



Ogenga v National Industrial Training Authority & another (Employment and Labour Relations Petition E225 of 2023) [2025] KEELRC 88 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEELRC 88 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E225 OF 2023
MN NDUMA, J
JANUARY 23, 2025

BETWEEN

STEPHEN OGENGA PETITIONER

AND

NATIONAL INDUSTRIAL TRAINING AUTHORITY 1ST RESPONDENT

ETHICS & ANTI-CORRUPTION COMMISSION 2ND RESPONDENT

RULING

1. The court delivered a judgment dated 25/4/2024 in favour of the Petitioner against the Respondents and issued the following final orders contained in the said judgment: -
 - a. A declaration is hereby issued that the decision of the 1st respondent to interdict the petitioner from his employment as the Director General of the 1st respondent by a letter dated 24th November 2023 is unlawful and unfair.
 - b. An order of *certiorari* is hereby issued to bring into the court for the purpose of quashing the unlawful interdiction of the petitioner by the letter dated 24th November 2024 against the respondents and any resolution and decision resulting therefrom.
 - c. An order for judicial review is issued by way of *mandamus* directing the 1st respondent to reinstate the petitioner to his employment including the reinstatement of his full salary and employment benefits from the date of interdiction.

The above remedies satisfy the damage and loss suffered by the petitioner and the court does not grant an award of damages to the petitioner.
 - d. The 1st respondent to pay the costs of the suit.



2. In the said judgment at page 15, the court had observed the following: -

“It is clear that the investigations by EACC commenced in the year 2019. At the time of filing this suit, the Petitioner had not been charged with any corruption and or economic crime to warrant keeping him under suspension at all or for period of upto 12 months.”

3. This observation was the main basis upon which the court made the final orders aforesaid inter alia.

4. It is not in dispute that the 2nd Respondent, EACC presented a report and recommendation to the Directorate of Public Prosecutions (DPP) upon which report the DPP issued a consent to charge/prosecute the applicant herein. The Applicant was subsequently charged before Nairobi, Milimani Magistrates’ Court in Anti-Corruption Criminal Case No E016 of 2024 on 3/6/2024 whereupon the Applicant and others pleaded not guilty as charged.

5. That upon the Applicant being charged under section 62(1) of the *Anti-Corruption and Economic Crimes Act*, he was suspended on half pay with effect from the date of the charge until the matter is heard and determined as is required by the said Act.

6. The Respondent had meanwhile, by a letter dated 15/5/2024 as placed before this court in the replying affidavit of the 1st Respondent, lifted the interdiction of the Applicant and reinstated the salary and other benefits which were withheld during the period of interdiction in accordance with court orders and section 71(4) of the *Public Service Commission Act* 2017. The 1st Respondent also reinstated the Applicant as follows: -

“By copy of this letter you are directed to resume your duties immediately and proceed to conclude the process of taking over from the Acting Director General (Ag. DG) Ms. Theresia Wasike within seven (7) working days from the date of this letter.”

7. The Applicant meanwhile filed the present notice of motion dated 23/5/2024 seeking the following orders.

a. Spent

b. That pending the hearing and determination of this application, this Honourable Court directs the 1st Respondent to complete the handing over process within twenty-four hours in compliance with this Honourable Court’s judgment of 25th April 2024.

c. That this Honourable Court be pleased to find that the 1st Respondent is in contempt of court for disobeying the judgment of this court issued by Hon. Judge Mathews Nderi Nduma on 25th April 2024 by refusing to reinstate the Applicant to his employment as was ordered by the court.

d. That the chairman, Hon. Aden Noor Ali, and the members of the 1st Respondent present in the special meeting on 22nd May 2024 be committed to civil jail for a period of not more than six months’ jail term for the said contempt of court or be punished in any other manner that the court finds just.

e. That the chairman, Hon. Aden Noor Ali, be condemned to pay any incidental costs relating to this application including fines that the court may deem fit.



- f. That the Board be compelled to provide and serve the Applicant with the minutes held on 22nd May 2024 and 13th May 2024 and letters from the 2nd Respondent relating to this matter pending the hearing of this application.
9. From the facts relied upon by the Applicant in the notice of motion and supporting affidavit as well as the juxtaposed facts set out in the replying affidavits of the 1st and 2nd Respondents, the application filed by the Applicant on 23/5/2025 did not disclose the full facts as to what had transpired as at the date of the filing between the Applicant and the Respondents.
10. The court is satisfied that the Respondents had complied with the orders of the court vide the letter dated 15/5/2024 and the alleged contemnor, Hon. Aden Noor Ali, the chairman of the 1st Respondent has not been shown to be in contempt of court in any manner.
11. The subsequent charge of the Applicant by the DPP on recommendation of the 2nd Respondent, EACC is a matter outside the purview of the judgement of the court delivered on 25/4/2024. And the Respondents have rebutted the case by the Applicant and clearly demonstrated that this application has been overtaken by events upon the Applicant being charged with the offence under *Anti-corruption and Economic Crimes Act*, 2003 and Public Procurement and Disposal Act, 2015.
12. In the final analysis the application lacks merit and is dismissed with costs.

DATED AT NAIROBI THIS 23RD DAY OF JANUARY 2025

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Otieno for Petitioner/Applicant

Ms. Akuno for 1st Respondent

Ms. Murugi for 2nd Respondent

Mr. Kemboi – Court Assistant

