



Kimani v Mombasa County Public Service Board & 2 others; Mombasa Water supply and Sanitation Company Limited & another (Interested Parties); Marafa (Contemnor) (Petition E011 of 2025) [2025] KEELRC 2097 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2097 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
PETITION E011 OF 2025**

**M MBARŪ, J
JULY 17, 2025**

BETWEEN

SAMUEL MARIGI KIMANI PETITIONER

AND

MOMBASA COUNTY PUBLIC SERVICE BOARD 1ST RESPONDENT

COUNTY GOVERNMENT OF MOMBASA 2ND RESPONDENT

WATER SERVICES REGULATORY BOARD 3RD RESPONDENT

AND

**MOMBASA WATER SUPPLY AND SANITATION COMPANY
LIMITED INTERESTED PARTY**

ABDIRAHIM MOHAMED FARAH INTERESTED PARTY

AND

EDITH KWEKWE MARAFA CONTEMNOR

RULING

1. The petitioner filed an application dated 19 May 2025 under the provisions of Section 5 of the [Judicature Act](#), Section 3A of the [Civil Procedure Act](#), Article 169(1)(d) of the [Constitution](#), Rule 39 of the High Court (Organization and Administrative (General) Rules and seeking Orders:
 1. Spent.
 2. Leave be granted to the applicant to institute contempt of court proceedings and summons be issued for personal attendance of Abdirahim Mohamed Farah and Edith Kwekwe Marafa,



being the 1st and 2nd contemnors before the court to show cause why they should not be cited for contempt of court for disobeying the orders of the court issued on 4 April 2025.

3. Abdirahim Mohamed Rafah and Edith Kwekwe Marafa do stand committed to civil jail for a period as this court shall determine for contempt of court orders issued on 4 April 2025.
4. Costs of the application be borne by the contemnors.
2. The petitioner supports the application through his Affidavit and avers that on 4 April 2025, the court issued orders and directed the respondents that:

In the interim, the 1st respondent's letter dated 7th March 2025 appointing the Managing Director with effect from 2nd May 2025, is hereby stayed.

3. The import of these orders was to the effect that the purported appointment of the managing director through a letter dated 7 March 2025 by the 1st respondent had no impact and could not influence the appointment of the 2nd interested party until further court orders. The orders were served upon the respondents and interested parties.
4. In deliberate disobedience of the court orders, the board of the 1st interested party met on 2 May 2025, deliberated on the letter already stayed by the court, and at Minute No. 3/02.05.2025 discussed it and resolved to recommend that the managing director's contract be renewed for a further three (3) year term.
5. The net effect is that, despite the contents of the letter being stayed by the court through an order, the 2nd contemnor proceeded to facilitate the convening of a meeting, proceeded to discuss the same and effected the contents of the said letter in apparent contravention of the express orders of the court.
6. To buttress the contentment of the 2nd contemnor, as stated in the Supporting Affidavit dated 7 May 2025, the deponent deposes that the board of the 1st interested party ratified the decision to renew the contract. The contemnors proceeded to sign the minutes, thus authenticating them for action by the 1st interested party with a clear intention to disobey express court orders. The orders were clear that the 1st contemnor's appointment, which was to take effect on 2 May 2025, was stayed until further directions. The 1st contemnor has continued to occupy the position of managing director of the 1st interested party, based on the letter dated 7 March 2025 and its ratification by the 2nd contemnor, rendering the court orders ineffective.
7. There is deliberate disobedience and a lack of respect for court orders. This is a blatant act of contempt and should be punished.
8. In reply, the 2nd contemnor filed a Replying Affidavit, averring that the petitioner's allegations of contempt are misguided. The court order of 4 April 2025 merely stayed the implementation of the 2nd interested party's appointment, effective from 2 May 2025. The ratification by the board of the 1st interested party was undertaken in the normal course of its functions. It was not intended to, nor did it deliberately circumvent or undermine the court's authority. The said action was carried out in good faith without any intention of disobeying or acting in contempt of court.
9. Kwekwe also avers that the decision of the 1st interested party to ratify the renewal of the managing director appointment was made solely in acknowledgement of the 1st respondent's decision and was not intended to give effect to the said renewal. To date, no practical or administrative steps have been taken by the 1st interested party to implement or operationalize the renewal decision.



