



Kenya Petroleum Oil Workers Union v Petro Oil Kenya Limited (Cause 24 of 2019) [2025] KEELRC 1230 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1230 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 24 OF 2019
M MBARŪ, J
APRIL 30, 2025

BETWEEN
KENYA PETROLEUM OIL WORKERS UNION CLAIMANT
AND
PETRO OIL KENYA LIMITED RESPONDENT

RULING

1. The claimant filed an application dated 18 December 2024 under the provisions of section 5 of the *Judicature Act*, Order 50 Rule 1 of the Civil Procedure Rules and seeking orders;
 1. Spent.
 2. The court be pleased to grant leave to the claimant to institute contempt of court proceedings against the respondent.
 3. This court is pleased to cite the respondent/contemnor for contempt of court and further order that the respondent's directors and CEO, Ben King'ori, be committed to civil jail for a period of six months for contempt of court unless and until they purge the contempt by honouring the orders made by this court on 25 January 2024.
 4. The court is pleased to grant any other or further orders to protect its integrity and the interests of the parties as it deems fit.
 5. Costs of this application be provided for.
2. The affidavit of George Okoth, the general secretary of the claimant, supports the application. He avers that the claimant obtained a ruling dated 25 January 2024 against the respondent to the effect that;
 - a. The parties to negotiate the CBA within 30 days from 25 January 2024;



- b. The respondent was to remit union dues from the time they were served with the Legal Notice No. 37, February 2023, from the employer's account.
3. Okoth avers that the court's orders and directions are within the respondent's knowledge. Through its directors and CEO, the respondent has willfully and negligently refused to obey the court orders. This refusal has resulted in loss and damage to the claimant through its unionized members in the respondent's employment.
4. The respondent's deliberate refusal to deduct and remit union dues to the claimant demonstrates a lack of interest in obeying court orders. The respondent has refused to sign the CBA, and unless the court intervenes, the dignity and honour of the court will be eroded.
5. The claimant wrote to the respondent on 5 January 2024 seeking to meet and negotiate the CBA. The respondent refused to attend. The claimant wrote a reminder on 11 November 2024, seeking that the respondent stop the acts of contempt, but they failed to respond.
6. Through its directors and CEO, the respondent has acted in breach of court orders by refusing and failing to deduct and remit union dues to the claimant as directed by the court. This made a mockery of the court process.
7. In reply, the respondent filed the Replying Affidavit of Benjamin Kingori, the CEO, who avers that on 13 December 2019, the court delivered judgment and on 25 January 2024, delivered a ruling. Since then, intervening events have made it impossible for the respondent to comply with the court's orders. The union membership has reduced to 58 members out of the 195 unionisable employees. Therefore, the claimant has not met the threshold set out under section 45 of the *Labour Relations Act* (LRA) for the signing of the CBA.
8. In the ruling delivered on 25 January 2024, the court held that the respondent can only lawfully act within the provisions of section 54(5) of the LR where the shop floor has changed post-judgment. In this regard, the respondent has lodged a claim seeking the invalidation of the Recognition Agreement under Section 54(5) of the LRA.
9. It is, therefore, premature to punish the respondent for failing to sign the CBA. The court should allow the claim seeking the invalidation of the Recognition Agreement to proceed to its full course. Granting the orders sought by the claimant will prejudice the determination of the matter lodged by the respondent.
10. Kingori avers that the respondent has not signed the CBA because of the change in the shop floor. Several employees have written to the respondent for union dues remittances and asked that they not have the deduction. The respondent has fully complied and remitted union dues to the claimant for the remaining employees who have not written.
11. The orders of 25 January 2024 were to the effect that union dues should be remitted from January 2024. The respondent has fully complied. The demand for remittance of union dues from February 2023 contradicts the orders. There is no basis to such a claim while the claimant is aware of proceedings seeking to revoke the Recognition Agreement. There will be no prejudice if the claimant waits for that process to complete before prosecuting this application.
12. Both parties attended and filed written skeleton submissions highlighting the issues in court.
13. The claimant submitted that the respondent is in contempt of court orders issued on 25 January 2024, and the directors and CEO should be summoned and committed to civil jail to purge the contempt. In the case of *Shimmers Plaza v National Bank of Kenya Limited* [2015] eKLR, the court held that a



party should not be allowed to disobey court orders with impunity. Judgment herein was delivered on 13 December 2019. In a ruling delivered on 25 January 2024, the respondent was directed to deduct and remit trade union dues and to sign the CBA, which they have failed to do. There is blatant and deliberate disobedience of court orders, which should be punished, and the respondent is directed to purge the contempt.

14. The respondent submitted that the claimant's application is without merit and should be dismissed with costs. The claimant has not met the threshold upon which the respondent can be punished for contempt of court. The respondent has offered a valid explanation why it is not in contempt of court. Since the judgment was delivered on 13 December 2019 and the ruling of 25 January 2024, there are intervening events which have made it impossible to comply with the court orders;
 - a. The union membership has reduced from 195 to 58, denying the claimant a simple majority for a CBA;
 - b. The respondent has filed a claim under section 54(5) of the LRA to challenge the Recognition Agreement;
 - c. The claimant knows that the shop floor changed after the judgment.
15. The respondent submitted that the threshold for contempt of court is very high because it is quasi-criminal and may lead to loss of liberty when jailed. The court's punishment of the respondent for contempt of court is contrary to the interests of justice. Yet, the respondent has offered a valid explanation why it has not complied with the court orders herein.

