



**Kioko v Technical University of Kenya & another (Employment and Labour Relations
Petition E173 of 2024) [2025] KEELRC 1647 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1647 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E173 OF 2024**

HS WASILWA, J

JUNE 4, 2025

BETWEEN

CUSTINE WANZA KIOKO PETITIONER

AND

TECHNICAL UNIVERSITY OF KENYA 1ST RESPONDENT

KENYA UNIVERSITIES STAFF UNION 2ND RESPONDENT

RULING

1. The 2nd Respondent/Applicant filed a Notice of Motion dated 30th January 2025 seeking orders that: -
 1. spent
 2. pending the hearing and determination of this Application, this Honourable Court be pleased to stay the sentencing of the contemnor.
 3. the ruling delivered by this Court on the 22nd of January 2025 be reviewed to a finding that the 2nd Respondent is not in contempt of court.
 4. the costs of this Application be provided for.

2nd Respondent/Applicant's Case

2. The Applicant avers that this court delivered a ruling on 22nd January 2025 finding it in contempt of court and thus liable for punishment unless the contempt is purged.
3. The Applicant avers that their officials are faced with a peculiar challenge because they lack the authority to reinstate the Petitioner/Respondent to her position and/or grant her access to union funds as she seeks without the participation of the members of the union countrywide.



4. It is the Applicant's case that its members have continuously expressed disgruntlement and dissatisfaction with the leadership of the Petitioner/Respondent, have not had a sitting at the 2nd Respondent's Annual Delegates Conference which has the sole mandate of implementing this court's decision.
5. The Applicant avers that it lacks any way of implementing this court's orders since the rest of the officials lack authority to put a leader in office without the participation of the members whom she will be serving and thus its impending punishment will be against the interests of justice.
6. It is the Applicant's case that the Petitioner's substantive petition which is at the final stages of determination does not raise the issue of her expulsion from the union, therefore, the effect of this court's finding will be to grant her total immunity from being disciplined and/or removed from the union regardless of the conduct she exhibits and/or the wishes of the 2nd Respondent's members at whose pleasure she serves.
7. The Applicant avers that the this court's ruling of 26th July 2024 precluded it from implementing the decision of the Annual Delegates Conference of 2023 from expelling the Petitioner/Respondent from the union.
8. On 9th August 2024, it held another Annual Delegates Conference and the members present, disgruntled with the Petitioner/Respondent's conduct moved a motion for her removal and procedurally voted her out both as an official and member of the union.
9. It is the Applicant's case that following this decision, the Petitioner/Applicant cited the 2nd Respondent for contempt of court orders. The 2nd Respondent/Applicant conceded that the ruling restrained it from expelling the Petitioner as its National Vice Chairperson, Branch Chairperson or member of the union as it was not satisfied that the same was procedural.
10. The Applicant avers that the owing to the Petitioner's gross misconduct and mismanagement of members' funds, this court cannot in the interest of justice cushion her from any disciplinary action by the union without investigating the conduct complained of.

Petitioner/Respondent Case

11. In opposition to the Application, the Petitioner/Respondent filed a replying affidavit dated 5th February 2025.
12. The Petitioner/Respondent avers that the Applicant has neglected or refused to comply with the orders of this court, even during the pendency of his sentencing and does not deserve the audience of this court.
13. The Petitioner/Respondent avers that the communication laying the basis of contempt was through the Applicant's Secretary General's office and not through the national officials as alleged.
14. The Petitioner/Respondent avers that the Applicant's Secretary General runs the union and can easily comply with the orders of this court remedying the disgruntles.
15. The Petitioner/Respondent avers that Articles 10(c)(1) and 7.1(g) of the union's constitution states the Applicant's Secretary General is the CEO and Spokesperson of the union and he has the powers to prepare the ADC agenda. He therefore exercised his powers to ensure he does not comply with the court orders by preparing the ADC agenda to ratify her expulsion and he misled the members to vote on a matter already determined by the court hence disobeying court orders.



