



Koiyet v County Public Service Board Uasin Gishu & another (Petition E017 of 2024) [2025] KEELRC 1287 (KLR) (2 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1287 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
PETITION E017 OF 2024
MA ONYANGO, J
MAY 2, 2025**

BETWEEN

TITO KOIYET PETITIONER

AND

COUNTY PUBLIC SERVICE BOARD UASIN GISHU 1ST RESPONDENT

COUNTY GOVERNMENT OF UASIN GISHU 2ND RESPONDENT

RULING

1. The application dated 27th February 2025 seeks the following orders:
 - a. That the 1st and 2nd respondents have continued to violate the Court Order issued by Hon. Lady Justice Maureen Onyango on 26th November, 2024
 - b. That the 1st and 2nd Respondents have willfully failed and/or refused to comply with the court order and have unlawfully revoked the Petitioner’s/Applicant’s rights as an accounting officer through a letter dated 17th January, 2025.
 - c. That on 18th February, 2025, the 1st and 2nd Respondents, in furtherance of their unlawful actions orchestrated and facilitated the deployment of unauthorized individuals to forcibly and illegally evict the Petitioner/Applicant from office, in a manner that is not only in violation of the court order but also contrary to the principles of due process and the rule of law.
 - d. That unless the orders sought herein are granted the Petitioner/Applicant will suffer irreparable harm and prejudice by actions of the said respondents.
 - e. That the 1st and 2nd respondents have behaved in a manner that threatens the peace of the petitioner.



- f. That the 1st and 2nd Respondents have violated and blatantly held the orders of the court in contempt.
2. The Orders issued by this court on 26th November 2024 restrained the Respondents from interfering with the employment of the Petitioner as City Manager, Eldoret City or from substantively filing the position of City Manager, Eldoret City during the pendency of the Petitioner's tenure as City Manager, Eldoret City, pending inter parties hearing of the application dated 25th November 2024.

The Applicant's case

3. The application is supported by the Applicant's supporting affidavit sworn on 27th February 2025 in which he deposes that the 1st and 2nd Respondents have failed to comply with the order of this court issued on 26th November 2024 despite being served with the Order. He avers that the 1st and 2nd Respondents have willfully failed and refused to comply with the Court Order and further revoked his rights as an Accounting Officer through a letter dated 17th January 2025. The Petitioner contends that on 18th February 2025, the 1st and 2nd Respondents in furtherance of their unlawful actions orchestrated and facilitated the deployment of unauthorized individuals to forcibly and illegally evict him from office in a manner that was not only in violation of the court order but also contrary to the principles of due process and the rule of law.
4. It is the Petitioner's argument that as a direct consequence of the Respondent's unlawful actions, he continues to suffer harm despite the court having clearly restrained the Respondents from interfering with his employment or substantively filing the position of City Manager, Eldoret City, pending the inter parties hearing of the application.
5. The Petitioner thus urged the court to hold the Respondents in contempt of court in order to uphold the dignity of this court and maintain the rule of law.

The Respondents' case.

6. The Respondents filed a Replying Affidavit sworn on 13th March 2023 by CPA Silah K. Ronoh, the 1st Respondent's Secretary. He avers that the orders of 26th November 2024 have not been violated as there has been no inference with the Petitioner's work and that the position of City Manager has not been filled. That at all material times the Petitioner was the Municipal Manager.
7. The Respondents also filed a replying affidavit of Ambrose Tarus, the Acting Secretary, Uasin Gishu County Government sworn on 14th March, 2025, a replying affidavit of Micah Kipkosgei Rogony, County Executive Committee Member-Finance and Economic Planning, also sworn on 14th March, 2025.
8. Ambrose Tarus reiterates the averments in the replying affidavit of CPA Silah K. Ronoh and further deposes in his replying affidavit that the Applicant did not call him or send him a text message on 18th February, 2025 to inform him that the Applicant had returned from leave. He denies that he was responsible for the mishandling of the Applicant by persons the Applicant describes as "hawkers". He states he was not present at the office on the material day and that as stated by the Applicant in his affidavit, the Applicant left the office voluntarily after being asked to do so by the OCS Eldoret Central Police Station.
9. On the withdrawal of accounting roles of the Petitioner Mr. Tarus states that the action was taken by County Executive Committee Member-Finance and Economic Planning within his mandate under the *Public Finance Management Act*, 2012.



