



**Waruhiu v Directline Assurance Company Ltd (Cause E1057 of 2024)  
[2025] KEELRC 925 (KLR) (24 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 925 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E1057 OF 2024  
BOM MANANI, J  
MARCH 24, 2025**

**BETWEEN**

**PAULINE NYAMBURA WARUHIU ..... CLAIMANT**

**AND**

**DIRECTLINE ASSURANCE COMPANY LTD ..... RESPONDENT**

**RULING**

1. Through a Memorandum of Claim dated 11<sup>th</sup> December 2024, the Claimant instituted this suit against the Respondent to challenge the latter's decision to institute disciplinary proceedings against her. She contends that the Respondent employed her as its Head of Claims and Legal as from 14<sup>th</sup> September 2020. She further contends that for the duration that she has served the Respondent, she has not been notified of any disciplinary or performance concerns against her.
2. The Claimant avers that she served the Respondent diligently and in peace until June 2024 when there was change in its (the Respondent's) management. She contends that when the new management came in, it begun interfering with the discharge of her mandate by attempting to take over some of her responsibilities, a matter she says she resisted.
3. The Claimant avers that on 4<sup>th</sup> December 2024, the Respondent issued her with a letter of show cause raising a number of accusations against her. She contends that she was required to offer her response to the accusations by the close of business on 5<sup>th</sup> December 2024. She further contends that she offered her response as demanded.
4. The Claimant avers that on 6<sup>th</sup> December 2024, the Respondent sent her on compulsory leave in order to conduct investigations into her case. She contends that on the same day, the Respondent wrote to her alleging that she had failed to respond to the show cause letter. As such, it (the Respondent) invited her for a disciplinary hearing scheduled for 13<sup>th</sup> December 2024.



5. The Claimant has challenged the Respondent's decision to subject her to a disciplinary hearing on the basis of the allegations in the invite to the disciplinary hearing. Besides asserting that the accusations against her are full of falsehoods, she avers that the Respondent did not give her adequate time and material to prepare her defense, some of the documents which she was to rely on having allegedly been confiscated by the Respondent.
6. The Claimant contends that the Respondent's attempt to press disciplinary charges against her commenced through its letter dated 6<sup>th</sup> December 2024 has the singular intention of terminating her employment without just cause. Hence her decision to seek the court's intervention in the dispute.
7. Contemporaneous with the Memorandum of Claim, the Claimant filed the application dated 11<sup>th</sup> December 2024 through which she sought interim orders to bar the Respondent from proceeding with the disciplinary session which was scheduled for 13<sup>th</sup> December 2024. As the court record shows, the matter was placed before the trial court on 16<sup>th</sup> December 2024 when the court directed that the application be served on the Respondent with a return date for 18<sup>th</sup> December 2024.
8. On 18<sup>th</sup> December 2024, the parties attended court when the Respondent's lawyer intimated that no disciplinary proceedings against the Claimant had taken place as at that date. He intimated that the Respondent was still undertaking an audit of the matter to enable it to decide on the way forward on the disciplinary case. He further intimated that the Respondent had filed a preliminary objection to the suit.
9. The Respondent's lawyer expressed his desire to have the application and preliminary objection heard through written submissions, a request which found favour with the Claimant's lawyer. However, the Claimant's lawyer applied for interim relief in terms of prayer two (2) of the application dated 11<sup>th</sup> December 2024 pending filing of submissions.
10. After hearing the parties' contrasting positions on the request for interim reliefs, the court issued the following orders in the presence of the lawyers for the parties:-

“On hearing the parties, it is apparent from the Respondent that no disciplinary hearing has been commenced. The Respondent says it is still conducting a forensic audit before it decides whether to start a disciplinary process against the Claimant. Meanwhile, the Claimant has been sent on leave to enable the process. In the premises, I order as follows:-

- a. The status quo be maintained pending resolution of this application with the consequence that:-
  - i. The Respondent is at liberty to continue with its forensic audit to determine whether there would be need to institute disciplinary proceedings against the Claimant.
  - ii. The Respondent retains the right to keep the Claimant away from the workplace during the audit by way of leave or suspension as is indeed within every employer's prerogative.
  - iii. However, should the Respondent reach a decision to commence a disciplinary case against the Claimant after finalizing its investigations, such case shall await the outcome of this application.
  - iv. In order not to prejudice either of the parties, the application shall be fast tracked.
  - v. As such, the Respondent is granted up to 6.1.2025 to file and serve a response to the application.



