



Nganga v County Government of Mombasa & another (Cause E081 of 2022) [2025] KEELRC 1667 (KLR) (5 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1667 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E081 OF 2022**

K OCHARO, J

JUNE 5, 2025

BETWEEN

JOSPHINE NDINDA NGANGA APPLICANT

AND

COUNTY GOVERNMENT OF MOMBASA 1ST RESPONDENT

MOMBASA COUNTY SERVICE BOARD 2ND RESPONDENT

RULING

1. By the Notice of Motion application dated 24th October 2024, the Applicant seeks that this Court expunge and declare inadmissible as evidence the letter of Charo Karume dated 27th October 2022 and the documents under cover thereof.
2. The application is premised on the grounds set out on the face of the application, and the affidavit in support thereof, sworn by the Applicant on 24th October 2024.
3. The Claimant/ Applicant contended that following her application dated 18th October 2022, this Court did issue a restraining order on 25th October 2022, barring the Respondent's from taking any disciplinary action against her pending the hearing and determination of the application on merit.
4. In breach of the Order, the 1st Respondent's County Chief Officer Medical Services, Dr. Khadija Shikely, wrote to the Independent Electoral and Boundaries Commission seeking information as to whether she had contested for an elective seat during the 2022 general elections.
5. She further stated that following the letter, the Commission responded through the letter, the subject matter of this application.
6. Subsequently, she initiated contempt proceedings against the Respondents' officers for defiance of the Court order. By its ruling dated 9th March 2023, the Court adjudged Dr. Khadija and other Officers guilty of contempt of the court order, fined KShs. 100,000, in the defaulting two months' civil jail.



7. In the ruling, the Court condemned Dr. Khadija for her act of writing the letter to IEBC, notwithstanding the restraining order.
8. The ruling was not appealed against.
9. The Respondents have included the letter from IEBC and the documents forwarded thereunder in their list of exhibits and intend to rely on them as their documentary evidence.
10. As the documents were sought and obtained in defiance of a court order, they cannot be used in evidence. They should be expunged from the record. The Respondents should not be allowed to use illegally obtained evidence in court proceedings.
11. It would be against the administration of justice to allow the use of evidence obtained as such.
12. Respondents resisted the application on the grounds of opposition dated 8th November 2024, thus;
 - a. The application is an abuse of the Court process, as it was filed long after pre-trial.
 - b. The orders sought are against the rules of evidence.
 - c. The orders of 18 October 2022 were unrelated to the acts forming the basis for the instant application.
 - d. The application attempts to delay the expeditious conclusion of this suit herein, and as such, it has been prompted by bad faith.

Analysis and Determination.

13. I have carefully considered the Applicant's application, the grounds upon which it is anchored, the affidavit in support thereof, the Respondents' grounds of opposition, and the respective submissions by Counsel for the parties, and the following issues emerge for determination;
 - a. Whether the letter dated 27th October 2022 and the documents under cover thereof were sought and obtained in defiance of a court order.
 - b. Whether the application herein has been filed too late in the day, rendering it an abuse of the court process.
 - c. Whether the orders sought in the instant application are grantable.
14. Undeniably, contemporaneously with the Statement of Claim, the Claimant/Applicant filed an application dated 18th October 2022, seeking orders:
 - a. That service of the application be dispensed with in the 1st Instance, and the application be certified urgent and be heard *ex parte*.
 - b. That the Court be pleased to issue an interim injunction restraining and preventing the Respondents or their officers, servants, or agents from stopping the Claimant's salary pending the hearing and determination of the application *inter partes*.
 - c. That the Honourable Court be pleased to grant injunctive orders restraining and or preventing the 1st and 2nd Respondents or their officers, agents or servants or any persons acting on their direction or authority from taking disciplinary action against the Claimant arising from or connected to the show cause letter issued by the County Chief Officer Medical Services dated 11th August 2022 pending the hearing and determination of the claim.