2nd Respondent/Applicant's Submissions

16. The Applicant submitted on three issues: whether this court has the mandate to review its ruling dated 22nd January 2025; whether the totality of the ruling of 26th May 2024 enjoined the Respondent from expelling the Petitioner in perpetuity; whether it is practical for her to be reinstated.
17. The Applicant submitted that Section 16 of the *Employment and Labour Relations Court Act* provides that this court has the jurisdiction to review its judgments, awards, orders and decrees in accordance with its rules. It therefore, seeks a review of the court's decision on the grounds that the ruling requires clarification and that it is impractical to reinstate the Petitioner as a union official in light of the fact that the members do not wish to be led by her and she is not compliant with the requirement for payment of union dues.
18. On the second issue, the Applicant submitted that the ratio decidendi of paragraphs 44-45 of Hon. Lady Justice Mwaure's ruling dated 26th July 2024 explains that having had the benefit of listening to the audio recording of the 2nd Respondent's Annual Delegates Conference of 2023, it could not decipher whether most delegates voted in favour of or against removing the Petitioner from the union.
19. It is the 2nd Respondent/Applicant's submission that the ruling barred it from expelling the Petitioner and the court's intention was to completely bar the Applicant from disciplining its members when necessary as the Petitioner alludes, therefore the court fell into error. Therefore, in its subsequent Annual Delegates Conference, it procedurally removed the Petitioner and for good reasons.
20. On the third issue, the Applicant submitted that the Petitioner cannot lead members of a union that do not wish to be led by her. Her right of association is limited to the extent that the rest of the members do not wish to be in a union with her, which limitation is permissible in law.
21. The Applicant further submitted that the Petitioner is in arrears of union fees as she herself admitted in the substantive petition. By seeking to remain as an official, she wants to partake from a collective basket to which she did not contribute whereas the union's constitution provides that any member who is more than 13 weeks in arrears of union dues cannot enjoy the union's benefits including the right to vote and hold office.

Petitioner/Respondent's Submissions

22. The Petitioner/Respondent reiterated the content of her replying affidavit dated 5th February 2025.
23. The Petitioner/Respondent submitted that the reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in administration of justice as held in *Sam Nyamweya & 3 others v Kenya Premier League Limited & 2 others* [2015] KEHC 6265 (KLR).
24. The Petitioner/Respondent submitted that the contemnor is guilty of disobedience of the court's order. The conduct of the contemnor is unjustified and amounts to a calculated attack on the court meant to bring the administration of justice into disrepute and contempt.
25. It is the Petitioner/Respondent's submission that by their wilful acts, the contemnors have sought and continue to demean the authority and dignity of the court. The conduct of the contemnor is malicious and calculated to embarrass and undermine judicial authority, rule of law and administration of justice.
26. I have examined all the averments and submissions of the parties herein. This court vide its ruling of 22/1/2025 indicated that the court had vide its ruling of July 26th 2024 barred any action by the respondents against the applicant geared at removing her from her position as National Vice Chair amongst other positions.



27. The court found the applicants herein guilty of contempt following the said ruling in which the applicant alleged that the 2nd respondent led by its secretary general Dr Charles Mukhiwaya had continued to expel her as the National Vice Chairperson and member of the union and held meetings in her absence and passed a vote of no confidence in her.
28. These actions are said to have been undertaken despite the existence of binding court orders which had been served upon the applicants. The applicants have now approached court again seeking stay of the sentencing of its officials.
29. The contemnor aver that they lack the capacity to implement the orders of this court because the respondent herein was removed following a decision of the annual delegate's conference of 2023. The court is being asked to review its decision on this ground and not sentence the applicants for contempt.
30. The application leading to the contempt dated 27th November 2023 sought orders barring the respondent/applicants (2nd respondent) its servants and/or employees and/or agent or anyone acting on its behalf from executing the decision to expel the petitioners/applicant as the national vice chairperson, branch chairperson and member of the 2nd respondent. In its ruling of 27th July 2024 the court granted orders sought for review and set aside orders of 17/5/2024 and ordered that the 2nd respondent, its servants and employee and agents or anyone acting on its behalf be restrained from expelling the petitioner as its National Vice Chairperson, branch chairperson and member of the 2nd respondent. The 2nd respondent now contends that they have no control over activities of its national delegates conference who they aver voted to remove the applicant from office contrary to this courts order.
31. Indeed the contention by the applicant is laughable because the National Delegate's conference is an organ of the 2nd respondent union. No delegates can call a conference outside the 2nd respondent's organ.
32. The assertion that the 2nd respondent is helpless over the activities of the national delegates conference is found untenable and in contempt of this court's orders. There is no reason whatsoever that the applicants have presented before this court that can make this court delay the sentencing of the applicant for contempt of the orders herein.
33. The issue of review does not also arise in the circumstances. I therefore decline to allow the applicant then seeking stay of the sentencing of the contemnor herein with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH OF JUNE, 2025.

HELLEN WASILWA

JUDGE

