



**Yaseen v Cabinet Secretary, Ministry of ICT, Innovation & Youth Affairs & 2 others;  
Kenya Broadcasting Corporation (Interested Party) (Employment and Labour  
Relations Petition E119 of 2022) [2025] KEELRC 1718 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1718 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E119 OF 2022**

**JW KELL, J  
JUNE 12, 2025**

**BETWEEN**

**DR. NAIM BILAL YASEEN ..... PETITIONER**

**AND**

**CABINET SECRETARY, MINISTRY OF ICT, INNOVATION & YOUTH  
AFFAIRS ..... 1<sup>ST</sup> RESPONDENT**

**THE HEAD OF PUBLIC SERVICE ..... 2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**KENYA BROADCASTING CORPORATION ..... INTERESTED PARTY**

**RULING**

1. The Petitioner/Applicant filed an application by way of Notice of Motion dated 12<sup>th</sup> April 2024 brought Under the *Judicature Act* of the law for Orders: -
  1. That Eliud Owalo, Cabinet Secretary Ministry of Information, Communications and the Digital Economy and/or his successors and the Principal Secretary Ministry of Information, Communications and The Digital Economy be committed to civil jail for disobedience of a consent order and Decree issued on 29<sup>th</sup> October 2023.
  2. That the costs of the application be provided for.
2. Grounds of the application
  - a. On 12<sup>th</sup> October 2023 the parties signed a consent letter to compromise the matter. The consent was recorded and adopted as a judgment of the court on 29<sup>th</sup> October 2023.



- b. In part compliance with the consent and decree, the Respondents paid to the Applicant a sum of Kshs. 2,000,000/- leaving an outstanding balance of Kshs. 5,585,733.20.
  - c. In disobedience of the decree, the Respondent failed to appoint the Applicant to a position “equivalent to that of the Managing Director in the Public Service.”
  - d. The law on contempt of court is trite that any party who is either served with a court order or made aware of a court order but deliberately refuses to obey the same is or is deemed to be in contempt of court. Despite various letters by the Applicant to the Respondents, they have failed to cure the contempt of court complained of.
  - e. The dignity and authority of this court must be upheld and protected at all times.
3. The application was supported by the Petitioner/Applicant’s Affidavit dated 12<sup>th</sup> April 2024 where he annexed the Judgment of the Court dated 31<sup>st</sup> October 2022; the Decree issued by the court on 7<sup>th</sup> November 2022; the Ruling dated 19<sup>th</sup> May 2023 by the Honourable Court of Appeal ordering stay of the judgment pending appeal; the Consent dated 12<sup>th</sup> October 2023; the second Decree issued by the court on 30<sup>th</sup> October 2023; and various correspondences to the Respondents.
  4. The application is opposed by the Respondents who filed Grounds of Opposition dated 14<sup>th</sup> February 2025 to the effect that the Applicant never served the stated public officers with any order of mandamus despite contempt of court applications being personal in nature and quasi-criminal proceedings. They also argued that there is no law describing the particulars of the offence and the prescribed sentence upon conviction, hence any sentence meted by the court for contempt of court would contravene Article 50 (p) which entitles a person to the least severe of the prescribed punishments for an offence. Further, the Respondents stated that the office of the 1<sup>st</sup> Respondent has demonstrated good faith by settling the entirety of the decretal sum i.e Kshs. 7,585,733.20 hence has complied with the decree, save for appointing the Petitioner/Applicant to a position equivalent to that of the Managing Director in the Public Service. They clarify that such appointment has not been made as a vacancy of that nature has not arisen in the Public Service. However, they stated that the Petitioner/Applicant is at liberty to take up his previous position in the Ministry of ICT, Innovation and Youth Affairs.
  5. The court directed the application be canvassed by way of written submissions and both parties filed.

#### Decision

Whether Eliud Owalo, Cabinet Secretary Ministry of Information, Communications and the Digital Economy and/or his successors and the Principal Secretary Ministry of Information, Communications and the Digital Economy should be committed to civil jail for disobedience of a consent order and Decree issued on 29th October 2023

6. The Court herein is called upon to commit the stated persons to civil jail for failing to obey court orders. The powers of the court to punish persons who are in contempt of its orders are derived from Section 5 of the Judicature Act Cap 8 of the Laws of Kenya which provides that:

“5. Contempt of court

- (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.



(2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”

