



**Kenya Union of Sugar Plantation and Allied Workers v Busia Sugar Industry Limited (Cause 56 of 2021) [2025] KEELRC 289 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 289 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA  
CAUSE 56 OF 2021  
DN NDERITU, J  
FEBRUARY 6, 2025**

**BETWEEN**

**KENYA UNION OF SUGAR PLANTATION AND ALLIED WORKERS ..... CLAIMANT**

**AND**

**BUSIA SUGAR INDUSTRY LIMITED ..... RESPONDENT**

**RULING**

**I. Introduction**

1. In a notice of motion dated 5<sup>th</sup> March, 2024(the application) under certificate of urgency, the claimant/ applicant is seeking orders that –
  - i. Spent
  - ii. That Mr. Aiman Yumen, Mr. Caleb Anyula, and Mr. Philip Ipapu being top managers of the respondent do appear before this honourable court in person to show cause why they should not be cited for contempt of court for willful, deliberate, and intentionally refusing to obey and implement the orders of this court as per the judgment delivered on the 30<sup>th</sup> November, 2023.
  - iii. That the honourable court be pleased to find and hold that Mr. Aiman Yumen, Mr. Caleb Anyula and Mr. Philip Ipapu being senior managers of the respondent are in contempt and have disobeyed the orders of the court.
  - iv. That Mr. Aiman Yumen, Mr. Caleb Anyula, and Mr. Philip Ipapu be punished for contempt of Court and be committed to civil jail for a period not less than six months or to impose a punitive fee upon each of them of not less than one hundred thousand Kenya shillings.
  - v. That in the alternative the honorable court be pleased to order attaching the said managers' six-month salaries for recovery of all the union dues lost.



- vi. That the honourable court be pleased to issue a permanent injunction against the respondent, respondent's manager (s) or agent (s), or anyone serving the interests of the respondent from interfering or stopping further (future) recruitment process or threatening, victimizing employees who joins or want to join the union.
  - vii. That the cost of this application be borne by the respondent.
2. The application is expressed to be premised on Section 12 of the *Employment and Labour Relations Court Act*, Rule 17 of the *Employment and Labour Relations Court(procedure)Rules*, Articles 27(1), 29(a) & 159 of the *Constitution* of Kenya, Sections 5 of the *Judicature Act* and other enabling provisions of law and the ILO Conventions. It is based on the grounds on the face of it.
  3. The application is supported with the affidavit sworn by Francis Bushuru Wangara on even date with several annexures thereto.
  4. In opposition to the application, the respondents filed a replying affidavit sworn by Ipapu Philip Jackah on 5<sup>th</sup> April, 2024.
  5. The claimant filed a further affidavit sworn by Francis Bushuru Wangara on 18<sup>th</sup> July, 2024 with several annexures thereto.

## II. Preliminary Directions

6. On 8<sup>th</sup> April, 2024, Keli J upon considering the application and the parties' oral submissions found that there was no willful disobedience of the judgment of the court by the respondent. However, the court issued further directions for compliance as follows –
  1. The court finds that the respondent is willing to comply with the judgment of the court. In order to settle the issue before court and satisfaction of the judgment the court directs that the Applicant submits within 3 days of this ruling the FORM S to the Respondent. The Respondent to comply with the decision of the court in 30 days and deductions under the FORM S be effected without failure in the April payroll. The respondent to give reasons in writing to the Applicant on any employee whose name appears in the FORM S and the employer fails to make deduction.
  2. Mention on 14<sup>th</sup> May 2024 to confirm compliance and close the court file.
  3. It is so Ordered.
7. When the parties appeared before the court on 25<sup>th</sup> June, 2024 the claimant confirmed service of FORM S on the respondent and the respondent was accorded a last opportunity to comply with the orders in the judgment.
8. Further, on 23<sup>rd</sup> July, 2024 the parties appeared before the court when the court issued the respondent with the last opportunity to comply with the judgment. In default, the application for contempt was to proceed to hearing.
9. The respondent failed to comply with the judgment and on 15<sup>th</sup> October, 2024 when the matter came up in court for directions, the court directed that the application be canvassed by way of written submissions.
10. The claimant's representative, Mr. Akhonya, filed written submissions on 18<sup>th</sup> October, 2024. The respondent's counsel, Mr. Ipapu, filed on 26<sup>th</sup> November, 2024.