- vi. The Claimant shall have up to 10.1.2025 to file and serve submissions on the application together with any supplementary affidavit if need be.
  - vii. The Respondent shall have up to 18. 1. 2025 to file and serve submissions in response.
  - viii. The matter shall be mentioned on 20.1.2025 to fix a ruling date.
11. It would appear that after these order were issued, Respondent wrote to the Claimant on 4<sup>th</sup> February 2025 suspending her from duty with effect from 5<sup>th</sup> February 2025. The Respondent informed that Clamant that during the period of the suspension, she was to receive half of her salary.
  12. The Respondent also notified the Claimant that the letter was to serve as a notice to terminate her employment with effect from 31<sup>st</sup> March 2025. The Respondent further stated that the said termination of employment was pursuant to sections 41 and 43 of the *Employment Act*.
  13. The Respondent went further to list the reasons why it had taken the aforesaid decision. These were: breach of clause 3 of the Claimant's letter by processing payment of double claims in October and November 2024; and unauthorized approval of credit notes to third parties.
  14. The Respondent informed the Claimant that her conduct amounted to careless and improper discharge of her duties. As such, she had allegedly breached section 44 (4) (c) of the *Employment Act*.
  15. The Respondent went further to remind the Claimant that one of its officers had notified her of the accusations on 4<sup>th</sup> December 2024. It contended that the Claimant had allegedly admitted the charges in her response.
  16. The Respondent informed the Claimant that she was required to appear before its Human Resources and Remuneration Committee on 21<sup>st</sup> February 2025 to respond to the charges. It further informed her of her right to be accompanied by a co-employee of her choice.
  17. Alarmed by this development, the Claimant instructed her advocates to write to the Respondent's advocates to inform them that the Respondent had acted in contempt of the court orders which issued on 18<sup>th</sup> December 2024. Accordingly, the Claimant's lawyers wrote to the Respondent's lawyers on 6<sup>th</sup> February 2025 informing them of the alleged breach of the court orders.
  18. In response, the Respondent's lawyers wrote back on 6<sup>th</sup> February 2025 stating that their client's action was not in contempt of the orders which had issued on 18<sup>th</sup> December 2024. According to them, all that their client had done was to withdraw the disciplinary case it had instituted against the Claimant and instead initiate termination of the contract between the parties using the termination clause in the contract.
  19. The Respondent's lawyers informed the Claimant's lawyers that once the Respondent withdrew its letter dated 6<sup>th</sup> December 2024 which had triggered filing of the suit, these proceedings abated. As such, there was no longer a cause of action by the Claimant and the case ought to be withdrawn.
  20. Quite clearly, the parties were reading from different scripts regarding the matters at hand. As such, the Claimant filed her application dated 14<sup>th</sup> February 2025 citing the Respondent and three other individuals for contempt of court. On the other hand the Respondent filed a Notice of Preliminary Objection dated 18<sup>th</sup> February 2025 asserting that the Claimant's suit has abated and or been overtaken by events and ought to be struck out.



21. When the matter came up for directions, the court informed the parties that it will determine both the application for contempt of court and the preliminary objection simultaneously. As such, the parties were asked to file their respective responses and submissions on the two applications.

### **Analysis.**

22. Since the preliminary objection challenges the court's jurisdiction to entertain the dispute, I will begin by addressing it. The Respondent raises a number of matters in the Notice of Preliminary Objection. These include the following:-
- a. That the Respondent's disciplinary session scheduled for 13<sup>th</sup> December 2024 having collapsed, the suit has abated as it was premised on the aforesaid anticipated session.
  - b. That the prayers in the application for contempt of court cannot be granted since they are predicated on prayers 2 and 3 in the application for interim reliefs dated 11<sup>th</sup> December 2024 which can neither be granted nor executed since the said application of 11<sup>th</sup> December 2024 is incurably defective.
  - c. That the court lacks jurisdiction to entertain the application for contempt of court since it has been brought pursuant to the wrong provisions of law.
  - d. That the application for contempt of court does not meet the jurisprudential threshold for an application for contempt of court.
23. As correctly pointed out by the Claimant's lawyers, a preliminary objection must be premised on a pure point of law. It should not require the court to interrogate contested facts in the case in order to determine it. This is the reason why is generally required that for a party to raise such objection, the facts that inform it should largely be agreed between the parties.
24. The above guidelines were developed in the celebrated decision of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1969]EA 696. The court observed on the matter as follows:-
- “... a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit....
- .....It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”
25. With regard to the first ground of the objection, the Respondent contends that the substratum of the Claimant's case was the disciplinary trial which was intended for 13<sup>th</sup> December 2024 and which was anchored on its (the Respondent's) letter dated 6<sup>th</sup> December 2024. The Respondent contends that it withdrew the letter in question. As such and in the Respondent's view, the very foundation of the suit and application for contempt of court has been obliterated. In the premises, the suit has abated and should be struck out.
26. The Respondent relies on its letter dated 4<sup>th</sup> February 2025 to advance this ground. Whether the said letter had the effect of removing the substratum of the suit is a matter that requires to be ascertained through evidence. The court cannot determine the matter through a preliminary objection as this is not a pure point of law. As such, this ground of objection fails.



