court lacks the requisite authority and/capacity to hear and/or determine any issue related to his appointment, renewal and/or contract extension; and in his capacity as the Company Secretary, he invited the applicant via a letter dated 31st January, 2018 to attend the Interested Party's Board of Directors meeting scheduled on 01st February, 2018 as its Managing Director and the applicant never attended the said meeting nor sent an apology.

12. By consent of the advocates for the parties, the application was disposed by way of written submissions.

13. Upon analyzing the application for contempt, pleadings and submissions of the parties, the learned Judge (Riechi, J., who had now taken over the matter upon the transfer of Aroni, J. out of the station) held that there was a court order dated 25th January, 2018; that the order was specific requiring the contemnors to do an act or refrain from doing an act, and finally that the contemnors disobeyed the

order. In particular, the learned Judge was persuaded that by suspending the respondent vide the letter dated 1st February, 2018, the appellants had disobeyed the court order. The learned Judge, thus, found them guilty of contempt of court.

14. Aggrieved by the decision of the High Court, the appellants filed a Notice of Appeal dated 19th February, 2019, and a Memorandum of Appeal dated 21st February, 2019, in which they raised fourteen (14) grounds of appeal namely:

1. That the learned honourable judge erred in law and in fact in failing to take into account the totality of the evidence and facts presented before him in arriving at the said decision.
2. That the learned honourable judge erred in law and in fact by dwelling on extraneous matters in arriving at the said decision.
3. That the learned honourable judge erred in law and in fact in failing to appreciate the role, mandate and authority each of the appellants possess in and/or while executing their respective mandates.
4. That the learned honourable judge erred in law and in fact in failing to consider the appellants submissions and depositions vide their respective affidavits.
5. That the learned honourable judge erred in law and in fact in considering the events of the Board of Directors meeting held on 1st February, 2018 and the decisions thereafter of suspending the respondent from employment which was outside the ambit of the jurisdiction of the honourable court as it borders on employer-employee relationship.
6. That the learned judge failed to acknowledge the circumstances of the case and render a just and accurate decision.
7. That the learned judge failed to acknowledge the fact that the respondent was invited to attend the Board of Directors meeting held on 1st February, 2018 as the Managing Director of the Interested Party which he never attended and/or sent any apologies.
8. That the learned judge failed to consider and make a determination on the issue of whether the respondent indeed made any attempt to return to work and/or whether he considered using the alternative means of transport to work as provided in his contract of employment.
9. That the learned judge erred in failing to determine and find that the application for contempt by the respondent was lacking in evidence on the allegation that goons barred him from accessing his place of work.
10. That the learned judge failed to ascertain as to whether and indeed the allegation of goons hired to bar the respondent had been proved sufficiently and to the required standard.
11. That the learned judge erred in law and in fact in failing to appreciate and acknowledge that the appellants were not responsible for the respondents return to work if at all the respondent indeed was willing to work.
12. That the learned judge erred in law in committing the appellants who are agents, employees and/or assigns of Nzoia Water Services Company Limited without lifting the veil of incorporation.
13. That the learned judge erred in law in failing to find that the law on contempt of court requires personal service of an order as provided under Order 5 and Order 48 Rule 2 of the Civil Procedure Rules 2010.

14. That the learned judge erred in law in finding that the law on services of an Order in Kenya requires proof of notice of the Order as opposed to proof of service.

15. Consequently, the appellants prayed that the appeal be allowed; the ruling and orders of the High Court be set aside, dismissed and/or quashed; a declaration that the appellants were not in contempt of court orders issued on 26th January, 2018; the costs of this appeal and the High Court application be borne by the respondent; and any further orders that the court deems fit and just to grant so as to meet the ends of justice.

16. During the virtual hearing of the appeal, learned counsel Mr. Makori appeared for the appellants, and learned counsels Mr. Maruti and Mr. Aloo appeared for the respondent. All parties filed written submissions and relied entirely on them. They also made oral submissions.

17. The appellants grouped their grounds of appeal into five. In the first place, they contended that the orders of 25th January, 2018, were specifically directed to the respondents in the Judicial Review application and were in respect of the suspension letter dated 8th January, 2018, signed by the 1st and 2nd respondents in that matter. According to them, the suspension conveyed vide the letter of 1st February, 2018 which the learned Judge found to be in contempt, was done, not by the respondents in the Judicial Review matter, but by the Board of Directors of Nzoia Water Services Company Limited and were with respect to allegations that were totally different from the those in the suspension letter dated 8th January, 2018 which was the subject of the Judicial Review application.