7. The Respondents herein have taken great pains to argue in their Grounds of Opposition that there is no law describing the particulars of the offence of contempt of court and no prescribed sentence for such an offence. I respectfully disagree with their position in light of the above set out provision of law. In any event, it is trite law that courts have inherent powers to punish contemnors. They are only required to adopt procedures which are fair and reasonable and ensure that a full opportunity was given to an alleged contemnor to defend himself or herself. The foregoing was eloquently spelt out by our apex court in the case of *Githiga & 5 others vs Kiiru Tea Factory Company Limited* (Petition 13 of 2019) [2023] KESC 41 (KLR). Section 5 of the *Judicature Act* which had been repealed following the enactment of the Contempt Act which was later declared unconstitutional, is now the applicable law as held by Justice Odunga of High Court (as he then was) in *Alfred Mutua v Boniface Mwangi* [2022] eKLR at paragraph 14 where the court upheld the decision of the Court of Appeal in *Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others* [2014] eKLR, Where the Court recognised that the only statutory basis for contempt of court law in so far as the Court of Appeal and the High Court are concerned is Section 5 of the *Judicature Act*.
8. In the present case, it is not in dispute that an order of mandamus was issued by the Court on 31<sup>st</sup> October 2022 requiring the 1<sup>st</sup> Respondent to reappoint Petitioner subject to the recommendation of the Interested Party’s Board, and have the same gazetted as required by law. It is also not in dispute that the parties herein entered into a consent dated 12<sup>th</sup> October 2023 as follows:
- “The parties hereto having compromised the instant matter would like to have this Petition marked as settled on the following terms:
- a. That the Ministry of Information, Communications and the Digital Economy is willing to consider the appointment of Dr. Bilal for a position equivalent to that of the Managing Director in the Public Service.
  - b. That the Petitioner, Dr. Naim Bilal will be paid a sum of Kshs. 7,868,733.20 in full and final settlement.
  - c. That the Petitioner and the Respondent will withdraw all cases in respect of the dispute herein.”
9. The consent was duly executed by both parties, and adopted as an order of the court on 26<sup>th</sup> October 2023, culminating in the second Decree issued by the court on 30<sup>th</sup> October 2023.
10. The Applicant herein complains that the Respondents have failed to comply with items (a) and (b) of the consent, save for the partial payment of Kshs. 2,000,000/- to the Applicant. In response to this assertion, the Respondents, in paragraph 5 of their Grounds of Opposition, state that they have complied with item (b) of the consent by remitting the entire sum of Kshs. 7,585,733.20 to the Applicant. The Applicant acknowledged receipt of the said sum through their counsel on record, Mr. Muluvi, on 4<sup>th</sup> February 2025 before this Court.
11. The only issue remaining, therefore, is the Respondent’s failure to comply with item (a) of the consent. It is instructive to note that the Respondents do not contest the assertion that they have failed to



appoint the Applicant to a position equivalent to that of the Managing Director in the Public Service, except to protest that no such vacancy exists in the Public Service at this time.

12. I find that the Applicant failed to comply with item (a) of the consent order issued by the Court on 26<sup>th</sup> October 2023, which they were no doubt well aware of, having executed the same. The question of whether they were served with the order does not arise, owing to their voluntary execution of the consent, and because they were present in court through a state counsel from the Office of the Attorney General, when the consent was adopted as an order of the Court. The Court of Appeal in *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR held that:-

“Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings” We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client’s case.”

13. In the circumstances of this case, should the court punish the Respondents for the aforesaid contempt? To answer this question, I invoke the Court’s finding in the case of *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR where it was stated:-

“ 40. 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. 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. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated:-

“There are essentially four elements that 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:-

- 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
- d. the defendant’s conduct was deliberate.

41. It is the last test in paragraph (d) above that warrants detailed consideration.”

14. Applying the above principles to the instant case, the Applicant has met the first three conditions of proving that the terms of the order were clear and unambiguous and were binding on the Respondents, the Respondents had knowledge of or proper notice of the terms of the order and the Respondents have acted in breach of the terms of the order.



15. In respect of the fourth condition, that is, that the Respondents' failure to comply is deliberate, I find and hold that the Respondents' position that there is no vacancy equivalent to that of Managing Director in the Public Service is persuasive. That is the only part of the consent order not fulfilled the applicant having been paid the entire sum of Kshs. 7,585,733.20.
16. While the Respondents have stated that the Applicant is at liberty to take up his previous position at the Ministry which he held prior to being appointed the Managing Director, Kenya Broadcasting Corporation, this is not what the parties consented to in the consent of 12<sup>th</sup> October 2023. The applicant in his affidavit of 12<sup>th</sup> April 2024 stated he was constrained to go back to his original work, a position he held 15 years ago. At the same time the court did not find evidence placed before it of deliberate failure to make the appointment as per the consent. Did the vacancy arise? Did the Respondent have the capacity to appoint the petitioner/applicant directly without a competitive process (Article 10 of *the Constitution*)? These questions relate to the test question of contempt, being, whether the failure by the Respondent to comply with the Consent order on the appointment as Managing Director in the public service was deliberate. The court returns in the negative.
17. For the above reasons, I find and hold that the application has not met the threshold of civil contempt against the respondents for failure to appoint the applicant as a Managing Director in the Public Service. The Respondent informed the court the entire decretal money had since been settled.
18. In conclusion, the court declines to issue the order sought, namely:- That Eliud Owalo, Cabinet Secretary Ministry of Information, Communications and the Digital Economy and/or his successors and the Principal Secretary Ministry of Information, Communications and The Digital Economy be committed to civil jail for disobedience of a consent order and Decree issued on 29<sup>th</sup> October 2023 under the application dated 12<sup>th</sup> April 2024. The application is disallowed with no order as to costs.
19. It is so ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 12<sup>TH</sup> DAY OF JUNE, 2025.**

**J.W. KELI,  
JUDGE.**

In The Presence Of:

Court Assistant: Otieno

Appellant : - absent

Respondent: absent

