



**Kioko v Technical University of Kenya & another (Petition
E173 of 2023) [2025] KEELRC 53 (KLR) (22 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 53 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E173 OF 2023
HS WASILWA, J
JANUARY 22, 2025**

BETWEEN

CUSTINE WANZA KIOKO PETITIONER

AND

TECHNICAL UNIVERSITY OF KENYA 1ST RESPONDENT

KENYA UNIVERSITIES STAFF UNION 2ND RESPONDENT

RULING

1. The application before this Court is dated 9th September 2024, brought by the Petitioner/Applicant, through her advocate, Osewe Alphonse Collins Odoyo of Collins Grace & Associates Advocates. It seeks urgent orders against the Kenya Universities Staff Union (the 2nd Respondent) for alleged disobedience and defiance of Court Orders issued on 26th July 2024.
2. The Applicant alleges that the 2nd Respondent, led by its Secretary-General, Dr. Charles Mukhwaya, has continued to expel her as the National Vice Chairperson and a member of the union, hold meetings in her absence, and pass a vote of no confidence against her. These actions are said to have been undertaken despite the existence of binding Court Orders, served on the same day they were issued, and without any pending appeal.
3. The Applicant asserts that the 2nd Respondent's conduct constitutes wilful contempt of court, bringing the judiciary into ridicule and disrepute. The Court is urged to assert its authority and dignity by finding the 2nd Respondent in contempt and imposing punitive measures, including fines, arrest, or detention of the Secretary-General and attachment of the Respondent's property. Additionally, the Applicant seeks reinstatement as a signatory to the union's bank accounts.
4. The application cites various provisions of the law, including Sections 1A, 3, 3A, and 63(c) and (e) of the *Civil Procedure Act*, Order 40 Rules 1(a), 2, 3, 4, and 11, Order 51 Rules 1 and 3 of the



Civil Procedure Rules 2010, Section 5(1) of the Judicature Act, and Articles 47, 50, and 159 of the Constitution of Kenya, 2010.

5. The Applicant contends that the 2nd Respondent's actions threaten the administration of justice, undermine the authority of the Court, and prejudice her rights. It is argued that unless the application is heard and determined urgently, the Respondent will continue to act with impunity, rendering the Petition nugatory. The Applicant submits that the Court has the jurisdiction to grant the orders sought and that failure to do so will cause her irreparable harm.
6. Through an affidavit dated 9th September 2024, Custine Wanzakioko, supports the Applicant's motion before this Honourable Court. The deponent identifies herself as the National Vice Chairperson, Branch Chairperson, and a member of the 2nd Respondent. She confirms her authority to swear the affidavit due to her knowledge of the facts.
7. The deponent states that she is aware of the Court Orders issued on 26th July 2024 in open court, in the presence of counsel for both parties. She affirms that no appeal or notice of appeal has been filed by the Respondents since the issuance of these orders. Despite this, the officials of the 2nd Respondent, led by Secretary-General Dr. Charles Mukhwaya, have continuously violated the orders. The violations include holding meetings, removing her as a signatory to the union's bank accounts, and organizing an illegal vote of no confidence against her during an Annual Delegates Conference.
8. The deponent asserts that these actions by the 2nd Respondent amount to deliberate and willful disobedience of the Court Orders. She notes that such conduct undermines the authority of the Court and brings the judiciary into ridicule and disrepute. In light of this, the deponent believes that the Respondents' actions warrant punishment for contempt of court to uphold the rule of law and judicial dignity.
9. The affidavit further references Constitutional Petition No. 87 of 2017, Kenya Human Rights Commission vs. Attorney General & Law Society of Kenya. This precedent emphasizes the judiciary's authority to enforce its orders and punish non-compliance to maintain public respect and ensure the administration of justice. The deponent highlights that failure to enforce compliance with Court Orders risks rendering the judiciary powerless and ineffective.
10. The deponent pleads with the Court to urgently hear and determine the application, emphasizing that unless the orders sought are granted, the Applicant will suffer irreparable harm. Furthermore, the continued non-compliance by the 2nd Respondent endangers the dignity and authority of the judiciary.
11. The affidavit concludes with the deponent confirming that the statements made therein are true to the best of her knowledge and based on disclosed sources of information. She prays for the Court to act urgently to ensure justice is served and the integrity of its orders is preserved.