10. Micah Kipkosgei Rogony deposes in his replying affidavit that he has no knowledge of the events of 18th February, 2025. On the removal of the Applicant as accounting officer he states that the same is the sole and exclusive discretion of the CECM Finance and Economic Planning under section 148 of the *Public Finance Management Act*, 2012. That the court orders did not and cannot take away discretions given in statutes including discretions under the *Public Finance Management Act* to be exercised by CECM, Finance and Economic Planning.
11. He states that the court order did not require the Applicant to be an accounting officer and removing such roles do not amount to interference with the Applicant's position whether as city or municipal manager.
12. Mr. Rogony states that his actions did not violate the petitioner's rights and were not an illegality. That the allegations linking him to any unauthorized actions against the Petitioner are false, malicious and without basis in fact or law.
13. The Respondents further filed a replying affidavit of Cosmus Kerich, the Director of County Inspectorate, Uasin Gishu County, in which he deposes that he did not attend, participate in or facilitate any meeting aimed at threatening, intimidating or evicting the Applicant.
14. The Respondents contend that the orders extracted by the Petitioner are at variance with the prayers the Petitioner sought in his application. According to the Respondents, the application for contempt relates to the office of a City Manager, an office that the Petitioner has never occupied nor held.
15. On this basis, the Respondents have urged the court to find that contempt of court order is not possible where the propriety of the order is questionable.
16. The Respondents have also argued that the orders extracted by the Petitioner amount to him occupying the office of City Manager without undergoing a competitive recruitment process as required by law.
17. It is the Respondents case that any contempt orders will amount to circumventing employment process giving the petitioner the office of the City Manager after he applied for and did not qualify beyond the shortlisting process. That the orders would further amount to the court giving him a job he does not qualify for on merit.

The Rejoinder.

18. The Petitioner filed a further affidavit sworn on 18th March 2025 wherein he asserts that it is premature at this instance to delve into the issues of municipal manager and city manager position which are to be determined through the main petition before this court.
19. The Petitioner contends that the Respondents were all aware of the interim orders and have never objected to the same being extended through various court attendances until the contempt application was filed.
20. It is Petitioner's case that the Respondents have never been intentional in safeguarding the honor of this court as their reply to the contempt application casts doubt on the orders issued without any justifiable reasons whatsoever. The Petitioner contends that the effect of the orders which was granted by the court and what was prayed for serves the same intended purpose of halting an illegal recruitment process before the Petition is heard on merit.
21. The Respondents filed a supplementary replying affidavit sworn by the 1st Respondent's secretary on 18th March 2025. In that affidavit, the Respondents reiterated the contents of the affidavit sworn on



13th March 2025 by the deponent and asserted that there is no automatic right of anyone to transit from Municipal Manager to City manager in law as purported by the Petitioner.

22. The application was argued orally in court on 17th March 2025. The Petitioner was represented by Counsel Chepkoech while Counsel Katwa represented the Respondents. I have considered the oral submissions of counsel for the rival parties as well as the written submission on record.

Determination.

23. The main issue for determination in this application is the question whether the Respondents are in contempt of the court orders issued by this court on 26th November 2024 and what orders the Court should make upon a finding of contempt on the part of the alleged contemnors.

24. In the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR, the court discussed the applicable law on contempt of court as follows: -

“It is an established principle of law that in order 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.”

25. In summary, the four elements that an Applicant has to be prove beyond reasonable doubt when seeking contempt orders are:

- i. the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- ii. the defendant had knowledge of or proper notice of the terms of the order;
- iii. the defendant has acted in breach of the terms of the order; and;
- iv. the defendant's conduct was deliberate

26. With regard to the first limb on the terms of the Order, on 26th November 2024, Court issued the following orders: -

- i. The application dated 25th November 2024 is certified urgent and fixed for inter parties hearing on 4th December 2024
- ii. In the meantime, the Respondents is hereby restrained from interfering with the employment of the Petitioner/Applicant as City Manager, Eldoret City, or from substantively filing the position of City Manager, Eldoret City during the pendency of the Petitioner/Applicant's tenure as City Manager, Eldoret City pending inter parties hearing of the application herein
- iii. Applicant to serve the Respondent forthwith and Respondents to file Response before the date for inter parties hearing

27. The Respondents in their response to the application for contempt aver that there was variance between the prayers in the Petitioner's application dated 25th November 2024 and the resultant order issued on 26th November 2024. The application dated 25th November 2024 giving rise to the orders that the Respondents are alleged to have disobeyed sought the following reliefs: -

- i. That pending inter-parties hearing and the petition, a temporary order do issue prohibiting the Respondents from proceeding to conduct interviews of City Manager, Eldoret, scheduled to be held on 26th November 2024



- ii. That pending inter parties and or the Petition herein a temporary order to stay the recruitment of city manager, Eldoret pursuant to the advert dated 15th October 2024
 - iii. Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders and/or favor the cause of justice
 - iv. That the cost of this application be provided for.
28. In the response to the application for contempt, the Respondents averred that the Petitioner was and is the Municipal Manager and has never held the position of a City Manager.
 29. It is not disputed that at the time the Petitioner sought the orders issued on 26th November 2024 the position of City Manager had not been filled. This fact was within the knowledge of the Respondents. They could not therefore get confused by the orders of the court.
 30. The relevant orders issued by the court state:

In the meantime, the Respondents is hereby restrained from interfering with the employment of the Petitioner/Applicant as City Manager, Eldoret City, or from substantively filing the position of City Manager, Eldoret City during the pendency of the Petitioner/Applicant's tenure as City Manager, Eldoret City pending inter parties hearing of the application herein
 31. The Respondents were served with both the application and the order. They instructed counsel who appeared in court on 4th December, 2024 and requested for 7 days to file response. By consent of the parties the interim orders were extended and the application fixed for hearing on 20th January, 2025.
 32. When parties appeared before me on 20th January, 2025 Ms. Waweru, Counsel appearing for the Respondents informed the court that the parties were negotiating.
 33. The jurisprudence on contempt now favor knowledge of the existence of Court orders as opposed to strict personal service. In the case of Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR the Court of Appeal posed the question as to whether knowledge of a Court order or judgment by an Advocate of the alleged contemnor would be sufficient for purpose of contempt proceedings and answered the question in the affirmative.
 34. From the foregoing it is clear that the Respondents were aware of the court orders. No mention was made about any ambiguity of the orders as at this date.
 35. I am satisfied that the alleged contemnors were aware of the court orders which prohibited them from interfering with the employment of the Petitioner/Applicant. They were aware that the Applicant is Municipal Manager and that the reference to City Manager was an error as the position of City Manager has not yet been filled. They disobeyed the court orders deliberately, their argument being that the Applicant was not the City Manager.
 36. On the second limb, there is no doubt that the Respondents were aware about the orders having been served and having commenced negotiations for settlement with the Petitioner.
 37. The 3rd limb is whether the Respondents acted in breach of the terms of the orders. The Respondents do not deny that the Petitioner was attacked and forced to move out of the office. They however deny that they are responsible for the attack on the Petitioner.
 38. On the last limb the Respondents admit that they withdrew the rights as an accounting officer but state the same did not violate the court orders.



39. The Applicant was employed as a Municipal Manager of Eldoret Municipality. Following the elevation of Eldoret to a city status on 15th August, 2024, the Respondents commenced the process of recruitment for the position of City Manager which was advertised by the Respondents on 15th October, 2024. It is the said advertisement that is the subject of the instant petition.
40. In his affidavit in support of the Application dated 25th November, 2024 which gave rise to the orders that are the subject of the instant application the Applicant describes himself as City Manager, County Government of Uasin Gishu. The court in granting the orders of 26th November, 2024 was aware of the transition of Eldoret from Municipality to City which is ongoing and which the Respondents are aware of. The use of the title city manager in the order is therefore not an issue that the Respondents can capitalize on in their defence to the instant application.
41. Section 28 of the *Urban Areas and Cities Act* uses the two terms interchangeably'. The section provides:
28. City or municipal manager
- There shall be a city or municipal manager for every city or municipality established under this Act, who shall implement the decisions and functions of the board and shall be answerable to the board.
42. Eldoret having been elevated to City status, the position held by the Applicant is that of City Manager. Indeed, the suit herein was filed by the Applicant to contest the manner in which the recruitment for the position of City Manager was handled.
43. Regarding the first act of contempt, the letter revoking the rights of the Applicant as accounting officer dated 17th January, 2025 is written by Micah Kipkosgei Rogony, Cecm-finance And Economic Planning, County Government Of Uasin Gishu.
44. Mr. Rogony swore a replying affidavit on 14th March, 2025 in which he admits writing the impugned letter removing the Applicant as accounting officer. In the replying affidavit Mr. Rogony does not attach the job description of Municipal Manager and does not demonstrate that being accounting officer is not an integral part of the functions of Municipal or city manager. Mr. Rogony did not demonstrate to the court that the Applicant's duties and or role did not include being accounting officer.
45. Mr. Rogony did not deny being aware of this court's orders of 26th November, 2024. He admitted that the Applicant was designated an accounting officer in his capacity. In withdrawing the rights of the Applicant a accounting officer Mr. Rogony disobeyed the orders of this court restraining the Respondents from interfering with the employment of the Petitioner pending inter parties hearing of his application.
46. On the second act of contempt being the attacking of the Applicant and hounding him out of office, I am not satisfied that the Applicant has proved that the people who attacked him and forcibly evicted him or caused him to leave office were the alleged contemnors or were sent by the alleged contemnors.
47. From the foregoing, I am satisfied that the Respondents through the actions of Micah Kipkosgei Rogony, Cecm-finance And Economic Planning, County Government Of Uasin Gishu, are guilty of disobeying this court's orders issued on November 26, 2024.
48. I however find that the Applicant has not proved that the Respondents were responsible for his eviction or caused his leaving the office on February 18, 2025.



49. The court will give a date for sentencing at the time of delivery of this ruling.

50. Orders accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY ON

THIS 2ND DAY OF MAY 2025

MAUREEN ONYANGO

JUDGE