### III. Evidence

11. In the application, the replying, and further affidavits by Francis Bushuru Wangara, it is deposed that the claimant union filed a suit against the respondent which suit was heard and determined on merit, and the court delivered the judgment on the 30<sup>th</sup> November, 2023.
12. It is deposed that the judgment directed the respondent as follows –
  - i. That the respondent is ordered to avail the claimant a list of all employees who have since exited their employment and had signed the FORM S and to commence deduction of check-off dues from the salaries acknowledging membership into the claimant union effective 31<sup>st</sup> December, 2023.
  - ii. That the respondent, his agent(s) or managers and/or any other persons serving the interests of the respondent is hereby restrained /stopped from threatening, harassing, victimizing, terminating and or dismissing any of its employees, shop stewards, or officials of the claimant on account of this suit or proceedings.
13. It is deposed that the judgment was delivered in the presence of all the parties including Mr. Philip Ipapu who represents the respondent in court and doubles as the respondent's Company Secretary and legal officer.
14. It is deposed that Mr. Caleb Anyula, is the respondent's Human Resource Officer, testified and confirmed in court that he is the most senior manager in the Human resources department, and deals with matters of unions and receives all communication between the unions and the respondent.
15. It is further deposed that Mr. Aiman Yumen is the administrative manager and a representative of the Managing Director and stands in for the managing director in his absence and thus he is in-charge of all company operations.
16. It is deposed that the three named managers have individual and collective responsibility in ensuring that the respondent obeys the impugned court orders.
17. It is deposed that the trio being top managers have connived against disobeying the court judgment by refusing to implement the orders in the judgment as above, knowing very well that their application for stay orders was declined.
18. It is deposed that the orders issued by this court were clear, free of ambiguity and the respondent had no alternative other than obeying them.
19. It is deposed further that the said managers led by Mr. Ipapu, with full knowledge of the said orders and knowing that there were no orders for stay have willfully chosen and elected to disregard and disobey the said orders thus unlawfully rendering the court orders futile.
20. It is deposed that the claimant has made several efforts, including writing to the respondent to comply with the court orders but all in vain.
21. It is deposed that the claimant's General Secretary further sent union officials from the head office on the 27<sup>th</sup> February, 2024 to have a meeting with the respondent's management but the respondent adamantly refused to implement the orders.
22. It is deposed that the claimant's officials who visited the respondent's premises on the 27<sup>th</sup> February, 2024 discovered that many employees were willing to join the union but the said human resources officer and the administrative manager were threatening the employees with dire consequences if they



- joined the union. It is deposed that those who had joined and those who were willing to join the union were threatened that their contracts would be terminated, which actions are in clear disobedience to the orders of this court.
23. It is further deposed that the respondent's managers have failed to explain to the claimant what difficulties they have faced in complying with the orders and are using their managerial status to demean this court and deny employees the fruits of a lawful judgment.
  24. It is deposed that further to the above threats, the respondent has threatened and coerced many employees to withdraw from the union membership and proceeded to terminate the employment of some other employees on account of their union membership.
  25. It is deposed that the claimant has written to the respondent protesting against the apparent victimization of its members but no action had been taken, in utter disobedience of the court orders.
  26. It is deposed that the superior courts have held that the plain and qualified obligation of every person against or to whom an order is directed to obey and any disobedience of such an order would result in the person disobeying it being held in contempt and liable for punishment by committal to jail, fine, or attachment.
  27. It is urged that unless the court grants the orders herein as prayed the integrity and dignity of this court, the fundamental rule of law and order, and the inherent powers of the court shall be at stake and hence the freedom and rights of workers shall be eroded.
  28. It is deposed that disobedience to court orders is not only abusive to the legal justice system, but it impacts negatively on the economic strength and value of the applicant union hence painting a negative image of the courts in the eyes of the public.
  29. It is deposed that this honourable court has the constitutional, statutory, and inherent powers to issue the orders sought by the claimant and it is in the interest of justice that the said orders be granted and issued.
  30. In the replying affidavit by Ipapu Philip Jackah, it is deposed that the application is brought against an unknown entity and the contemnors mentioned by the claimant are not associated with the respondent.
  31. It is deposed that the application is incompetent for want of proper service as the cited contemnors have not been properly served.
  32. It is further deposed that the application breaches the strict procedural rules for failure to extract the decree against which the respondent is said to be in contempt.
  33. It was deposed that the application as filed lacks basis as the claimant failed to avail the Form S to the respondent for compliance with the directions that the respondent avails the list of the claimant's members who were still in employment.

