



**Kenya Plantation & Agricultural Workers Union v Solio Ranch Limited  
(Cause 7'A' of 2019) [2025] KEELRC 2056 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2056 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 7'A' OF 2019  
AN MWAURE, J  
JULY 11, 2025**

**BETWEEN  
KENYA PLANTATION & AGRICULTURAL WORKERS UNION . APPLICANT  
AND  
SOLIO RANCH LIMITED ..... RESPONDENT**

**RULING**

1. The Claimant/Applicant filed a Notice of Motion dated 16<sup>th</sup> January 2025 under Certificate of Urgency seeking the following orders that:
  1. The Respondent's officer, Human Resource & Administration Manager, be summoned before this Honourable court to show cause why he should not be committed to a civil jail for blatantly failing to comply with order issued on 26<sup>th</sup> June 2024.
  2. On failing to show necessary cause, the said officer be committed to prison for a maximum of a period of 6 months for contempt of this Honourable Court's Judgment on 26<sup>th</sup> June 2024.
  3. The Honourable court compels the Respondent to execute the Recognition agreement to enable the Applicant negotiate and execute the Collective Bargaining Agreement on behalf of the workers.
  4. The Officer Commanding Narumoru Police in Narumoru do execute the order 2 herein.
  5. Any other or further orders as this Honourable Court deems fit and appropriate.
  6. Costs of this Application be borne by the Respondent.
2. The application is brought to be expressed under sections 4,5,30 of the *Contempt of Court Act*, section 5 of the *Judicature Act*, Chapter 8 of the Laws of Kenya, section 3A of the *Civil Procedure Act*, and section 13 of the *Employment and Labour Relations Court Act*.



### **Claimant/Applicant's supporting affidavit**

3. The Claimant/Applicant supporting affidavit has been sworn by Deputy General Secretary, Thomas Kipkemboi, duly authorized to act on the Claimant/Applicant's behalf, dated even date as the application.
4. The Claimant/Applicant avers that despite a court judgment delivered on 26<sup>th</sup> June 2024 ordering the Respondent to recognize the Claimant as the rightful union representatives and pay the awarded costs, the Respondent has deliberately failed to comply.
5. The Claimant/Applicant avers that it made a formal follow-up on 1<sup>st</sup> August 2024 by serving the Respondent with the recognition agreement and filed an affidavit of service, but received no response or action.
6. The Claimant/Applicant avers that this continued disregard constitutes a wilful disobedience of the court's orders and is argued to be a direct affront to the dignity and authority of the judiciary, violating the principles of the rule of law.
7. The Claimant/Applicant emphasizes that court orders must be obeyed unless lawfully vacated or challenged, and defiance is unacceptable.
8. Consequently, the Claimant/Applicant urges this Honourable court to summon the responsible officers of the Respondent to explain their non-compliance and to consider committing them to civil jail for contempt of court.

### **Respondent's replying affidavit**

9. In opposition to the application, the Respondent filed a replying affidavit dated 6<sup>th</sup> March 2025, sworn by Kevin Carr-Hartley, the Respondent's General Manager.
10. The deponent avers that, based on legal advice from their counsel, Dr. Fred Ojiambo S.C., the Respondent refutes all claims of contempt.
11. The deponent avers that the Claimant/Applicant did not comply with the required legal procedures for executing the judgment, as prescribed under Rule 72(4) and (6) of the [\*Employment and Labour Relations Court \(Procedure\) Rules 2024\*](#).
12. The deponent further maintains that the Claimant/Applicant has neither extracted nor served a decree with penal consequences on the Respondent or its officers and provides no evidence of such service.
13. Consequently, the deponent avers that the Claimant/Applicant is improperly attempting to compel actions, such as executing a recognition agreement or entering into collective bargaining, through contempt proceedings rather than proper enforcement channels.
14. The deponent urged this Honourable Court to dismiss the application with costs.
15. Parties canvassed the application by way of written submissions.

### **Claimant/Applicant's written submissions**

16. The Claimant/Applicant filed their written submissions on 14<sup>th</sup> May 2025, and upon looking at the court file together with the Case Tracking System (CTS), the Claimant/Applicant's submissions were incomplete.



## Respondent's written submissions

17. The Respondent defined contempt as set out in *Halsbury's Law of England*, Vol 9(1), 4<sup>th</sup> Edition follows:

“Contempt of Court can be classified as either criminal contempt, consisting of words or act which impede or interfere with the administration of justice or which create substantial risk that the course of justice will be seriously impede or prejudiced, or contempt in procedure, otherwise known as civil contempt consisting of disobedience to Judgment, Orders or other process of Court and involving in private injury.”

18. The Respondent also relied on section 5 of the *Judicature Act*, which provides as follows:

“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 that power shall extend to upholding the authority and dignity of subordinate courts.”

19. In *Samuel M N Mweru Others V National Land Commission and 2 others* [2020] KEHC 9233 (KLR), the court set out the ingredients to establish civil contempt and held that to succeed in civil contempt proceedings, the applicant must prove that:

- i. the court order was clear, binding, and unambiguous;
- ii. the respondent knew or had proper notice of it;
- iii. the respondent breached the order; and
- iv. the breach was deliberate.