27. In the second ground of the objection, the Respondent contends that the contempt of court proceedings have suffered a stillbirth in so far as they are predicated on prayers 2 and 3 in the application dated 11<sup>th</sup> December 2014 for interim reliefs. According to the Respondent, the two prayers in the said application (the application dated 11<sup>th</sup> December 2024) are incapable of being granted or enforced since the application is allegedly incurably defective and an abuse of the court process. As such, the prayers cannot support the contempt proceedings.
28. This ground of objection was not clear to me. It was unclear what the Respondent wanted to communicate through it. Nevertheless and assuming that I have understood it correctly, I do not think that it can found a preliminary objection.
29. It is noteworthy that the application dated 11<sup>th</sup> December 2024 is yet to be heard and determined. As such, whether the prayers in it, including prayers 2 and 3, cannot be granted will only be discernible once the application has been heard. For the moment, the court cannot speculate on the fate of the said prayers. Consequently, the second ground of the preliminary objection fails.
30. The third ground of the objection is that the court lacks jurisdiction to entertain the application for contempt of court since it has been brought pursuant to the wrong provisions of law. It is true that the application refers to provisions of the *Law of Succession Act* and the *Probate and Administration rules*. However, it also cites various other provisions which speak to contempt of court proceedings.
31. The Claimant says that quoting provisions of the *Succession Act* and *Probate and Administration rules* was an error. She contends that this should not affect the competence of the application since it has quoted other provisions of law which speak to contempt of court proceedings.
32. Although the Claimant included an erroneous provision in her motion for contempt, I do not think that this should result in striking out of the application. In a series of decisions by various courts, similar requests have been rejected with the courts opting instead to focus on doing substantive justice to the parties (see *Mohamed Aden Abdi v Abdi Nuru Omar & 2 others* [2007] eKLR and *Godfrey Kirimi v Catherine Makena* [2021] eKLR). I am inclined to follow the same pathway and save the application.
33. Regarding the fourth ground of objection, it appears to me that it goes to the merits of the application for contempt of court. As such, I will address it whilst evaluating the merits of the said application.
34. I now move to the application for contempt of court. On 17<sup>th</sup> February 2025, I ordered counsel for the Claimant to effect physical service of the application on the alleged contemnors. I have seen an affidavit of service by counsel dated 21<sup>st</sup> February 2025 in which he confirms having effected physical service of the application on the Respondent, one Sammy Kanyi and one Maina Mwangi. As such, I am satisfied that the three have been served with the application.
35. As regards, Mr. Alex Gatundu, there is no affidavit to speak to service of the application on him. However, the court record shows that Mr. Gatundu represents the other three alleged contemnors.
36. The record further shows that Mr. Gatundu was present in court on 17<sup>th</sup> February 2025 when directions on the aforesaid application were issued. He informed the court that the application had been served on his office the previous Friday. As such, he was yet to file his response to it but was going to do so shortly. Whilst acceding to the court issuing directions on the application, Mr. Gatundu asked that the purported contemnors be served directly.
37. The purpose of service of a court process is to bring to the attention of those who are affected by the process of its existence. As such, I do not think that there is an obligation to serve a person who is



- already aware of the process by reason of having been present in court when it was initiated and who, through other means, is shown to have accessed the process.
38. From the evidence on the court record, it is apparent that Mr. Gatundu was not only aware of the application for contempt as at 17<sup>th</sup> February 2025 when the court issued directions on it. He also had been served with it the previous Friday. As such, I am satisfied that Mr. Gatundu was properly served with the application for contempt of court.
  39. *Black's Law Dictionary* defines the term 'contempt of court' to mean conduct that defies the authority and dignity of a court. It is a disregard of or disobedience to orders of a judicial body.
  40. Every person against whom an order has been made has the singular duty to obey the order. This obligation extends to cover orders which the person believe were obtained irregularly. Until, the orders are set aside, they must be respected (*Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] eKLR).
  41. An individual is said to have defied a court order if he was aware of it but disregarded it. As such, it has always been a requirement that before a court can punish one for contempt of court, it must be demonstrated that the person had been served with the order he is accused of having disregarded.
  42. But this was the traditional approach to contempt of court proceedings. Presently, what is critical before punishing one for contempt is evidence that he was aware of the order he has defied irrespective of whether he had been served with the said order. As such, personal service of the order is no longer a pre-requisite for holding an individual in contempt of court if he was aware of the order.
  43. A litigant who is represented in court proceedings is deemed to have knowledge of any order which is issued in the case in the presence of his advocates. Such party need not have been served with orders which were issued in the presence of his advocates before he can be cited for contempt of court if the orders are defied.
  44. The justification for this approach is that the party's advocate is deemed to be his agent in the proceedings. As such, he is expected to have notified his client of the directions which the court issued in the suit in his presence (*Oilfield Movers Limited v Zahara Oil and Gas Limited* [2020] eKLR).
  45. When the litigant is a corporate entity, its lawyers are deemed to have notified its officers of the order. As such, if there is defiance of the order, the officers of the corporate body will be held in contempt of court. It will not be a defense that they were not personally served with the order (*Oilfield Movers Limited v Zahara Oil and Gas Limited* (*supra*)).
  46. In the case before me, the orders of 18<sup>th</sup> December 2024 were issued in the presence of the Respondent's lawyer. As such, it is considered that the Respondent together with its officers became aware of the orders on the day they were issued.
  47. As is clear from paragraph 10 of this decision, the orders specifically barred the Respondent from conducting disciplinary proceedings against the Claimant based on the results of its investigations until the application dated 11<sup>th</sup> December 2024 is determined. The Respondent's letter to the Claimant dated 4<sup>th</sup> February 2025 marked as PNW 1 shows that the Respondent opened a disciplinary case against the Claimant on that day by setting out charges against her and inviting her for a disciplinary hearing on 21<sup>st</sup> February 2025.
  48. In the letter, the Respondent accuses the Claimant of two infractions and contends that its officers had notified her about the infractions on 4<sup>th</sup> December 2024. The Respondent contends that the Claimant had even admitted the charges in her response to the aforesaid letter.