15. Upon being served with summons to enter appearance, the Respondents filed a memorandum of appearance but didn't file a response to the application or attend court on the 25th October 2022, when the application was slated for hearing. As a consequence, the Court ordered;
 - a. The Notice of Motion is fixed for inter-partes hearing on 10th November 2022.
 - b. The Respondents may file responses to the application within 7 days of today.
 - c. In the meantime, an interim order of injunction is hereby issued restraining the Respondents, their agents, officers, or servants from stopping or withholding the Claimant / Applicant's salary and from taking any disciplinary action against her pending an inter partes hearing of the application on 18 October 2022.
 - d. The Claimant/ Applicant shall serve this order on the Respondents within 3 days of today.
16. After considering the application on its merits, the Court rendered itself on the application through its ruling dated 9th March 2023, and allowed the application in the following terms;
 - a. An order of injunction is hereby issued to restrain and prevent the Respondents or their officers or agents from stopping the Claimant's salary pending the hearing and determination of the claim herein.
 - b. An order of injunction is hereby granted restraining and preventing the 1st and 2nd Respondents or their officers, agents or servants, or any person acting on their direction or authority from taking disciplinary action against the Claimant arising from or connected to the show cause letter issued by the County Chief Officer Medical Services and dated 11th August 2022 pending the hearing and determination of the claim herein.
17. Alleging that the Court's orders of 9 March 2023 had been violated, the Claimant / Applicant filed an application dated 11th November 2023, in which she sought:
 - a. that this Honourable Court be pleased to find the 2nd Respondent's Chief Executive Officer Mr. Jeizen Faruk, the 1st Respondent's County Chief Officer Devolution and Public Service Administration Mrs. Justina Mwikya, County Chief Officer Medical Services Dr. Khadija Shikely and the County Chief Officer Public Health Ms. Pauline Odinga to be in contempt of this Court's orders granted on 25th October 2022.
 - b. that this Honourable Court be pleased to order that the 2nd Respondent's Chief Executive Officer Mr. Jeizan Faruk, the 1st Respondent's County Chief Officer Devolution and Public Service Administration Mrs. Justina Mwikya, County Chief Officer Medical Services Dr. Khadija Shikely, and County Chief Officer Public Health Ms. Pauline Odinga, be arrested and committed to civil jail for a term not exceeding six months.
 - c. that the Court be pleased to order that the Respondents should not be heard by the Court until they purge the contempt.
 - d. that this Court be pleased to award damages, to be assessed to compensate the Claimant/ Applicant.
 - e. that costs of the application be borne by the Respondents.
18. After hearing the combatants in the application, the Court found merit in the application, adjudged the contemnors guilty of contempt of the orders and punished them as stated hereinbefore.



19. I have carefully considered the ruling by the Court and noted that although the Claimant/Applicant argued inter alia that, despite the restraining orders, Dr. Khadija wrote to IEBC seeking information to further the Respondents' investigations against her, the success of the application did not depend on that ground whatsoever. In fact, the Court did not mention this ground in the determination section of the ruling.
20. The orders of 9th March 2023 did not expressly or implicitly prohibit the Respondents from gathering documentary or other evidence that would enable them to defend the Claimant/Applicant's application and claim. I am not convinced that a court can issue an order restraining the collection of evidence for one's defence in litigation without being expressly asked to do so, or providing reasons for such an order. Acting as such would absurdly stifle the affected party's right to a fair hearing, embodied in Article 50 of the Constitution and the principles of natural justice.
21. The Respondents asserted that they sought the information from the IEBC to defend the Claimant's claim adequately. Given the circumstances of the suit, they had the right to do so in the absence of any order restraining them for any reason. The Claimant/Applicant has not demonstrated that the purpose for requiring the information was anything other than what the Respondents put forward.
22. For this reason, it is challenging to understand how the Respondents' action can be regarded as part of, or as an act furthering, a disciplinary process.
23. Ultimately, this Court is not convinced that the impugned documents were obtained illegally and in contempt of court orders. The Applicant's application is for failure.
24. Before I pen off, it is essential to point out the Court's appreciation of the Claimant/Applicant's authorities cited and that, unfortunately, they are irrelevant in the circumstances of the instant application.
25. In conclusion, I find the application lacking merit. It is hereby dismissed.
26. Orders accordingly.

READ, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 5TH DAY OF JUNE, 2025.

OCHARO KEBIRA

JUDGE