10. The board meeting held on 2 May 2025 was primarily focused on discussing and ratifying the renewal of the 2nd interested party appointment. The implementation, execution, or enforcement of the renewed contract was not addressed.
11. The petitioner has neither demonstrated nor presented evidence to show that a renewal contract has been signed between the 1st interested party and the 2nd interested party to formalize the renewal of the term of service. The petitioner has not provided evidence that a contract has been executed. The internal deliberations and ratification by the Board have no proof that the 2nd interested party has resumed office under the purported renewal of the contract.
12. Internal deliberations and ratification conducted by the board of the 1st interested party form part of the lawful internal governance processes and corporate autonomy. These actions were strictly limited to administrative procedures and do not in any manner violate or contravene the interim orders of the court.
13. Kwekwe avers that the 1st interested party has complied with the orders issued on 4 April 2025. The continued existence of the orders have hindered the effective management and decision-making processes of the 1st interested party. There are operations paralysis and an impact on the provision of essential services. To maintain service continuity, the board resolved to appoint an interim Managing Director on 29 May 2025. This was to ensure continuity and not to disobey court orders, and the deliberations on 2 May 2025 were purely procedural.
14. Other parties have not filed affidavits.
15. The petitioner submitted that on 4 April 2025, the court issued a stay order, suspending any further action on the letter dated 7 March 2025 until further notice. However, on 2 May 2025, the 2nd contemnor convened a meeting to authorise the appointment of the 1st interested party as the managing director. The court had suspended such action, and the respondents and interested party were served with the subject orders. This is conduct that is deliberate and calculated to defy court orders.
16. The 2nd contemnor, in reply to the instant application, confirms that the board ratified the decision to renew the letter of 7 March 2025, but not to defy the court. The duty to obey court orders is an unqualified obligation of every person for the maintenance of the rule of law, good order and due administration of justice. As long as a court order exists, no party is permitted to disobey, even if they feel it is inconvenient to them or irregular. In *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR, the court held that every person is under an obligation to respect court orders, even if they disagree with the court's decision. A party that is aware of a court order, whether valid or not, cannot be permitted to disobey it.
17. The 2nd contemnor in reply has admitted that the ratification by the board of the appointment of the 1st contemnor as managing director is a development that this court ought to consider and vacate its orders of stay. In effect, the disobedience of the subject orders was deliberate without regard to the rule of law. The orders sought should be issued to protect the dignity of the court orders and ensure the rule of law.
18. The contemnors submitted that there is no contempt of court as alleged. The meeting convened by the 1st respondent on 2 May 2025 did not constitute contempt. There is no appointment of the 1st contemnor, which the court stayed. The order halted the implementation of the letter dated 7 March 2025. In the case of *Amuga & Company Advocates v Kisumu Concrete Products Limited* [2021] eKLR, the court held that to resolve the opposing positions taken by the parties, it is necessary to get



the real meaning of the court orders. A court order should achieve its purpose, and where there are conflicting interpretations, the parties should be heard on the merits.

19. The effect of the orders of 4 April 2025 was to preserve the status quo, taking effect on 2 May 2025, which the respondents and interested party have done. In *Samuel M N Mweru & Others v National Land Commission & 2 others* [2020] eKLR, the court held that in addressing a contempt application, the applicant must prove that the terms of the order were clear and binding the respondents and who are served with notice and terms thereof, there is a breach and the conduct is deliberate.
20. The contemnors submitted that in this case, the meeting held on 2 May 2025 was part of the routine governance of the 1st respondent. The discussions and deliberations are lawful, but they refrained from discussing the contract for the 1st interested party. The respondents did not restrain the 1st interested party board from convening or discussing its operational matters. There is no contempt, and the interim orders should be vacated to allow the interested parties to undertake their mandates.