Determination

16. The application, affidavits, and written submissions indicate that the issue for determination is whether the respondent, through its officers, the CEO, and directors, is in contempt of court orders issued on 25 January 2024 and whether they should be committed for contempt.
17. On 25 January 2024, the court made the following orders and directions;
 - a. The non-compliance with the orders to remit union dues in section 48(2) of the LRA is now clarified through the correct Legal Notice No. 37 of 21 February 2023 as published by the Minister. From such publication, the respondent should and ought to comply and deduct and remit the dues to the claimant from the date of this ruling, failing which, the unremitted monies should be paid by the employer without placing the employees at a disadvantage, meaning, the same should accrue from the employer's account.
 - b. Following (a) above, union dues to be paid effective January 2024;
 - c. The court finds no reasonable cause to stay proceedings herein, and the Notice of Appeal dated 19 October 2023 is part of a series regarding abuse of court process. The application is hereby dismissed with costs to the claimant.
 - d. The respondent will pay costs to the claimant.

Has the respondent disobeyed these orders and directions?

18. In the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR, the court reiterated the rationale for contempt of court proceedings and held that;
19. Contempt of court is not merely a mechanism for enforcing court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to



- obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest.
20. This position is reiterated in the case of *Wekesa & 2 others v Munialo* [2025] KECA 679 (KLR), where the court outlined the principles of law when addressing contempt of court as follows;
 21. It is an established principle of law that to succeed in civil contempt proceedings, the applicant has to prove
 - i. the terms of the order,
 - ii. Knowledge of these terms by the Respondent,
 - iii. Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements, the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.
 22. These elements are that;
 - a) The terms of the order (or injunction or undertaking) 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;Four elements must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases, which is higher than civil cases) that:
 - (d) The defendant's conduct was deliberate
 23. In this case, the claimant asserts that the respondent has failed to deduct and remit trade union dues from February 2023. Despite all efforts to have the respondent execute the CBA, they have refused and are thus in contempt of court.
 24. The respondent asserts that they have since remitted union dues from January 2024 as directed by the court on 25 January 2024. The CBA has not been executed because the respondent has since invoked the provisions of Section 54(5) of the LRA. The claimant is aware, and it wouldn't serve justice to execute a CBA challenged upon a claim for the revocation of the Recognition Agreement. The shop floor has been changed, and the claimant does not enjoy a simple majority based on its 58 members out of the 195 members.
 25. The respondent has applied under section 54(5) of the LRA to revoke the Recognition agreement, save that the matter is ongoing and pending resolution.
 26. There is judgment herein that is valid and legitimate. The same is the subject of enforcement. Any issues arising from the motions under Section 54(5) of the LRA cannot be applied to negate the judgment herein and should be addressed as and when there is a determination that the Minister publishes. A Recognition Agreement is legally regulated and can only change through a lawful process.
 27. Kingori, for the respondent and the CEO, is well aware of the facts herein and particularly reiterates the court's judgment and the ruling of 25 January 2024 at length. He knows the court's judgment is not a mere paper but an order subject to compliance.



28. The respondent cannot choose which order to obey or ignore. If encouraged, this would result in the rule of the jungle. Courts exist for a reason, including to enforce lawful orders and directions. That defines the rule of law.
29. To therefore assert that some employees have opted not to have their union dues deducted is to negate the provisions of section 48(3) of the LRA;
 - (3) An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule, signed by the employees in respect of whom the the employer is required to make a deduction.
30. Upon notice by the Minister, the employer is bound under section 48(3) of the LRA to deduct and remit trade union dues to the trade union it has recognised or represents employees at the shop floor.
31. Unless and until the employee(s) invoke the right under section 48(6) of the LRA, the employer is still bound to deduct and remit trade union dues;
 - (6) 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.
 - (7) A notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.
32. A claim filed under Section 54(5) of the LRA is not a bar to the deduction and remittance of trade union dues. The respondent appreciates its rights under this part of the LRA but has failed and refused to comply with the orders issued on 25 January 2024.
33. The respondent cannot cherry-pick the orders and those to disobey.
34. Where the respondent established that essential changes at the shop floor made it impossible to comply with the judgment and ruling herein, to secure the rule of law, there are procedures for bringing such matters to the court's attention. Going off and failing to comply with the judgment and ruling herein outside the judicial process commenced by the claimant is a deliberate and willful disobedience of court orders.
35. The respondent made no effort before the instant application to bring any matter to the court, making the orders herein unenforceable.
36. On the 25 January 2024 orders, the respondent was to commence deduction and remittance of union dues from January 2024, not February 2023. However, the changes effected by the respondent regarding the unionisable employees' ability to deduct and make remittances are contrary to section 48(3) of the LRA.
37. The element of knowledge of the terms of the court orders is not contested. The lapse is in compliance and adherence to the terms thereof. The failure to obey, as addressed above, is not justified. The willful non-compliance despite the clarification made by the court in the subject ruling on 25 January 2024 is deliberate and contemptuous of the court.
38. Besides being unlawful, such acts of disobedience also attract Penalties on the people who disobey them, as held in *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR.
39. In this application, I am satisfied that there existed a clear and unambiguous court order dated 25 January 2024, which is within the knowledge of the respondent/contemnor. There is blatant disregard



and disobedience of the court order; therefore, all the ingredients of contempt of court are established.
To uphold the dignity and authority of the court,

40. I direct that Benjamin Kingori, the respondent's CEO or directors, appear before the court in person on 5 June 2025 for Mitigation and Sentence. The respondent shall purge the contempt.

DELIVERED IN OPEN COURT AT MOMBASA THIS 30TH DAY OF APRIL 2025

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