Petitioner's Written submissions

12. The Petitioner filed an application dated 9th September 2024 seeking orders to deny the 2nd Respondent audience, impose a fine, or commit them to six months' civil jail for contempt of court. This stems from the alleged defiance of the court's ruling and orders issued on 26th July 2024, reinstating the Petitioner as National Vice Chairperson and a member of KUSU. The Petitioner alleges that despite knowledge of the ruling, the 2nd Respondent conducted a vote of no confidence against her, contrary to the court's directive.
13. The Petitioner relies on the definitions of contempt in Black's Law Dictionary and Halsbury's Laws of England and emphasizes that court orders must be obeyed unless discharged. The submission cites



Republic v Kajiado County & 2 Others ex parte Kilimanjaro Safari Club Limited [2019] eKLR and Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others [2014] eKLR, asserting that the Judicature Act and English law remain applicable for contempt proceedings due to the invalidation of the Contempt of Court Act of 2016. The Petitioner also references Samuel M. N. Mweru & Others v National Land Commission & 2 Others [2020] eKLR, emphasizing the continuing applicability of section 5 of the Judicature Act.

14. The submission highlights that the ruling and orders were delivered in the presence of counsels for all parties and were later served on the 2nd Respondent. The Petitioner cites Simmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR and Basil Criticos v Attorney General & 8 Others [2012] eKLR to argue that knowledge of court orders supersedes the requirement for personal service.
15. The Petitioner further contends that the 2nd Respondent's actions constitute deliberate disobedience of the court's orders, citing Sam Nyamweya & 3 Others v Kenya Premier League Limited & 2 Others [2015] eKLR, which underscores the importance of compliance with court orders to uphold the rule of law. The Petitioner relies on Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another [2005] eKLR to argue that disobedience, even if the order is deemed irregular or void, is inexcusable.
16. The submission emphasizes the need for deterrence against contempt, citing Republic v Kenya School of Law & 2 Others ex parte Juliet Wanjiru Njoroge & 5 Others [2015] eKLR. The Petitioner urges the court to send a strong message against such conduct to maintain the authority and dignity of the judiciary. The Petitioner concludes that the contemnor's actions are malicious, undermine judicial authority, and violate the principles of governance. It is requested that the court finds the 2nd Respondent guilty of contempt, order their personal appearance for mitigation and sentencing, and ensure compliance with its rulings to preserve the rule of law.

Respondent's Case

17. Through a Replying Affidavit dated 7th October 2024, the 2nd Respondent avers as follows: the deponent, Dr. Charles Mukhwaya, is a Kenyan citizen, the Secretary General of the 2nd Respondent, and competent to swear this affidavit. He has read and understood the Notice of Motion Application dated 9th September 2024, with guidance from the 2nd Respondent's Advocates.
18. The ruling of this Honorable Court dated 26th July 2024 determined an application dated 5th June 2024 that sought a review of the Court's orders of 17th May 2024. In its ruling, the Court restrained the 2nd Respondent from implementing the decision made at the 2023 Annual Delegates Conference to expel the Petitioner as National Vice Chairperson and Branch Chairperson of the 2nd Respondent.
19. The rationale for the Court's decision was that the recording of the said conference did not clearly demonstrate how the 2nd Respondent identified the members who voted to expel the Petitioner, as the election was conducted by shouting. The deponent is advised by the 2nd Respondent's Advocates that, in contempt of court proceedings, the Applicant must prove the terms of the order and the Respondent's failure to comply with those terms.
20. The deponent believes the ruling did not bar the 2nd Respondent from initiating further disciplinary action against the Petitioner, whose gross misconduct has negatively affected the Union's welfare. Copies of complaints and correspondence providing evidence of this misconduct are annexed to the affidavit.
21. Further, the deponent notes that the Court's ruling did not address the Petitioner's conduct, the reasons for her removal, or the possibility of subsequent disciplinary action. On 9th August 2024,



during the 2nd Respondent's Annual Delegates Conference, a resolution was passed to revoke the Petitioner's membership and convert her status to agency fee-paying. This resolution was proposed by Victor Waweru of the University of Nairobi Branch and seconded by Anne Ndolo of Maseno University Branch.