18. Second, the appellants contended that whilst suspending and/or taking disciplinary action against the respondent, the Board of Directors of Nzoia Water Services Company Limited was executing its mandate as an employer to the respondent, which mandate had not been taken away by the orders of 25th January, 2018.

19. The appellants also argued that the learned trial judge Riechi, J., erred when he convicted them for contempt and fined each of them Kshs. 300,000.00 by relying on the respondent's suspension letter dated 1st February, 2018, since the decision conveyed in that letter was made before the orders of 25th January, 2018.

20. Additionally, the appellants argued that the ingredients of contempt of court were not met since the decision to suspend the respondent by the Board of Directors of Nzoia Water Services Company Limited was not made by any of the appellants in their individual capacity but by the Board in its collective capacity.

21. The appellants also argued that since the Board was taking a disciplinary action, any dispute arising therefrom should have been the preserve of the Employment and Labour Relations Court and not of the High Court.

22. Lastly, the appellants submitted that the allegations that the respondent was barred from accessing his work place in compliance with the orders of 25th January, 2018 were not proved to the required standard; and the mere fact that the respondent was summoned by the Board of Directors via a letter dated 31st January, 2018, to attend the Board meeting was testament enough that the Board was engaging the respondent as its Managing Director and was under duty to ensure the company was executing its mandate.

23. Opposing the appeal, the respondent condensed the issues for consideration into two namely: (a) whether the appellants actions as officers of the Company-Employer exempted them from obedience

of the court order of 25th January, 2018; and whether the appellants were aware of the order of 25th January, 2018 and whether they disobeyed the order.

24. On the first issue, the respondent resisted the appellants' submissions that they had a right as officers of an employer to commence disciplinary proceedings against him. In this regard, the respondent argued that the appellants as officers of the company did not disclose to this Court that the question of their disobedience to the said court orders was already addressed and the disciplinary process rendered a nullity in Kisumu ELRC Cause No. 188 of 2018, Patrick Wanyonyi Munialo vs. Nzoia Water Services Company, wherein it was held at paragraphs *48* to *50* that:

> 48. The Respondent being an Interested Party in the JR proceedings knew that there were orders in place preventing disciplinary action against the Claimant and the least it could have done was to wait for the orders to be lifted or better still, seek the lifting of the orders before issuing the subsequent suspension letter of the 1st February, 2018.
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> 49. RW1 told this court by virtue of the court orders in force at the time, the Claimant had justified reasons not to attend the disciplinary hearing.
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> 50. The court finds and holds that the disciplinary process that culminated in the dismissal of the Claimant was unlawful and unfair for reason of there being in force court orders baring the process."

25. The respondent argued that body corporates operate through human agency and in the event of disobedience, it is the human agents who are held accountable as the appellants were in this case. The respondent also argued that the Employment and Labour Relations Court made a specific finding that the employer and by extension its officers who include the appellants, were obligated to obey the said court orders; and there being no appeal on that decision, the issue of estoppel arises on that particular question and the appellants cannot re-agitate it afresh without violating the well settled tenets of res judicata. For this proposition, he relied on the case of Royal Media Services Limited & 2 Others vs. Attorney General & 8 Others [2014] eKLR, wherein this Court whilst citing the case of Trade Bank Limited vs. LZ Engineering Construction Limited [2000] IEA 266, observed that the issue of estoppel bars a party from re- litigating matters already ruled on by the Court.

26. Further still, the respondent submitted that the learned judge, in evaluating the evidence before him, found that even though the appellants herein denied disobeying the order and not being responsible for the goons who allegedly prevented the respondent from accessing his office, the suspension letter dated 1st February, 2018, betrayed them as it was stated therein that they convened a meeting and purported to suspend the respondent. The learned judge went on to state that the said letter on its own confirms the respondent's contention that the appellants disobeyed the specific court orders which directed the respondent to remain in his position pending the hearing and determination of the substantive motion. Thus, according to the respondent, it follows that even with the context of acting as an officer, servant and/or agent of the employer, the appellants were obligated to obey the court order.

27. On the second issue, the respondent submitted that a cursory perusal of all the affidavits sworn by the appellants before the trial court exhibit that they were aware of the existence of the court order dated 25th January, 2018, and none of them denied knowledge thereof; since the same was served by a licensed process server who deponed in his affidavit that he served it upon the 1st and 2nd appellants through their secretary, Ms. Dorcas, on 26th January, 2018. In this regard, the respondent relied on this Court's decision in Caroline Mutuku vs. Amos Kones Mabele & 2 Others, wherein it was stipulated that the law as it stands today is that knowledge of an order is sufficient for purposes of contempt proceedings.