### **Submissions**

34. Mr. Akhonya, the claimant's representative, submitted that the orders from the judgment of 30<sup>th</sup> November, 2023 were clear and unambiguous yet the respondent chose to disobey the same.
35. Citing *DKG V EG* (2021) eKLR the court is urged to find that the terms of the order were clear and unambiguous and well within the knowledge of the contemnors. Further citing *Basil Criticos v Attorney General & others* (2012) eKLR, it is submitted that the allegation that the contemnors were



not personally served should not arise since the contemnors were fully aware of the impugned orders of the court.

36. It is submitted that the respondent willfully disobeyed the first court order as the orders for the deduction of union dues did not have any financial implication on the respondent. In support of this assertion the claimant relied on [\*Kenya Chemicals and allied Union V Tata Chemical Magadi Limited\*](#) (2018) eKLR.
37. It is submitted that although the respondent, during the hearing of the application argued that the claimant's members had since left employment, no evidence was adduced in support of that allegation.
38. It is submitted that although the claimant engaged the respondent in a meeting on 27<sup>th</sup> February, 2024 it was apparent that the respondent was not keen to comply with the court orders and only asserted that they had appealed against the orders and sought FORM S.
39. It is submitted that it was confirmed by Mr. Caleb Anyula that the respondent had received FORM S but the respondent willfully refused to deduct the union dues citing lack of a recognition agreement.
40. It is submitted that the respondent in disobedience of the order against victimization of the claimant's members has resorted to intimidating employees to resign from the union and forced some of them to sign and issue withdrawal letters. It is submitted that despite the claimant's general secretary's notice to the respondent to cease the intimidation the respondent continued to disobey the court order.
41. It is submitted that while contempt may be purged through obedience to court directives, the respondent sought FORM S from the claimant to comply. It is further submitted that despite having been served with the FORM S the respondent failed to comply despite many directives by the court. The court is urged to be guided by the reasoning in [\*Direct Line Co. Ltd V Jamii Bora Bank & 5 others\*](#) (2015) eKLR and find that failure to purge contempt leaves the court with no option but to find the respondent in contempt.
42. It is submitted that the respondent, its agents, managers, and all those serving the respondent's interests were directed to comply with the orders of the court and thus the contemnors, Mr. Ipapu, Mr. Caleb Anyula, and Mr. Aimen Yamen should be found personally liable for disobeying the orders. Citing [\*Econet Wireless Kenya Ltd vs Minister for Information & communication of Kenya & another\*](#) (2005) eKLR, [\*Kenya Chemical Allied Union v Tata Chemical Magadi Limited\*](#) (2018) eKLR, [\*Kenya Union of Sugar Plantation and Allied Workers v West Kenya Sugar Company & 3 others\*](#) (Cause No. E020 of 2020), the court is urged to punish the respondent for disobedience of the court orders.
43. The court is urged to impose a fine against the respondent for contempt of the court orders and order it to meet the costs as the claimant has suffered economic loss from the failure by the respondent to effect deductions from its members.
44. On the other hand, the respondent's counsel submits that the contempt orders sought by the claimant are not available to them, since the employees whose deductions are to be effected have since renounced their desire to have deductions effected from their salaries.
45. It is submitted that the claimant ought to have annexed the affidavits of all its members who are still in employment and willing to have their union dues deducted. It is argued that the contempt proceedings as presented cannot stand.

