



**Republic v National Social Security Fund Board Of Trustees; Kamau (Exparte) (Miscellaneous Civil Application E017 of 2022) [2024] KEELC 3503 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3503 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
MISCELLANEOUS CIVIL APPLICATION E017 OF 2022**

**EK WABWOTO, J**

**APRIL 30, 2024**

**IN THE MATTER OF AN APPLICATION FOR AN ORDER OF MANDAMUS**

**AND**

**IN THE MATTER OF MILIMANI ELC CIVIL SUIT NO 104 OF 2007**

**NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES-**

**V**

**GEOFFREY CHEGE KIRUNDI & 3 OTHERS**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES ..... RESPONDENT**

**AND**

**MIKE MAINA KAMAU ..... EXPARTE**

**RULING**

1. By a Notice of Motion application dated 2<sup>nd</sup> December, 2023 filed, the Ex parte Applicant sought to have the Managing Trustee- Mr David Koross, of National Social Security Fund (NSSF) be cited for contempt of court orders and be committed to 2 years of civil jail together with costs of the Application.
2. The application was supported by the supporting affidavit sworn by Mike Maina Kamau dated 2<sup>nd</sup> December 2023 and further affidavit dated 26<sup>th</sup> February 2024. The application was premised on the following grounds:



- a. The judgment and order extracted from the Court orders granted on 8<sup>th</sup> June 2023 were served upon Mr Koross and to date the Respondent had not complied with orders to settle the decretal sum.
  - b. The orders made have neither been set aside nor appealed against, therefore they are still in force.
3. The application was opposed. The Respondent filed a replying affidavit sworn by Helen Koech, its Ag. Manager Legal Department on 2<sup>nd</sup> February 2024. It was averred that the application allegedly offends the mandatory provisions of Section 7 of the Civil Procedure Act in view of the ruling delivered on 5<sup>th</sup> October 2023 in ELC 104 of 2007, It allegedly offends Order 22 of the Civil Procedure Rules and it is allegedly contrary to the doctrine of exhaustion of remedies and is an abuse of the court process.
  4. The application was canvassed by way of written submissions pursuant to the directions issued by this Court. The applicant filed his submissions dated 28<sup>th</sup> February 2024. None were filed by the Respondent.
  5. The Court has considered the application, rival affidavits filed and written submissions filed by the applicant and how outlined the following key issues for determination herein: whether the Applicant have made out a case for the grant of the orders sought and who shall bear the costs of the application.
  6. With regards to the issue of contempt, I have considered the case of *Sam Nyamweya & Others v Kenya Premier League Ltd and Others* [2015] eKLR where it was stated as follows:

“Contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.” [Emphasis mine]
  7. In *North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi* [2016] eKLR, the Court discussed the threshold that would constitute contempt as follows: “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 defendants conduct was deliberate.” [Emphasis mine]
  8. A perusal of the letter dated 7<sup>th</sup> August 2023 (marked as MMK2) confirms service of the extracted decree upon the Respondent. In this instance, the Respondent did not present any evidence to controvert service of the orders of the Court nor participation in the Court proceedings. Undoubtedly, the Respondent has both a statutory and public duty to satisfy the decree issued by a competent court in favor of the ex parte applicant.
  9. On the issue of costs, the courts have ultimate discretion. In my view awarding further costs herein will unnecessarily prolong the suit and therefore exasperate the applicant’s attempts to enjoy the fruits of litigation and in view of the same, this Court hereby directs each party to bear its own costs of the application.



10. Accordingly, for the reasons set out above, this Court finds that the Applicant's Notice of Motion dated 2<sup>nd</sup> December 2023 is merited and the same is hereby allowed as follows:

- i. Mr. David Koross, Managing Trustee, National Social Security Fund is in for contempt of court orders issued on 8<sup>th</sup> June 2023. and hence guilty.
- ii. Pending mitigation and sentencing, the Contemnor is at liberty to purge the contempt herein within 30 days from today.
- iii. The Contemnor shall appear before this Honourable court at a date to be set after delivery of this ruling for mitigation and sentencing should he not have purged the said contempt within 30 days.
- iv. Each party to bear own costs of the application.

11. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF APRIL 2024.**

**E. K. WABWOTO**

**JUDGE**

In the virtual presence of: -

Ms. Nduta Kamau for the Applicant.

Mr. Kimani for the Respondent.

Court Assistant: Caroline Nafuna.

