



**Kenya Quarry and Mines Workers Union v Kilimapesa Gold (Pty) Limited  
(Cause E006 of 2023) [2025] KEELRC 838 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 838 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E006 OF 2023  
BOM MANANI, J  
MARCH 13, 2025**

**BETWEEN  
KENYA QUARRY AND MINES WORKERS UNION ..... CLAIMANT  
AND  
KILIMAPESA GOLD (PTY) LIMITED ..... RESPONDENT**

**RULING**

**Background**

1. Through a judgment which was delivered on 29<sup>th</sup> February 2024, the court entered judgment for the Claimant against the Respondent in the following terms:-
  - a) The Respondent has a statutory duty to negotiate a new CBA with and remit trade union dues to the Claimant.
  - b) The Respondent is ordered to cease forthwith from engaging in actions that amount to violation of the right to fair labour practice by failing, without justifiable cause, to negotiate a fresh CBA with the Claimant and collect and remit to the Claimant trade union dues as required in law.
  - c) The Respondent is ordered to resume the collective bargaining process with the Claimant forthwith and in any event within 14 days from the date of this order.
  - d) Since the Claimant was not represented by an advocate, it is not entitled to recover costs under the Advocates Remuneration Order. However, it (the Claimant) shall recover the actual disbursements it incurred in prosecuting this action.”
2. The Claimant contends that the Respondent was notified of the judgment on 1<sup>st</sup> March 2024 when a copy thereof was sent to it through its email address. In addition, the Claimant avers that it delivered



- a hard copy of the judgment to the Respondent's officers on 13<sup>th</sup> March 2024 when the parties met for collective bargaining.
3. The Claimant avers that after their first meeting on 13<sup>th</sup> March 2024 when they were to initiate the collective bargaining process, the Respondent became noncommittal about effecting the terms of the aforesaid court decision. It (the Claimant) further contends that the Respondent has refused to deduct and remit to it trade union dues as directed by the court and to finalize the collective bargaining process between the parties.
  4. The Claimant contends that the Respondent's conduct amounts to willful disobedience of a lawful court order. As such, it (the Claimant) prays that the Respondent's officers be found to be in contempt of court and be punished accordingly.
  5. The court record shows that the Claimant filed an application dated 11<sup>th</sup> April 2024 to anchor the aforesaid prayers. The record further shows that the matter was placed before court on 16<sup>th</sup> April 2024 when it was directed that the application for contempt of court be served. The court listed the application for hearing on 23<sup>rd</sup> April 2024.
  6. As the record shows, on 23<sup>rd</sup> April 2024, the parties appeared before the trial Judge when the Respondent's lawyer, one Gikonyo, informed the court that the application for contempt of court was served on the Respondent directly. He stated that the Respondent forwarded the said application to him albeit late. As such, he requested for fourteen (14) days to file a response to the motion.
  7. The court granted the aforesaid request. As such, the application was adjourned to 16<sup>th</sup> May 2024 for further directions.
  8. The foregoing confirms that the Respondent was served with the application under consideration. As such, I find that the application for contempt of court was properly served on the Respondent.
  9. Although the Respondent was served with the aforesaid application, the record does not show that it (the Respondent) ever responded to the motion. Instead, on 16<sup>th</sup> May 2024, the Respondent's lawyer informed the court that the parties were trying to resolve the matter amicably.
  10. It would appear that the efforts to resolve the matter amicably did not bear fruit. As a consequence, on 6<sup>th</sup> February 2025, the court listed the aforesaid application for hearing on 5<sup>th</sup> March 2025. The Claimant was asked to serve the Respondent with a Hearing Notice.
  11. According to the court record, the Claimant served the Respondent's lawyers, M/S Kasande Advocates, with a Hearing Notice for 5<sup>th</sup> March 2025. In addition, the Claimant also served the said lawyers with an extract of the directions which the court issued on 6<sup>th</sup> February 2025.
  12. The Respondent's lawyers stamped on the return copies of the aforesaid documents which have been placed on the court record alongside an affidavit of service dated 14<sup>th</sup> February 2025. As such, the court is satisfied that the Respondent was aware of the fact that the application for contempt of court was scheduled for hearing on 5<sup>th</sup> March 2025.
  13. On 5<sup>th</sup> March 2025, only the Claimant's representative attended court. The Respondent's officials and its lawyers were absent. This is despite the fact that they had been served with notice for this day.
  14. The Claimant moved the court for the orders sought in the application under consideration. The court reserved its ruling for 13<sup>th</sup> March 2025.



## Analysis

15. For the court to convict one for disobedience of a court order, it is a requirement that the applicant satisfies it (the court) that:-
  - a. the terms of the order were clear and unambiguous and were binding on the defendant;
  - b. the defendant had knowledge of or proper notice of the terms of the order;
  - c. the defendant has acted in breach of the terms of the order; and
  - d. the defendant's conduct was deliberate (see *Trusted Society of Human Rights Alliance v Cabinet Secretary for Devolution and Planning & 3 others* [2017] eKLR).
16. In the instant case, I am satisfied that the Claimant has met these conditions. The Claimant spoke to the fact that the court decision was served on the Respondent both through email and physically on 1<sup>st</sup> March 2024 and 13<sup>th</sup> March 2024 respectively. This evidence has not been controverted by the Respondent. As such, I arrive at the conclusion that the Respondent is aware of the court judgment.
17. The judgment sets out, in plain terms, what the Respondent was required to do. This is set out in paragraph one of this decision. As such, I am satisfied that the terms of the judgment were unambiguous and were binding on the Respondent.
18. The Claimant avers that the Respondent has not fully implemented the judgment. This fact is supported by the Respondent's own representations to the court. For instance, on 8<sup>th</sup> July 2024, the Respondent's lawyer informed the court that the Respondent had remitted Ksh. 100,000 out of the outstanding trade union dues to the Claimant. He averred that the Respondent was to make full payment by 16<sup>th</sup> July 2024. However, he did not report back to court to confirm that the Respondent had lived up to its promise. As such, I am convinced that the Respondent is in breach of the court judgment.
19. There is no evidence to demonstrate that the failure of the Respondent to honour the terms of the court's judgment is not deliberate. Absent this evidence, the court infers deliberate refusal on the part of the Respondent to abide by the terms of the judgment.

## Determination

20. After evaluating the affidavit evidence in support of the application dated 11<sup>th</sup> April 2024, I arrive at the conclusion that the Respondent has deliberately failed to implement the court's judgment that was delivered on 29<sup>th</sup> February 2024. As such, I find that the Respondent is in contempt of the court's judgment.
21. In the premises, I issue summons to the Respondent's directors to appear before this court on 26<sup>th</sup> March 2025 at 9.00 am to show cause why they should not be sentenced for defiance of this court's judgment.
22. If the Respondent's directors fail to appear in court on 26<sup>th</sup> March 2025 to show cause as directed, warrants for their arrest will issue.
23. If the Respondent's directors do not show cause to the satisfaction of the court on why they should not be sentenced for defiance of the court's judgment, the court will forthwith impose an appropriate sentence on them.

**DATED, SIGNED AND DELIVERED ON THE 13<sup>TH</sup> DAY OF MARCH, 2025**



**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant/Applicant

.....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.

