



Kenya National Union of Nurses v Kirinyaga County Public Service Board; Public Service Commission (Interested Party) (Miscellaneous Application 1 of 2021) [2025] KEELRC 1558 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1558 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
MISCELLANEOUS APPLICATION 1 OF 2021
ON MAKAU, J
MAY 22, 2025

BETWEEN

KENYA NATIONAL UNION OF NURSES APPLICANT

AND

KIRINYAGA COUNTY PUBLIC SERVICE BOARD RESPONDENT

AND

PUBLIC SERVICE COMMISSION INTERESTED PARTY

RULING

1. This ruling relates the Applicant's Notice of Motion dated 14th November 2024, seeking the following orders:
 - a. The Respondent and its officials being the Chief Executive Officer Mr. Newton Njenga, the Chairman of the Board Mr. Teddy M. Muchiri, the vice chairperson Ms. Esther W. Muchiri, and members Leah Margaret W. Kabui, Patrick Tarzan Manu and Prof. Raymond Thomas be summoned to court to appear in person and explain why they are disobeying the Court Order of the Court dated 30th July 2024 and issued on 26th July 2024 by Hon. Justice Onesmus N. Makau, Judge of the Employment and Labour Relations Court at Nyeri.
 - b. That the Respondents/contemnors be ordered to immediately reinstate the 188 members of the Applicant as per the order of the Court of 30th July 2024.
 - c. That the Respondent/contemnor's members of the board namely the Chief Executive Officer Mr. Newton Njenga, the Chairman of the Board Mr. Teddy M. Muchiri, the vice chairperson Ms. Esther W. Muchiri, and members Leah Margaret W. Kabui, Patrick Tarzan Manu and Prof.



Raymond Thomas be committed to civil jail for 6 months for disobeying the Court dated 30th July 2024.

- d. That further, the Respondent's/contemnor's namely the Chief Executive Officer Mr. Newton Njenga, the Chairman of the Board Mr. Teddy M. Muchiri, the vice chairperson Ms. Esther W. Muchiri, and members Leah Margaret W. Kabui, Patrick Tarzan Manu and Prof. Raymond Thomas be declared unfit to hold public office, and consequently be removed from office for contravening Article 6 of *the Constitution* of Kenya on leadership and integrity, Article 10 on national values and principles of governance and Article 232 on the values and principles for public service as well as section 89(2) of the *Public Service Commission Act* for refusing, failing and/or neglecting to implement the interested party's decision of reinstating 188 members of the Applicant back to employment.
 - e. That the Respondent's/contemnor's namely the Chief Executive Officer Mr. Newton Njenga, the Chairman of the Board Mr. Teddy M. Muchiri, the vice chairperson Ms. Esther W. Muchiri, and members Leah Margaret W. Kabui, Patrick Tarzan Manu and Prof. Raymond Thomas be personally present in Court on all the dates appointed for the hearing of the Application.
 - f. That the officer commanding Kerugoya Central Police Station be compelled to implement these orders and the court order of 30th July 2024.
 - g. Any other appropriate orders that the Court may be pleased to issue.
 - h. That the costs of this suit be granted to the Applicant.
2. The Application is supported by the affidavit of Seth Ambusini Panyako and is opposed by the respondent vide Replying Affidavit of Newton Njenga sworn on 28th November 2024. The motion was disposed of by written submissions. The parties agreed to have the motion herein heard together with Respondent's Notice of Motion dated 22nd November 2024 filed in Nyeri ELRC JR E001 of 2022 between the same parties. However, after considering the facts involved, it became necessary to write separate rulings in the respective files.
 3. The applicant's case is that the cited officers of the Respondent have wilfully disobeyed the said express order of the Court; and that upon several reminders from the Applicant's counsel and its officials, they responded with great impunity vide their letter dated 7th November 2024, constraining the Applicant to file the instant application.
 4. It is further applicant's case that the Respondent is hiding behind the judgement in Nyeri ELRC JR No. E001 of 2022 R vs Public Service Commission and Kenya National Union of Nurses ex-parte County Government of Kirinyaga delivered on 27th April 2023, which judgement is distinguishable from this matter, as it quashed the PSC decision of 13th October 2021 and left the decision of 3rd March 2021 undisturbed. That the said decision has full force following its adoption by the Court in its ruling of 26th July 2024.
 5. The Respondent's case, on the other hand, is that no contempt of proceedings that can flow from the said court's order as the same merely adopted the interested party's decision of 3rd March 2021, which did not require any action from the Respondent; and that the Applicant sought an order to direct the Respondent to implement the decision of PSC in its application dated 21st May 2021 but the same was not granted.



