



Machangi v County Government of Nyandarua & 2 others (Miscellaneous Application E131 of 2021) [2025] KEELRC 2009 (KLR) (9 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2009 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E131 OF 2021**

HS WASILWA, J

JULY 9, 2025

BETWEEN

DR. JOSEPH MAINA MACHANGI APPLICANT

AND

COUNTY GOVERNMENT OF NYANDARUA 1ST RESPONDENT

**THE OFFICE OF THE GOVERNOR NYANDARUA COUNTY
GOVERNMENT 2ND RESPONDENT**

**AG. COUNTY SECRETARY AND HEAD OF PUBLIC SERVICE NYANDARUA
COUNTY 3RD RESPONDENT**

RULING

1. The Applicant filed a Notice of Motion dated 2nd December 2024 seeking orders that: -
 1. Spent
 2. summons to appear in person be issued to Mr. Frank Kanja Muchina, the County Secretary and Head of Public Service and Hon. Mary Kamande, the County Executive Committee, Member for Finance, Economic Planning and ICT.
 3. a Notice to Show Cause for the outstanding arrears of Kshs. 8,135,517 be issued against Mr. Frank Kanja Muchina, the County Secretary and Head of Public Service and Hon. Mary Kamande, the County Executive Committee, Member for Finance, Economic Planning and ICT.
 4. a warrant of arrest be issued against Mr. Frank Kanja Muchina and Hon. Mary Kamande for disobedience of court orders.
 5. any other order the Honourable Court deem fit in the circumstances.



6. cost be in the cause.

Applicant's Case

2. The Applicant avers that he was granted orders by this court but the Respondent have refused to comply with the orders despite being served with the orders together with their advocates.
3. The Applicant avers that sometime in 2022, the Respondents invited him and his advocates for a settlement meeting at Olkalau which seemed fruitful as they indicated they would pay his dues. The Respondents asked for details of the Applicant's pending salary arrears and allowances which he submitted to the County Attorney.
4. The Applicant avers that the Respondents later intimated that their investigations did not bear fruits and they remained adamant that they would settle the matter out of court but frustrated the Applicant's efforts.
5. The Applicant avers that the Respondents refused to pay the monies as directed by the court for the contractual period and the outstanding arrears are at Kshs. 8,135,517. The Applicant has tried his level best to request the Respondents to comply with the court order but he has not been successful.
6. The Applicant avers that the court ought to take action against the County Secretary and Head of Public Service and the County Executive Committee, Member for Finance, Economic Planning and ICT and they be committed to civil jail.

Respondents' Case

7. In opposition to the Application, the Respondents filed a replying affidavit dated 7th February 2025 sworn by Joseph Gatore, the County Attorney at the County Government of Nyandarua.
8. The Respondents aver that the Applicant obtained orders on 17th August 2021 which were set aside on 10th February 2022 and the Respondents were allowed to defend the application that led to the issuance of the orders. Subsequently, the court made further orders on 18th August 2022 ordering the Respondents to pay the Applicant Kshs. 641,610 being the salary for the months of May, June and July 2021. All the other prayers were to be substantially canvassed in arbitration proceedings.
9. The Respondents aver that they complied with the orders of 18th August 2022 and paid the Applicant the sum of Kshs. 641,610 less stator deductions. The Applicant was eventually paid a net sum of Kshs. 471,976.95.
10. It is the Respondents' case that the application is an attempt to obtain ex parte orders for prayers that this court directed the parties to canvass in arbitration.
11. The Respondents aver that pursuant to the orders of 18th August 2022, the Institute of Chartered Arbitrators wrote to the parties vide a letter dated 7th March 2024 requesting the parties to pay Kshs. 20,000 for the appointment of an arbitrator. Both parties paid half of the amount, and on 16th September 2024, they received communication that Evans Lagat FCI Arb had accepted appointment as a sole arbitrator and invited the parties to a preliminary meeting.
12. It is the Respondents' case that what ensued thereafter were frustrating actions by the Applicant who refused to commit to a date for the preliminary meeting as evidenced by the chain of communication from 20th September to 9th October 2024.



13. The Respondents aver that the Applicant paralysed the arbitration proceedings and frustrated the implementation of the orders of this court issued on 18th August 2022.
14. The Respondents aver that the Applicant having frustrated the arbitration process, is hereby trying to mislead the court into granting prayers this court set aside to allow the parties go to arbitration and in doing so, he is undermining the Respondents' right to fair trial and obstructing this court's jurisdiction to hear and determine disputes on merits.