22. The resolution was adopted through a written petition circulated among the delegates, who appended their signatures to indicate support or opposition to the resolution. A copy of this petition is annexed to the affidavit.
23. The deponent asserts that the 2nd Respondent is not in contempt of the Court's orders of 26th July 2024, as the initiation of new disciplinary proceedings against the Petitioner did not breach those orders. No evidence has been presented to show deliberate or willful disobedience of the Court's directive by the 2nd Respondent.
24. The deponent prays that this Honorable Court dismisses the Petitioner's application dated 9th September 2024 with costs to the 2nd Respondent. The facts deposed herein are true to the best of his knowledge, belief, and understanding, save for matters stated on information or advice, whose sources have been disclosed.

2nd Respondent's Written Submissions

25. In their written submissions dated 4th December 2024, the 2nd Respondent argues that the Application before the Court is misguided and ill-informed. The 2nd Respondent highlights that the Applicant's claims of contempt are baseless and unsupported by evidence. The Respondent references its Replying Affidavit dated 7th October 2024, detailing that the Court's ruling on 26th July 2024 quashed the decision of the Annual Delegates Conference of 17th November 2023 but did not bar the Respondent from initiating fresh disciplinary proceedings against the Applicant.
26. The 2nd Respondent asserts that at its Annual Delegates Conference held on 9th August 2024, a vote of no confidence was passed against the Applicant, revoking her membership and converting it to agency fee-paying status due to gross misconduct. This action, they contend, was not in violation of the Court's orders, as the ruling was primarily based on the procedural shortcomings of the 2023 decision and did not address the Applicant's conduct or bar future disciplinary measures.
27. The Respondent relies on the case of *Katsuri Limited v Kapurchand Depar Shab (Civil Case 25 of 2013)* and the South African decision in *Kristen Carla Burchell v Barry Grant Burchell*, which established that civil contempt requires proof of clear and binding terms of the order, knowledge of the order, failure to comply, and deliberate defiance. They also cite *Gatharia K. Mutikika v Baharini Farm Ltd*, emphasizing the quasi-criminal nature of contempt proceedings and the higher standard of proof required.
28. The Respondent argues that the Applicant has failed to meet this burden of proof and has not demonstrated that the terms of the 26th July 2024 order were violated. They reiterate that the Court's ruling did not address the Applicant's conduct or restrict the Respondent from taking further disciplinary action.
29. The 2nd Respondent submits that the Application lacks merit, as no evidence has been adduced to prove deliberate disobedience of the Court's orders. Accordingly, they pray for the dismissal of the Application with costs.
30. I have considered the averments and submissions of the parties herein. On 26/7/2024 this court (Hon. Judge Mwaure) delivered a ruling and "set aside court's orders therein and instead ordered that the 2nd



respondent, its servants, employees or agents or anyone acting on its behalf be restrained from expelling the petitioner as National Vice Chairperson, branch persons and member of the 2nd respondent”

31. The court also granted prayer 3 of the notice of motion which had allowed the prayer to review and/or set aside the orders of 17th May 2024 and any other consequential order.
32. The applicants have now approached this court contending that the respondents have breached these orders of court by expelling the applicant, without her holding meetings and commencing a vote of no confidence against the applicant despite the existence of court orders.
33. The respondents on their part aver that the orders of the court did not bar them from conducting disciplinary proceedings against the applicant.
34. Having considered the orders of this court dated July 26th 2024, this court barred any action by the respondents against the applicant geared at removing her from her position as National Vice Chair amongst other positions.
35. The orders so granted were clear and unambiguous and the applicant cannot purport to indicate and interpret them as they so wish.
36. Commencing any action geared towards removing the applicant from office by whichever means was in my view against clear orders of the court and in contempt of this court.
37. I find the contemnor guilty of contempt of this court’s orders and is therefore liable to punishment unless the contempt is purged. These are the orders of this court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF JANUARY, 2025.

HELLEN WASILWA

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

HELLEN WASILWA

JUDGE