6. It is further respondent's case that the contempt proceedings are premature and fatally defective as Applicant cannot compel the Respondent in the manner it has proceeded, without first complying with the mandatory procedure set out under section 21 of the *Government Proceedings Act*.
7. Finally, it is the respondent's case that the decision of PSC is incapable of enforcement since all the 188 positions were filled after the dismissal of the applicant's members; that reinstating the 188 members would mean that the Respondent would terminate the 188 nurses currently in service without any justification. The Court is therefore urged to find that the application is unmerited and dismiss it with costs.
8. I have considered the application, affidavits and the written submissions and the following issues fall for determination:
 - a. Whether the application is premature and fatally defective.
 - b. Whether the orders sought should be granted.

Premature and defective application

9. The applicant has instituted contempt proceedings to compel the officers of the respondent to implement the decision of the interested party which was adopted as judgment by the court on 26th July 2024. The applicant seeks that the cited officers be committed to jail for disobeying the said decision and further be removed from office.
10. However, the Respondent objects to the said application on ground that it does not comply with the procedure of execution against the government under section 21 of *Government Proceedings Act* (GPA). It avers that it is part and parcel of the County Government of Kirinyaga established under section 57 of the County Government Act. Section 21 of the GPA provides as follows:
 - “(1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government, or against a Government department, or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order: Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.
 - (2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
 - (3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon: Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies



may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.

- (4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.”

11. The objection before the court is not new to our courts. In *Republic v County Government of Bomet Ex parte DKN (Suing as the Father and the next friend of the Minor DK)* [2021] eKLR the Court stated thus:

- “ 13. It therefore follows then that the rules applicable to normal execution proceedings are not applicable to the Government. It must be remembered that an application that seeks to compel the Government to satisfy a Decree is subjected to a very elaborate procedure. Before the Court issues such an Order, there must be proof that the provisions of the Section 21 of the *Government Proceedings Act* have been complied with. In the case of *Permanent Secretary Office of The President, Ministry of Internal Security & Another Ex-parte Nassir Mwandihhi* (2014) eKLR, Odunga J held that: -

“The said elaborate procedure is further meant to give adequate notice to the Government to make arrangement to satisfy the decree. The procedure, in my view is not meant to relieve the Government from meeting its statutory obligations to satisfy decrees and orders of the Court.”

12. In the case of *Republic v The Attorney General & another Exparte James Alfred Kosoro supra*, where Odunga J (as he then was) held that: -

- “ 20. Where therefore a public officer declines to perform the duty after the issuance of an order of mandamus, his/her action amounts to insubordination and contempt of court hence an action may perfectly be commenced to have him cited for such. Such contempt proceedings are meant to show the court’s displeasure at the failure by a servant of the state to comply with the directive of the court given at the instance of the Republic, the employer of the concerned public officer and to uphold the dignity and authority of the court.”

13. Much earlier, the Court in *Kisya Investments Ltd v Attorney General & another* [2005] eKLR stated as follows:

- “In our Kenyan case of *MAWANI –V- MAWANI* (1977) KLR 159, the consequences of disobedience of court and contempt of court are fully enunciated. In the present case, the applicant moved this court for an order of Mandamus to compel the Permanent Secretary to pay the decretal sum and in default of compliance to be committed to civil jail for contempt of court. Justice Okubasu (as he then was) nipped the application in the bud by invoking the provisions of Section 21(4) of the *Government Proceedings Act*. As a result, there was



no finding of any contempt of court as the stage of enforcement of the orders sought was never reached. No order of Mandamus was granted on the basis of the aforesaid statutory provision.

In view of the said provision, it is the view of this court that the applicant could not in law present an application for an order of Mandamus to enforce the decree against the government by way of committing the Permanent Secretary to civil jail if there was default or non-compliance. Such an application was not and is not sustainable at law.

We hold that the mode of execution of the decree chosen by the Applicant was expressly prohibited by statute – The Applicant by the application for an order of Mandamus, strictly, was not executing an order of the High Court punishing the Permanent Secretary for contempt of the court as no such order had been given. In any case, no such order could validly be given by the court and the presentation of the very application was in disregard of the Law. It should not have been filed in the first place as it was prohibited and an act in vain.”

14. It is my understanding, guided by the above authorities, that before instituting contempt proceedings against individual Government officer there must be an order of mandamus issued against him/her, requiring him to perform a public duty and he/she has disobeyed the same. The applicant must then show that the applicant has obtained from the court and served the respondent/cited public officer with a decree, and certificate of order against the government. Without meeting such requirements, contempt proceedings against the officer is premature and fatally incompetent since there is no order against him or her.
15. In the instant case, the applicant has only annexed a Court order issued on 30th July 2024, and several correspondences between counsel for the two sides. There is no iota of proof that the applicant obtained a Certificate of Order Against the Government as required by section 21 of the GPA nor is there evidence that the applicant sought and obtained an order of Mandamus against the cited officers of the respondent.
16. As observed above, it is paramount for the Applicant to follow procedure spelt out in the statute. Since it failed to do so, the application must fail and it is dismissed. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 22ND DAY OF MAY, 2025.

ONESMUS N MAKAU

JUDGE

Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, 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.

ONESMUS N MAKAU

JUDGE