Determination

21. The fact that orders were issued on 4 April 2025 is not contested. The orders were served on the respondents and interested parties. The two cited contemnors are aware of the court orders.
22. The orders were that;
 - The application dated 3 April 2024 is certified urgent.
 - Serve the application upon the respondents and interested parties to allow 14 days' right of reply;
 - In the interim, the 1st respondent's letter dated 7 March 2025 appointing the managing director with effect from 2 May 2025, is hereby stayed;
 - Attend the hearing on 29 April 2025.
23. A penal notice accompanies the court orders. The notice directed that;
 - ... any disobedience or non-observance of the order of the court served herewith will result in penal consequences to you and any other person(s) disobeying and not observing the same.
24. In reply to the application, Kwekwe, as the chairperson of the 1st interested party, avers that the Board she chairs met on 2 May 2025, solely to address the issue of ratification of the letter dated 7 March 2025 in the ordinary course of its functions. Such did not circumvent or undermine the authority of the court orders. That the ratification was carried out in good faith and with due regard to the court's interim orders, without any intention of disobedience or contempt.
25. In the affidavit, Kwekwe confirms and admits the follows:
 - a. That the board's decision to ratify the Managing Director's renewal was merely in acknowledgement of the 1st respondent's decision and was not intended to implement it.
 - b. That to date, the 1st interested party has not taken any practical or administrative steps to effect the said renewal.
 - c. The board meeting on 2 May 2025, was primarily focused on the discussion and ratification of the renewal. No matters related to implementation or enforcement were addressed. ...
26. The import of the orders issued on 4 April 2025 was to stay the implementation of the 1st respondent's letter dated 7 March 2025, which had appointed the managing director with effect from 2 May 2025.



Acting on the letter in any manner, either through ratification, discussion, or administrative steps, was a direct breach of the terms of the court orders.

27. This position is emphasised in *Kenya National Union of Teachers & 2 others v Teachers Service Commission* [2018] KECA 214 (KLR) that:

... the plain and unqualified obligation of every person against, or in respect of whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged.

28. In *Commercial Bank of Africa Limited versus Isaac Kamau Ndirangu* [1992] eKLR, the court held that:

It is imperative that orders of the court must be obeyed as a cardinal basis for endorsement of judicial authority and dignity.

To do otherwise would erode the dignity and authority of the courts.

29. The 1st and 2nd interested party have relied well on the case of *Firestone South Africa (Pty) Ltd v Genticuro AG*, where the court held that the basic principles applicable to the construction of documents also apply to the construction of a court judgment or order. In this case, upon service of the court orders issued on 4 April 2025, the respondents and interested party were bound. This stayed the letter of 7 March 2025 appointing the managing director with effect from 2 May 2025. To purport to diminish the court order by attending to discuss and ratification of the renewal covered the disobedience under the guise of no implementation or enforcement was addressed, was to breach the subject orders directly. Such conduct is contrary to the terms of the court orders and hence deliberate.

30. Court orders once issued should be obeyed, as held in *Kenya National Union of Teachers & 2 others v Teachers Service Commission* [2018] KECA 214 (KLR). Court orders facilitate the orderly conduct of court business and uphold the rule of law. The purpose would be undermined if interested parties were allowed to justify their disobedience on the grounds that Kwekwe considers as justification in her Affidavit, that:

The said ratification by the Board of the 1st interested party is a development that the court ought to consider and thus vacate the earlier orders of stay..

31. The court in the case of *Taita Taveta County Government & another v Mwakungu & 12 others* [2022] KECA 1125 (KLR) held that the court does not, and should not, issue orders in vain. Otherwise, the court would be exposed to ridicule, and no agency of the constitutional order would then be left to serve as a guarantee for legality and the rights of all people.

32. The court notes that an essential service managed by the 1st interested party is at the core of the instant application. The interim orders of 4 April 2025 were to subsist until 29 April 2025, were it not for the conduct of the Board, the 1st interested party, chaired by Kwekwe, for the benefit of Abdirahim Mohamed Farah. Matters that should have been resolved on a priority basis have stalled to the detriment of the 1st interested party, primarily due to the actions of its officers. This is without justification.

33. This is contempt of the highest order. The petitioner's application is with merit.

34. I therefore find and order as follows:

1. The Abdirahim Mohamed Farah and Edith Kwekwe Marafa are in contempt of this court's orders of 4 April 2025;



2. Abdirahim Mohamed Farah and Edith Kewkwe Marafa shall be required to purge the contempt;
3. In the alternative, shall attend court on 31 July 2025 to show cause why they should not be committed for contempt of court;
4. For avoidance of doubt, Abdirahim Mohamed Farah and Edith Kewkwe Marafa shall have no right of audience before the court until the contempt above is purged.
5. Abdirahim Mohamed Farah and Edith Kewkwe Marafa shall meet the costs due to the petitioner for this application.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 17 JULY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