#### **IV. Analysis & Determination**

46. The court has carefully read the application, the affidavit in support, the affidavit in response, and the written submissions by representatives for both parties, alongside all the cited authorities. The



following issues commend themselves to the court for determination – Whether the respondent is in contempt of the court orders issued on 30<sup>th</sup> November, 2023; Whether the names persons should be held liable for the contempt; and, Who should meet the costs of this application.

47. The basis for the contempt proceedings against the named officers of the respondent is the purported disobedience of the court orders issued in the judgment of 30<sup>th</sup> November, 2023 which stated as follows–
- i. That the respondent is ordered to avail the claimant a list of all employees who have since exited their employment and had signed the FORM S and to commence deduction of check-off dues from the salaries of the employees who have voluntarily signed the union forms acknowledging membership into the claimant union effective 31<sup>st</sup> December, 2023.
  - ii. That the respondent, his agent(s) or managers, and/or any other person(s) serving the interests of the respondent is hereby restrained /stopped from threatening, harassing, victimizing, termination and or dismissing any of its employees, shop stewards, or officials of the claimant on account of this suit or proceedings.
48. Before a party is held to be in contempt of a court order(s) it must be demonstrated that there indeed existed a valid court order and that the guilty party was aware of the order alleged to be in violated or breached. In other words, proof of service of the order is necessary unless, for reasons to be stated, the court dispenses with service of the order on the purported contemnor. The respondent in the replying affidavit by Mr. Ipapu alleged that the cited contemnors are not associated with the respondent and that there was no personal service. Mr. Ipapu who doubles as the legal officer and company secretary of the respondent did not deny that the judgment had been served upon the respondent. He in fact informed the court that they had asked for the FORM S to comply with the court order. While Keli J delivering a ruling on 8<sup>th</sup> April, 2024 found that the respondent was willing to comply with the orders in the judgment and directed as follows –
1. The court finds that the respondent is willing to comply with the judgment of the court. In order to settle the issue before court and satisfaction of the judgment the court directs that the Applicant submits within 3 days of this ruling the FORM S to the Respondent. The Respondent to comply with the decision of the court in 30 days and deductions under the FORM S be effected without failure in the April payroll. The respondent to give reasons in writing to the Applicant on any employee whose name appears in the FORM S and the employer fails to make deduction.
  2. Mention on 14<sup>th</sup> May 2024 to confirm compliance and close the court file.
  3. It is so Ordered.
49. When the respondent appeared in court on 14<sup>th</sup> May, 2024, Mr. Ipapu confirmed that they were reviewing the list of names furnished by the claimant through Form S. When the parties appeared in court on 25<sup>th</sup> June; 2024, the respondent was yet to effect any deductions for May in the payroll despite having been issued with the check-off forms. The respondent was given a last opportunity to comply with the deductions in the payroll for June, 2024.
50. When the parties appeared in court on 23<sup>rd</sup> July, 2024, the respondent through Mr. Ipapu indicated that they were still seeking dialogue with the claimant. They were issued with a last opportunity to comply with the court orders failure to which the contempt application was to be listed for hearing.
51. The respondent failed to comply hence the hearing of the application. The next communication from the respondent was to the effect that the employees had opted to withdraw their membership with



