



**Nyarawati v Action Africa Help International (Petition E199 of 2021)
[2025] KEELRC 370 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 370 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E199 OF 2021**

S RADIDO, J

FEBRUARY 13, 2025

**IN THE MATTER OF ARTICLES 22 AND 258(1)
& (2) OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF ALLEGED THREAT VIOLATION OF
ARTICLES 3 AND 10 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF ALLEGED THREAT TO AND CONTRAVENTION
OF ARTICLES 19, 20, 21, 22, 23, 24, 25(C), 27, 28, 29(D), 31, 35,
41, 47 AND 50 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF THE EMPLOYMENT ACT, 2007

BETWEEN

JACOB MANG'ONDI NYARAWATI PETITIONER

AND

ACTION AFRICA HELP INTERNATIONAL RESPONDENT

RULING

1. In a judgment delivered on 15 June 2022, the Court found for Jacob Mang'ondi Nyarwati (the Petitioner) as follows:
 - i. A declaration that by publishing his image in the Standard Newspaper as the Respondent did on 24th November 2021, the Respondent infringed his right to the fundamental right to privacy and human dignity.



- ii. Compensation of Kshs 5,000,000/- for the breach in (i) above and tarnishing the Petitioner's name.
 - iii. One month's salary in lieu of notice – Kshs 368,047/-.
 - iv. Unpaid salary for 22 days worked in November 2021 – Kshs 269,901.13.
 - v. 25-day leave balance – Kshs 306,705.83.
 - vi. Pension $15\% \times 368,047 \times 12 \text{ months} \times 5 \text{ years}$ – Kshs 3,312,432/-.
 - vii. 12 months compensation for wrongful loss of employment – Kshs 4,416,564/-.
 - viii. Interest at court rates on the sums in (ii), (iii), (iv), (v), (vi) and (vii) above from date of termination till payment in full.
 - ix. Costs of the Petition
2. Action Africa Help International (the Respondent) sought and secured a stay of execution pending appeal on 25 April 2023, on conditions that it paid the Petitioner Kshs 3,000,000/- within 14 days and deposited Kshs 10,000,000/- in an interest-earning account in the joint names of the parties' advocates within 30 days.
3. On 29 August 2024, the Petitioner filed a Motion seeking orders:
- i. ...
 - ii. ...
 - iii. That the Honourable Court be pleased to grant leave to the Claimant/applicant to initiate contempt of court proceedings against the Respondent's Regional Director officer namely Kamau Githaiga.
 - iv. That this Honourable Court do cite and commit to prison Kamau Githaiga for a period of six months or such other period the Honourable Court may deem fit to impose in the circumstances.
 - v. That costs of this application be awarded to the Claimant/applicant.
4. The grounds in support of the Motion were that after delivery of judgment requiring the Respondent to pay Kshs 13,673,640/-, and issuance of a decree for Kshs 16,531,472/-, the Respondent failed to settle the decretal sum; a garnishee order managed to realise only Kshs 2,505,532/- leaving a balance of Kshs 14,025,939/-; the Respondent had closed offices after commencement of execution and disposed of the proclaimed goods; the Respondent had misappropriated funds it received to settle the decretal sum and that Kamau Githaiga was the overall Head of the Respondent.
5. On 14 October 2024, the Respondent's Regional Director swore and filed a replying affidavit in opposition to the Motion.
6. In the affidavit, it was deponed that there was a pending appeal before the Court of Appeal and if the order sought were granted, the appeal would be rendered nugatory; the Regional Director was an agent of the Respondent and thus could not be held in contempt in that capacity; the Respondent was dependent on donor funding and arising from global and national economic crisis, access to donor funding had been hugely impacted and that partial payment of Kshs 2,505,532/- had been made to the Petitioner.



7. The Petitioner filed submissions on 20 November 2024.
8. In the submissions, the Petitioner contended that there was a valid judgment against the Respondent which had not been complied with nor set aside and that there was wilful and deliberate disobedience of the judgment.
9. The Petitioner referred the Court to *Econet Wireless Kenya Ltd v Minister for Information and Communication of Kenya & Ar (2005) eKLR* where the Court stated:

It is essential for the maintenance of the rule of law and order that authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is plain and unqualified obligation of every person against whom an order is made by the Court of competent jurisdiction to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.