Applicant's Submissions

15. The Applicant submitted that Court orders disobeyed was issued on 19th August 2021 and set aside almost a year later, when the contempt had already arisen. He contends that the effect of the Court order of 10th February 2022 was only to allow parties move for arbitration on the other issues of damages but not salary owed to the Applicant on his fixed term contract with the Respondents. The salary due to the Applicant is still owing to date and the Respondents ought to pay him immediately in compliance with the Court orders.
16. It is the Applicant's submission that Section 4 and 27 of the *Contempt of Court Act* defines contempt of court to include civil contempt which means willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court; or disobedience of an order or directions of a superior or subordinate court in the course of the hearing of a proceeding.
17. The Applicant submitted that the Respondents have admitted to the contempt of court orders as alleged by the Applicant.
18. The Applicant submitted that the Respondents should bear the costs of this application, based on their clear admission of contempt of Court orders and their ill motive conduct towards the Applicant in a bid to frustrate him from getting justice.

Respondents' Submissions

19. It is the Respondents' submission that the application is an abuse of the court process, vexatious, frivolous, bad in law and is in bad faith.
20. The Respondents submitted that the application offends the provisions of Rule 7 of the Employment and Labour Relations Court (Procedure) Rules, 2024 which provides that a person who wishes to refer a dispute to the Court under any written law shall file a statement of claim. The Applicant has never filed any substantive claim before this court; he has been mutating from application to application canvassing a dispute of employment that first gave jurisdiction to arbitration as the mechanism for dispute resolution.
21. The Respondents submitted that the application has been filed whilst arbitration proceedings were ongoing. In fact, it was filed a day before parties were to go court to confirm the status of the arbitration of the process. The Applicant is even not seeking leave to abandon the arbitration proceedings before embarking on totally new claims through the said application to this court.
22. The Respondent submitted that the Applicant has significantly changed the prayers before the court by introducing a new claim for Kshs. 8,135,517.00 which he alleges is outstanding salary and allowances owed him. If the Applicant exercised good faith while prosecuting his claim, he would have made this prayer earlier noting that the matter originates from an Application filed in 2021; there was sufficient time for him to realise the prayer, amend it and file a substantive claim in this court for consideration.



23. The Respondent submitted that the Applicant has been avoiding a forum where parties will ventilate the real issues of this dispute in a proper hearing forum. This could have been achieved in either by the arbitration proceedings which he has frustrated or through a proper hearing in court once the arbitration proceedings are formally abandoned by parties, a substantive claim filed before the court and leave sought to confer jurisdiction of this court to proceed and hear and determine the matter to fruition.
24. The Respondent submitted that it is trite law that litigation must come to an end. However, the Applicant's conduct shows that he enjoys unnecessary litigation with no intention to conclude. The Respondents contend that the matter herein has been prolonged through one application after the other with no substantive claim before the court and such conduct on the part of the Applicant is not only an abuse of the court process but also vexatious.
25. The Respondent submitted that this court referred the matter to arbitration, therefore, if either party were to abandon the arbitration proceedings, then a consent ought to be filed in court and if any other pleading is being filed in court, then leave of court be sought first. The Applicant did not seek any leave to abandon the arbitration proceedings in his current application. Therefore, the application ought to be dismissed not only for being incompetent, frivolous, vexatious, bad faith and abuse of the court process, for failing to adhere to this court's orders and not seeking leave to rectify that violation.
26. The Respondent avers that the Applicant prays in his application herein for the sum of Kshs. 8,135,517.00 claiming that it is the total of the outstanding salaries and allowances for the period of the contract. It is the Respondents' submission that it would be a great injustice if the prayer is ventilated through the application as it denies this court, a chance to examine not only the documents but also witness accounts that lay basis of the prayer sought.
27. I have examined all the averments and submissions of the parties herein. The applicants seek orders for show cause against the respondent in view of a pending payment as directed by court.
28. The respondents on their part aver that the applicants want to compel payment is still pending before an arbitration panel and no final judgment has been made by this court.
29. This court (Mwaure J.) vide a ruling of 17/8/2021 ordered the respondents to settle the applicant's salary in accordance with prayer no 2 of the application and also settle his August 2021 salary and going forward till the expiry of the contract and pending arbitration proceedings. Order 4 and 5 was to be dealt within the arbitration or in full hearing as the case maybe. Prayer 4 was in relation of remittance of kshs 2,566,440/- being cumulative salary for the applicant for the month of May 2021 till expiry of the contract on 28th April 2022.
30. Vide another ruling of 10/2/22 Hon. J. Mwaure set aside orders of 17th August 2021 in its entirety pending hearing and determination of the application.
31. On 18/8/22 J. Mwaure then considered the application and in her ruling ordered the respondent to settle the applicant's salary in terms of prayer no 2. Prayer 2 related to payment of kshs 641,619/-. The court directed all other prayers to be canvassed substantially at the arbitration proceedings.
32. From the record, the arbitration proceedings have never proceeded. In view of this position, the application by the applicants to enforce payments not determined either through arbitration or the hearing before his court cannot be granted.
33. The application is found unmerited and is dismissed accordingly. Costs in the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF JULY 2025.



HELLEN WASILWA
JUDGE