49. The letter of 4<sup>th</sup> December 2024 which the Respondent refers to above is the notice to show cause letter which was issued to the Claimant and which culminated in her being asked to appear before the Respondent's disciplinary panel on 13<sup>th</sup> December 2024. As such, it is clear to me that the basis of the Respondent's attempts to discipline the Claimant in the session of 21<sup>st</sup> February 2025 is the very same one that informed institution of the instant case.
50. The court order of 18<sup>th</sup> December 2024 barred the Respondent from opening fresh disciplinary proceedings against the Claimant based on the matters which informed the filing of this case and which the Respondent had informed the court were still under investigation. As such, the Respondent's letter of 4<sup>th</sup> February 2025 was written in open disregard of the court orders of 18<sup>th</sup> December 2024. In the premises, I find that the Respondent acted in contempt of court by issuing the Claimant with the aforesaid letter.
51. As has been stated above, the Respondent's officers are equally liable for contempt of court since the Respondent's lawyer who was present in court when the orders were issued is deemed to have notified them of the said orders. The Claimant has joined one Maina Mwangi to the case for contempt of court. The letter of 4<sup>th</sup> February 2025 was authored by this individual in his capacity as the Respondent's Chairman, Board Committee, Human Resource, Remuneration and Nominations. This is a clear demonstration that the individual is an officer of the Respondent and that he therefore authored the letter despite being aware of the orders of 18<sup>th</sup> December 2024. As such, he too is found to be guilty of contempt of court.
52. The Claimant has also joined one Sammy Mwangi in the contempt of court action. According to the court record, this officer swore the replying affidavit dated 21<sup>st</sup> January 2025 in his capacity as the Respondent's Chief Executive Officer. As such, he is deemed to have been aware of the orders that issued on 18<sup>th</sup> December 2024. Consequently, he is also found to have acted in contempt of the orders when, as the Chief Executive of the Respondent, he acquiesced to Maina Mwangi authoring the impugned letter.
53. The Claimant has joined the Respondent's lawyer in the application for contempt. However, it is not clear whether the said lawyer advised his client to author the offending letter of 4<sup>th</sup> February 2025 in defiance of the court order of 18<sup>th</sup> December 2025. The correspondence which are attributable to the lawyer appear to have come after the fact. As such, the court is reluctant to find Mr. Alex Gatundu in contempt of court.

#### **Determination.**

54. Having regard to the foregoing, the court makes the following orders:-
- a. The Respondent's preliminary objection is dismissed for want of merit with costs to the Claimant.
  - b. The court finds the Respondent, Directline Assurance Company Ltd, the Respondent's officers, Maina Mwangi and Sammy Kanyi, in contempt of court having defied the court orders which were issued on 18<sup>th</sup> December 2024.
  - c. Accordingly, the three contemnors are directed to purge the contempt by tendering a written apology to the court and the Claimant and withdrawing the purported disciplinary proceedings which they had commenced against the Claimant through their letter dated 4<sup>th</sup> February 2025 within five (5) days of this order.
  - d. Should the contemnors fail to purge the contempt as directed above, they will suffer a prison sentence of seven (7) days.



e. The court acquits Mr. Alex Gatundu of the contempt charge.

f. Costs of the contempt proceedings are granted to the Claimant.

**DATED, SIGNED AND DELIVERED ON THE 24TH DAY OF MARCH, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