10. The Respondent filed its submissions on 21 November 2024.
11. According to the Respondent, the Motion was not only an abuse of the court process but bad in law because the person sought to be cited for contempt was its agent and being such an agent had little or no control over its funds.
12. The Respondent contended that where there is a disclosed principal, then proceedings could not be maintained against an agent. The Respondent cited *Victor Mabachi & Ar v Nurtun Bates (2013) eKLR* and *City Council of Nairobi v Wilfred Kamau Githua t/a Githua Associates & Ar (2016) eKLR* among other authorities.
13. The Respondent further asserted that the Petitioner had not demonstrated wilful disobedience of the judgment on its part because partial payment had been made, and *Directline Assurance Co Ltd v Jamii Bora Bank Ltd & 5 Ors (2015) eKLR* was relied on.
14. The Court has given due consideration to the Motion, affidavits and submissions.
15. The Court will first address the legal technical challenge raised by the Respondent that its Regional Director being an agent cannot be sued or found liable in contempt.
16. The cases cited by the Respondent concerned the joinder of agents to substantive suits where the principals were known and disclosed. The decisions did not turn on the question of liability for contempt.
17. The instant proceedings concern contempt allegedly perpetrated by a legal person within the employment sphere. A legal person can only act through human beings. The Respondent being a legal person, it has no body or soul to be damned.
18. Section 2 of the *Employment Act* defines an employer to mean:

any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.
19. The person sought to be cited Kamau Githaiga has identified himself in his affidavit as the Regional Director of the Respondent. As such, he is not only an agent but a manager of the Respondent for purposes of the *Employment Act*, 2007.



20. In the Court's view, and the Court so finds, he is a person who can be cited for contempt on behalf of the Respondent employer.
21. The Court can now deal with the merits of the contempt application.
22. After the invalidation of the *Contempt of Court Act*, the legal regime is that which existed prior to the enactment of the Act (English law and section 5 of the *Judicature Act*).
23. The Court of Appeal set out the parameters in *Christine Wangari Chege v Elizabeth Wanjiru Evans & Ors* (2014) eKLR.
24. Leave is not a legal requirement before bringing a contempt application (see also *Samuel N. Mweru & Ors v National Land Commission & 2 Ors* (2020) eKLR).
25. The Court delivered a judgment on 15 June 2022. The judgment required the Respondent to pay certain monies to the Petitioner. The Respondent was aware of the judgment and the ensuing decree because it lodged an Appeal with the Court of Appeal.
26. The Respondent also filed a Motion seeking a stay of execution pending the determination of the Appeal.
27. The Motion for stay was granted on terms that the Respondent pays to the Petitioner Kshs 3,000,000/- within 14 days.
28. The condition was not complied with and the Court had to intervene by issuing a garnishee order against the Respondent's accounts. The order realised Kshs 2,505,532/-.
29. The second condition was that the sum of Kshs 10,000,000/- be deposited into an interest-earning account in the name of the advocates within 30 days but none of the parties have disclosed whether this condition was complied with.
30. An attempt by the Petitioner to execute in the normal way did not succeed. The Petitioner asserted without contradiction that the Respondent disposed of the proclaimed properties.
31. The Respondent has attempted to explain the failure to comply by stating that it relies on donor funds and that due to a global and national economic crisis, it has been hugely impacted. The Respondent did not present any evidence to suggest such an economic crisis.
32. The Respondent also argued that its funds are meant solely for particular projects or the promotion of its objectives.
33. The Court finds the explanations mere excuses which are not only hollow but bereft of reality. The Respondent as any entity enters into contracts and where there are allegations of breach of contract, it cannot wave away the failure to fulfil those obligations or court orders on the suggestion that its funds are solely meant for particular activities.
34. The Court finds that the Respondent has been in breach of the judgment/contempt of Court.

Orders

35. The Court orders Kamau Githaiga to appear personally in Court on a date to be given hereinafter to show cause why he should not be committed to civil jail for contempt of Court.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 13TH DAY OF FEBRUARY 2025.



RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Petitioner Omongo Gatune & Co. Advocates

For Respondent Oloo & Oloo Advocates

Court Assistant Wangu