28. The respondent further submitted that the said court order was clear and unambiguous; and binding upon the appellants who were required to either comply with it or seek to set it aside. As such, he invited this Court not to condone such blatant violations as it would be countenancing an injustice. For this proposition, he relied on this Court's decision in Shimmers Plaza Limited vs. National Bank of Kenya Limited (2015) eKLR, wherein it was held that obedience of court orders is not optional. Rather, it is mandatory and a person does not choose whether to obey a court order or not. The Court further cited Theodore Roosevelt, the 26th President of the United States of America who once said that: "No man is above the law and no man is below it; nor do we ask any man's permission to obey it. Obedience to the law is demanded as a right; not as a favour."

29. This is a first appeal. We are required to review issues of both facts and law afresh and come to our own independent conclusions. Even as we do so, we are obligated to be cognizant of the fact that we should not interfere with the findings of fact by the trial court unless they were based on no evidence or on a misapprehension of the evidence or the trial judge is shown demonstrably to have acted on wrong principles in reaching his findings. (See Selle vs. Associated Motor Boat Co. Limited (1968) EA 123) and Jabane vs. Olenja (1968) KLR 661).

30. We have carefully considered the appeal, the rival submissions of the parties in support of the opposing positions. We will now address them.

31. It is imperative to first briefly lay down the law respecting contempt of court. In our view, this has been most perspicaciously stated in Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR where Mativo J., as he then was, pronounced himself as follows regarding the rationale for contempt of court:

> 46. Contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest."

32. Regarding the elements of contempt of court, Mativo J., in the same case laid them down as follows:

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

> 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:(d)the defendant's conduct was deliberate."

33. We will now review the case at hand with these principles in mind.

34. Before then, however, we will address the threshold question of jurisdiction. The appellants argue that since the issue at hand was an employment matter, the contempt proceedings should have been in the Employment and Labour Relations Court and not the High Court. This argument is a non-starter: the orders of 25th January, 2018 were given by the High Court. It was incumbent upon the same court to enforce them – including through contempt proceedings. It matters not whether the court had jurisdiction in the first place to issue them or not. As long as the orders were in existence and not set aside, they were for obeying. If the appellants formed the opinion that the High Court did not have jurisdiction, then their recourse would have been to approach the court or a higher court to set them aside but not to disobey the orders.

35. We now propose to analyze the remainder of the appeal in terms of the ingredients of the offence of contempt of court as enumerated above.

36. The first element is that there must have be a court order which is clear and unambiguous and directed at the defendants. In the present case, it is not in dispute that the High Court issued orders on 25th January, 2018 that among others read as follows:

> " 1. That the Applicant be and is hereby granted leave to apply for an order of certiorari to remove into the High Court and quash the decision of the 3rd and 4th Respondents issued through the 1st and 2nd Respondents via their letter dated 8th January 2018 suspending the Applicant as Managing Director of the Interested party for the justifiable cause, without the legal authority or mandate to act as such and without giving the Applicant the right to be heard.
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> 2. That the Applicant be and is hereby granted leave to apply for an order of prohibition restraining the Respondents either by themselves or by someone authorized by them from suspending, taking disciplinary action or otherwise terminating the Applicant's contract without strict compliance with the Memorandum and Articles of Association of the Interested Party, the applicable law and the *Constitution* of Kenya.
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> 3. That the Grant of Leave do operate as stay of implementation of the impugned decision and all subsequent steps arising therefrom and in particular the Applicant to remain in his position pending the hearing and determination of the substantive motion."

37. It is true that the respondents in the Judicial Review application were: the County Executive Committee Member for Water and Natural Resources for Bungoma County; the County Executive Committee Member for Water and Natural Resources for Trans Nzoia County; the County Government of Bungoma; and the County Government of Trans Nzoia. The Nzoia Water Services Company Limited was enjoined as an Interested Party. Given this, it is true that the appellants herein

were not named parties in the Judicial Review application. However, it is also true that they acted, regarding the matters under appeal, as members or officials of the Board of Directors of Nzoia Water Services Company Limited, which was a named Interested Party. It is also true that all the appellants do not deny having knowledge of the court orders of 25th January, 2018 and understanding its import and purpose. Indeed, in all the replying affidavits they filed before the High Court as summarized above, they each demonstrate knowledge of the court orders.