- the claimant. The claimant has confirmed the same position that indeed its members sent withdrawal letters from the union. All the while the respondent had not complied with the court orders.
52. On 23rd July, 2024 the respondent asserted that it was seeking dialogue with the claimant. The failure to comply with court orders was not addressed by the respondent.
  53. The court's directions were clear that "The Respondent to comply with the decision of the court in 30 days and deductions under the FORM S be effected without failure in the April payroll. The respondent to give reasons in writing to the Applicant on any employee whose name appears in the FORM S and the employer fails to make deduction".
  54. The respondent did not make any deductions from the payroll of April, 2024 and neither was the claimant informed of the reason why the deductions were not made. It is in their submissions herein that the respondent states that the employees of the respondent who desired to have deductions from their salaries have since renounced that desire.
  55. The respondent had the opportunity to provide the records of its employees who were members of the respondent when ordered by the court by July, 2024. The respondent in its submissions annexed records, as of 13<sup>th</sup> November, 2024, of its employees membership with the claimant. The claimant's members still in employment of the respondent had all written letters to withdraw from the claimant's union. The claimant vide a letter dated 28<sup>th</sup> June, 2024 accused the respondent of forcing its members to leave the union, upon receipt of the withdrawal letters from its members.
  56. The last opportunity by the court for the respondent to comply with the order to effect deductions was in June 2024 payroll. It was in the same month that the claimant members withdrew their membership from the union.
  57. The order in the judgment required the respondent to avail to the claimant a list of all employees who had since exited their employment and had signed the FORM S. The respondent was to commence deduction of check-off dues from the salaries acknowledging membership into the claimant union effective 31<sup>st</sup> December, 2023. The respondent, its agent(s) or managers and/or any other persons serving the interests was restrained /stopped from threatening, harassing, victimizing, terminating and or dismissing any of its employees, shop-stewards, or officials of the claimant on account of this suit or proceedings.
  58. The respondent did not avail the list of the employees who had exited its employ despite the opportunity given by the court to comply. The same was only provided in the submissions filed on 26<sup>th</sup> November, 2024. No deductions were made since April, 2024 when the court gave the further directions. The court on various dates directed the respondent to make deductions with the last opportunity in June 2024.
  59. It was in that month that the claimant's employees are said to have withdrawn their membership or denied being members of the claimant union. By dint of Section 48 of the [Labour Relations Act](#), deduction of union dues is done where more than 5 employees are recruited by a union. The respondent's list of employees indicated that the employees who were members of the claimant all wrote letters demonstrating their unwillingness to have the deductions made. Under Section 48(6) of the [Labour Relations Act](#), an employer may not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the union.
  60. The notices by the employees were to the effect that the employees had not joined the union or authorized the deductions based on the fact that the said employees denied being members of the union the employer cannot make such deductions. The claimant indeed confirmed receipt of the



withdrawal notices from the said employees as per the affidavit by Francis Bushuru Wangara sworn on 18<sup>th</sup> July, 2024.

61. Legally, the respondent could not make deductions where the employees had withdrawn their membership with the union. The respondent has made available the list of the employees who left its employ, either on their own accord or otherwise, though late through its submissions. It is important for the claimant to confirm this late disclosure.
62. Regarding the order to restrain the victimization of employees who are union members, no evidence by any employee was placed before the court to show that the employer had indeed forced the employees to withdraw from the union.

#### **V. Order**

63. As a matter of law and orderly functioning of the judicial system, court orders must be obeyed. However, an applicant must demonstrate existence of a valid court order, service of the order upon the alleged contemnors, and willful disregard and disobedience of the court order.
64. No doubt there was an order issued by Keli J as alluded to in the foregoing parts of this ruling. The evidence also points to the fact that the respondent, and hence its named officers were aware of the contents thereof. However, there is no evidence to convince the court that the respondent is in willful contempt of the said order.
65. The evidence placed before the court is that the employees who were members of the claimant have either left employment of the respondent and or withdrawn their membership with the claimant since June, 2024. In those circumstances, the court finds it unfair to hold the purported officers of the respondent in contempt of an order that they may not be capable of applying.
66. There is also no evidence of threats or intimidation of employees by the respondent leading to their alleged withdrawal from the claimant union.
67. In the entire circumstances as discussed above, the court is not satisfied as to hold the respondent in contempt of the impugned court orders.
68. The court orders that –
  - i. The application by the claimant is dismissed with no orders as to costs.
  - ii. In the interest of justice and in order to bring this matter to its logical conclusion the claimant is ordered to avail in court a list of its members in employment on the respondent within 14 days hereof for the court to issue further orders or directions. Failure to do so the court shall proceed to close this file.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT BUNGOMA THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025.**

.....

**DAVID NDERITU**  
**JUDGE**

