



Nyangongo v Mulati, the Principal Kisii National Polytechnic & 2 others (Miscellaneous Case E001 of 2025) [2025] KEELRC 1803 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1803 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII
MISCELLANEOUS CASE E001 OF 2025
NZIOKI WA MAKAU, J
JUNE 19, 2025**

BETWEEN

EVANS MORARA NYANGONGO APPLICANT

AND

**TOM MULATI, THE PRINCIPAL KISII NATIONAL POLYTECHNIC 1ST
CONTEMNOR**

**DR NANCY NJERI MACHARIA, CEO/SECRETARY TEACHERS SERVICE
COMMISSION 2ND CONTEMNOR**

**DR ESTHER MUORIA, PS STAE DEPARTMENT OF VOCATIONAL &
TECHNICAL TRAINING 3RD CONTEMNOR**

RULING

1. The Alleged Contemnors Mr. Tom Mulati, Dr. Nancy Macharia and Dr. Esther Muoria were summoned to appear in Court today. Mr. Mulati is present and Mr. Mulaku has presented himself on behalf of the 2nd Alleged Contemnors. He urges the Court to vacate the warrants issued on account of the 2nd Alleged Contemnors not having been served. He asserts the matter is related to Petition No. E007 of 2022 at Kisumu. He asserts there has been no notice of the contempt to date and that he was served by Mr. Morara the Applicant directly with the summons.
2. Mr. Mulati appeared and indicated that he is no longer at the Kisii Polytechnic and that he was subsequently transferred. He asserts he cannot disobey a Court order being a civil servant sworn to uphold the law and serve the public.
3. The Counsel for the Applicant Mr. Masolo asserts the refusal to appear by Dr. Nancy Macharia and Dr. Esther Muoria is of itself contemptuous. He asserts the service of the process preceding the issuance of warrants was proper and evidenced by affidavits of service.



4. The Court has had regard to the representation by Mr. Mulati and those by Learned Counsels Masolo Esq. and Mulaku Esq. It is apparent the contempt alleged emanated from a determination in a Petition which was determined in April 2024 – Evans Morara *Nyangongo & another v Cabinet Secretary, Ministry of Education & 8 others (Petition 7 of 2022)* [2024] KEELRC 836 (KLR) (18 April 2024) (Judgment).
5. The Court is minded that the disconnect between the Miscellaneous Application and the Petition was not apparent until it was pointed out by Mr. Mulaku. In the affidavit serving the warrants, there is no evidence of service upon Mr. Mulati, Dr. Macharia and Dr. Muoria. There are screenshots of the alleged service with the deponent process server indicating a stamp was obtained yet none is seen on any of the documents attached to the Affidavit of Service. Additionally, the affidavit of service is not paid for as are a number of documents for the Applicant.
6. The matter of contempt of court is very grave and can lead to the loss of liberty for subjects. Wilful disobedience of a court order, judgment, decree or the like is not something one can take lightly. However, in articulating the need for action against an alleged contemnor, the balance of justice is that no one can be condemned unheard. I therefore direct that the alleged contemnors file affidavits within 14 days of today. The Applicant must serve the PS properly as the service was not proper and it is only by sheer luck Mr. Mulaku was present today for the 2nd Alleged Contemnor after the Applicant notified him of the matter. Mr. Mulati though no longer at Kisii Polytechnic will also be required to have an affidavit placed on record so as to respond to the accusations that he did not abide the court orders and decrees issued by Baari J. in Petition E007 of 2022 aforesaid. The Court therefore vacates the summons issued and places the matter for inter partes hearing of the motion for contempt afresh on 10th July 2025 before Hon. Dr. Justice Gakeri.
7. The Applicant is also directed to clear all outstanding court fees within the next 24 hours.
Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 19TH DAY OF JUNE 2025

NZIOKI WA MAKAU, MCIArb.

JUDGE