Once these are established, bad faith or willful disobedience is presumed, though the respondent may rebut this on a balance of probabilities.

20. The Respondent submitted that the Applicant has failed to meet the essential legal requirements for citing contempt, particularly the need for a clear, valid court order that has been properly served and willfully disobeyed. The Respondent contends that no order or decree has been extracted from the judgment nor served on the Respondent or its Human Resource and Administration Manager.

21. The Respondent relied on *Samuel M N Mweru Others V National Land Commission and 2 others*(supra) and Rule 72(4) and (6) of the *ELRC Rules 2024*, the Respondent emphasizes that the Claimant/Applicant did not initiate the proper procedures to draft, approve, and serve a decree as required. Consequently, the Respondent maintains the contempt application is premature, procedurally flawed, and should fail due to a lack of evidence of personal service or deliberate disobedience.

22. In *Nyamodi Ochieng Nyamogo & another v Kenya Posts & Telecommunications Corporation* [1994] KECA 114 (KLR), the Court of Appeal held that for a contempt of court application to be valid, any judgment or order served must include a clear penal notice warning of the consequences of disobedience. This requirement, affirmed in *Mwangi H.C. Wang'ondu V Nairobi City Commission (UR)*, is mandatory under section 5(1) of the *Judicature Act*. Without such an endorsement, as in that case, the application for contempt is deemed procedurally defective and incompetent.

23. The Respondent submitted that the contempt application is fatally defective due to the Applicant's failure to comply with legal requirements for enforcing a court judgment. The Respondent cited the



cases of the *Republic V Nairobi City County; Ojienda & Company Advocates (Exparte)* [2024] KEHC 3734 (KLR) and *Murata Farmers Savings & Credit Society Ltd V Mugama Farmers Co-operative Union* [2004] eKLR, the Respondent emphasizes that no valid contempt claim can exist without a duly extracted decree endorsed with a penal notice and personally served on the Respondent or its officers.

24. The Respondent submitted that since the Claimant/Applicant has neither extracted nor served such a decree bearing penal consequences, and no wilful disobedience has been demonstrated, the Respondent maintains that the application is premature, procedurally flawed, and an abuse of court process, which should be dismissed with costs.

### **Analysis and determination**

25. The court has considered the application before it, and the pleadings and submissions by the respective parties.
26. As earlier defined the contempt of court is as set out in *Black's Law Dictionary*, 9<sup>th</sup> Edition and section 5 of the *Judicature Act* as precluded in the earlier part of this ruling.
27. In *Shimmers Plaza Limited V National Bank of Kenya Limited* [2015] KECA 945 (KLR), where the Court of Appeal cited the case of *Hadkinson V Hadkinson*, (1952) ALL ER 567, where Romer, L.J, stated as follows:

“It is 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. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C., said in *Chuck -vs- Cremer* (1) (1 Coop. temp.. Cott 342):

“A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid, whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists, it must not be disobeyed.”

Further, this Court in *Refrigeration and Kitchen Utensils Ltd. -vs- Gulabchand Popatlal Shah & Another*, -Civil Application No.39 of 1990 held,

“ ... It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts is upheld at all times.”

28. In *Olive Muihaki Mugenda & another V Okiya Omtata Okoiti & 4 others* [2016] KECA 663 (KLR) the Court of Appeal cited the case of *Rose Detbo V Ratilal Automobiles & 6 Others*, Civil Application No. 304 of 2006 (171/2006UR), and stated that this Court in a bench majority (Githinji and Onyango-Otieno JJA; with Hon. Tunoi JA, as he then was dissenting) observed that if the actions of the alleged contemnor in failing to obey court orders cannot impede the course of justice or make it difficult to ascertain the truth in respect of the matter, then the contemnor can be heard.
29. In this instant case, the Honourable Court (Nderitu J) issued judgment on 26<sup>th</sup> June 2024 directing the Respondent to enter into and sign a recognition agreement with the Claimant/Applicant within 30



days. However, since that date, the Respondent has failed to comply with the order, thereby acting in defiance of the court's directive. There is no application to set aside the said judgment or lodge an appeal against the same. The judgment delivered by a competent court is binding and should be followed.

The Applicant has been writing to the Respondents with no response. The Respondent have not acted in good faith and has deliberately refused to obey the court order.

30. Article 159(2) (d) of the Constitution of Kenya 2010 provide that justice shall be administered without undue regard to procedural technicalities. The Respondent was always aware of the court orders and he deliberately failed and/or neglected to comply with the same citing technicalities.
31. In view of the foregoing, the court finds that the application has merit and is allowed as prayed. The court hereby directs that the Respondent's officer, Human Resource & Administration Manager, be summoned before this Honourable court to show cause why he should be committed to a civil jail for blatantly failing to comply with order issued on 26<sup>th</sup> June 2024. He is summoned in court on 23<sup>rd</sup> September 2025.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 11<sup>TH</sup> DAY OF JULY, 2025.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