38. As the respondent argues, our law has now evolved such that in Kenyan jurisprudence, the principle that knowledge of a court order suffices for contempt proceedings, thereby dispensing with the necessity for personal service and other like formalities, has been affirmed in several cases. This Court, in Shimmers Plaza Limited v. National Bank of Kenya Limited [2015] eKLR, stated:

> On the issue of service, we hold the view that knowledge of an order supersedes personal service and for good reason. The law cannot countenance a situation where a party who is fully aware of a court order is allowed to go around violating it simply because he was not personally served. This would amount to undermining and ridiculing the authority of the courts."

39. This position underscores the courts' commitment to upholding their authority and ensuring compliance with their orders, irrespective of personal service. Hence, in Basil Criticos v. Attorney General & 8 Others [2012] eKLR, this Court held:

> " The law has changed and as it stands today knowledge supersedes personal service... where a party clearly acts and shows that he had knowledge of a court order; the strict requirement that personal service must be proved is rendered unnecessary."

40. These decisions reflect a shift towards emphasizing the contemnor's awareness of court orders over the formalities such as personal service, thereby reinforcing the enforceability of judicial directives. This same judicial attitude applies in cases, such as the present one, where individuals who have become aware of court orders seek to reconstitute themselves into a different body or to act in different capacities with the sole aim of defeating the court orders as issued. Once it had been shown that the appellants had knowledge of the court orders, their attempts to act as the Board of Nzoia Water Services Company Limited with a view to effectuating the very thing the court orders had stayed, cannot succeed.

41. The appellants also contest that it was demonstrated that they, in fact, disobeyed the court orders of 25th January, 2018. In this regard, they make two arguments. One, they say that the respondent did not prove that there were goons placed at the gates to prevent him from accessing the officers. Two, they say that in their letter dated 1st February, 2018, the decision communicated is unrelated to the decision communicated in the letter of 8th January, 2018 which was the subject of Judicial Review. In their letter of 1st February, 2018, the appellants argue, they were acting as the Board, which retained its authority to discipline the respondent despite and inspite of the court orders of 25th January, 2018.

42. The first issue – that sufficient proof was not produced to show that the appellants were responsible for the "goons" who allegedly prevented the respondent from accessing the offices – is a red herring. The learned Judge specifically based his finding of contempt on the contents of the letter of 1st February, 2018 and the entirety of his analysis is based thereon. He made no findings regarding the "goons".

43. On the second issue, we find the appellants' arguments disingenuous. The court orders of 25th January, 2018 instructed that "the grant of leave do operate as stay of implementation of the impugned decision and all

> subsequent steps arising therefrom and in particular the Applicant to remain in his position pending the hearing and determination of the substantive motion."

44. This order has two specific parts. In the first part, it stays the implementation of the impugned decision. The impugned decision is the one communicated in the letter of 8th January, 2018 which not only announces the respondent's suspension but announces investigations against him for "cases of misconduct received against [him] as the Managing Director of NZOWASCO." According to the letter, the investigations were to take three months. So, the import of the court orders of 25th January, 2018 was to stop any investigations against the respondent pending the hearing and determination of the Judicial Review application. In the second part, the court order specifically requires that the respondent remains in his position as the Managing Director pending the hearing and determination of the Judicial Review application.

45. In its letter dated 1st February, 2018, the Board suspended the respondent for a raft of alleged acts of misconduct. Two things immediately spring to mind: first, all the allegations cover the same undefined period as that covered in the letter of 8th January, 2018 despite the fact that the court orders of 25th January, 2018 had stayed all those investigations. Additionally, the letter defies the court's specific order that the respondent should remain in his capacity as the Managing Director pending the hearing and determination of the Judicial Review application.

46. It seems readily clear to us that the appellants defied the very terms of the court orders of 25th January, 2018. This same analysis demonstrates that their defiance was deliberate since they specifically attempted to evade the technical implications of the court order through subterfuge.

47. In the end, like the High Court Judge, we are persuaded that there was a specific High Court order (of 25th January, 2018); it covered the appellants among others; the appellants knew about the order; they acted in disobedience of it; and their disobedience was deliberate. In short, the appellants were in contempt of court as the learned Judge correctly found.

48. The upshot is that we find no basis for interfering with the ruling, and orders of the High Court. Accordingly, we are satisfied that this appeal lacks merit and we hereby dismiss it with costs to the respondent.

49. Orders accordingly

DATED AND DELIVERED AT KISUMU THIS 11TH DAY OF APRIL, 2025.

HANNAH OKWENGU

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JUDGE OF APPEAL

J. MATIVO

.....

JUDGE OF APPEAL

JOEL NGUGI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR