



Kamunyu v Safaricom PLC (Employment and Labour Relations Judicial Review E066 of 2024) [2025] KEELRC 1963 (KLR) (2 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 1963 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS JUDICIAL REVIEW E066 OF 2024**

HS WASILWA, J

JULY 2, 2025

BETWEEN

NICHOLAS KAMUNYU APPLICANT

AND

SAFARICOM PLC RESPONDENT

RULING

1. The Applicant filed a Notice of Motion dated 1st April 2025 seeking orders That: -
 1. spent
 2. the Honourable Court be pleased to find Peter Ndegwa, the Chief Executive Officer of Safaricom PLC, Florence Nyokabi, the Chief Human Resource Officer of Safaricom PLC, DILIP PAL, the Chief Finance Officer of Safaricom PLC, Fred Waithaka, the Head of Regulatory & Public Policy at Safaricom PLC, Peter Njioka, Head of Resourcing and HR Shared Services at Safaricom PLC and Nicholas Mulila, Chief Corporate Security Officer of Safaricom PLC in contempt of the Court's Orders issued on 12th March 2025 in ELRCJR/ E066 of 2024.
 3. this Honourable Court do issue summons requiring the named contemnors to personally appear before the court and show cause why they should not be committed to civil jail for contempt of court.
 4. the Honourable Court be pleased to issue orders committing the cited contemnors to civil jail for a period not exceeding six (6) months or imposing a fine as the Court deems appropriate for their contempt of Court.
 5. the said persons be ordered to purge the contempt.
 6. the Respondents and the contemnors herein be ordered to bear the costs of this application.



7. the Honourable Court be pleased to issue such further or other orders as may be just to safeguard the authority of the Court and the Applicant's rights

Applicant's Case

2. The Applicant avers that on 12th March 2025, this Court issued orders restraining the Respondent from intimidating, victimising, or harassing the Applicant, including initiating multiple disciplinary processes against him pending the hearing and determination of the judicial review application. However, instead of complying to the court order, on 13th March 2025, the Respondent sought an interpretation of the order, specifically regarding the institution of multiple disciplinary proceedings against the Applicant, which they sought to have quashed.
3. The Applicant avers that the Respondent extended his suspension on 14th March 2025 in a punitive and unreasonable manner, prompting him to file an application challenging the extension of the suspension.
4. Subsequently, the Respondent issued him with a show cause letter on 24th March 2025, requiring a response within 24 hours. Additionally, he was denied access any of the Respondent's systems, email accounts, access to the company property, and talking to any of the Respondent's employees. These restrictions denied the Applicant an opportunity to adequately prepare and comprehensively respond to the allegations within the timeline issued, including his ability to get his colleagues to corroborate his evidence.
5. It is the Applicant's case that show case letter was accompanied with a 195-page investigation report which took the company over 66 days to compile yet they expected him to respond within 24 hours.
6. The Applicant avers that the Respondent failed to provide all the necessary documents previously requested by the Applicant to prepare his defense, thereby denying him a fair opportunity to respond adequately.
7. It is the Applicant's case that he responded to the show cause letter indicating that the matters were pending before the court and requested for additional documents and time. However, his concerns were ignored and instead he was a disciplinary action letter on 25th March 2025, summoning him to a disciplinary hearing scheduled for 27th March 2025.
8. The Applicant avers that in response to the letter, he raised a preliminary objection to his line manager and the CHRO, which was then forwarded to the disciplinary hearing committee, however, the Respondent proceeded with the hearing despite the concerns raised and in his absence.
9. The Applicant avers that his employment was summarily dismissed on 28th March 2025.
10. It is the Applicant's case that the cumulative actions of the named individuals: PETER NDEGWA, FLORENCE NYOKABI, DILIP PAL, FRED WAITHAKA, PETER NJIOKA, and NICHOLAS MULILA, constitutes deliberate acts of intimidation, harassment, and victimization of the Applicant, contrary to the express orders of this Court.
11. The Applicant avers that Respondent's actions of proceeding with disciplinary proceedings against him while the matter was actively pending before this Court amounted to a blatant violation of the sub judice rule. It further undermined the authority of this Court and amounted to an interference with the due process of law. T
12. The Applicant avers that the Respondents' actions constitute contempt of Court under Section 5 of the *Judicature Act*, Chapter 8 of the Laws of Kenya, and they should be held accountable. The Court's



authority must be upheld, and the Respondent's contemptuous actions addressed to safeguard the Applicant's constitutional and legal rights.

Respondents' Case

13. In opposition to the application, the Respondent filed a replying affidavit dated 25th April 2025 sworn by its Head of Resourcing and HR Shared Services, Peter Njioka.
14. The Respondent avers that instant suit is in relation to the Applicant's conduct of 26th October 2024 during the Greater Western Edition of the Safarilypics at the Eldoret Sports Club which resulted in the disciplinary proceedings of 18th November 2024 which were halted by this court on 2nd December 2024 pending the hearing of the application to quash the disciplinary proceedings.
15. The Respondent avers that at the time this court issued the orders, the disciplinary hearing had been concluded and what was pending was communication of the outcome; as a consequence, the court order the Respondent stopped the process in obedience to the said orders.
16. The Respondent avers that the Applicant proceeded to file a second case, ELRC Petition No. E013 of 2025 following his suspension on 17th January 2025 in relation to his role in the contract between Safaricom PLC and Baran Telecon Networks (thr BTN contract).
17. It is the Respondent's case that on 12th March 2025, this court issued orders restraining it from intimidating, victimizing or harassing the Applicant including initiating multiple disciplinary processes against him. These orders were followed by an application by the Respondent on the same day, seeking clarification or varying of the orders and for it to be allowed to institute unrelated disciplinary proceedings against the Applicant. On 14th March 2025, the court clarified that the orders were limited to the disciplinary proceedings of 18th November 2024 in relation to the Applicant's conduct on 26th October 2024.
18. The Respondent avers that the Applicant previously cited it for contempt vide an application dated 19th January 2025 following his suspension on 17th January 2025 in relation to the BTN contract. The court by its ruling of 5th March 2025 clarified that the orders were specific to the disciplinary proceedings of 18th November 2024. This paved way for the Respondent to proceed with the disciplinary proceedings in relation to the BTN contract.
19. The Respondent avers that in accordance with its Disciplinary Policy, it conducted the disciplinary proceedings on 27th March 2025 and the Applicant was summarily dismissed on 28th March 2025. Subsequently, the Applicant submitted an appeal which was heard on 16th April 2025.
20. The Respondent avers that the Applicant has not shown how the disciplinary proceedings relating to the BTN contract amounts to intimidating, victimizing or harassing him. It contends that if the Applicant has any complaint as to the grounds of termination or the process followed, he has a right to sue for wrongful termination.
21. The Respondent avers that application is misconceived and is aimed at intimidating, victimizing or harassing the Respondent's officers from performing their duties for fear of being cited for contempt of court.

Applicant's Submissions

22. The Applicant submitted on three issues: whether the Court issued clear, unambiguous orders binding on the Respondents; whether the Respondents had knowledge of the orders; and whether the Respondents disobeyed the orders.



23. The Applicant submitted that this court has jurisdiction to punish for contempt under Section 5 of the *Judicature Act*. Additionally, the court laid down three elements of contempt in *Republic v Principal Secretary, Ministry of Defence Ex Parte George Kariuki Waithaka* [2019] eKLR, as: the terms of the order are clear and unambiguous; the respondent had knowledge of the order; and there was wilful disobedience of the order. All of these elements are met in this case.
24. On the first issue, the Applicant submitted that there is no ambiguity in the conservatory order of 12th March 2025. It plainly prohibited disciplinary actions including initiation or continuation of such processes on matters which were already before the court against the Applicant.
25. On the second issue, the Applicant submitted that there is no dispute that the Respondent was aware of the order as it filed an application seeking interpretation and clarification of the order the next day, on 13th March 2025, the Respondent. This act confirms knowledge and deliberate engagement with the order, therefore, the Respondent cannot claim ignorance.
26. On the final issue, the Applicant submitted that it is inaccurate and misleading for the Respondent to suggest that the activities leading to the dismissal was based on a new cause or fresh incident. The actions culminating in the dismissal arose directly from, and in continuation of, the very facts and processes under challenge before this Court. The interim orders were thus clearly meant to preserve the status quo and prevent precisely the kind of retaliatory and prejudicial action that has now taken place.
27. The Applicant submitted that two days after the court issued the restraining orders, the Respondent extended his suspension on 14th March 2025. This action disciplinary in nature and punitive in effect though disguised as an administrative measure; it was in direct defiance of the court's order prohibiting acts of harassment, victimization, and the continuation of further disciplinary processes. The Applicant further submitted that the proximity in timing strongly suggests that the extension was retaliatory and intended to punish him for seeking judicial protection hence amounting to intimidation and victimization contrary to the court order.
28. The Applicant submitted that the constituted disciplinary panel was irregular and violated the Respondent's internal procedures and policies; as there is no evidence that the panel members were independent or neutral, raising doubts about impartiality. Additionally, the manner in which the panel was formed gave the impression of a predetermined process where the Applicant stood no real chance of fair adjudication.
29. It is the Applicant's submission that in violation of his right to fair administrative action under Article 47 of *the Constitution*; he denied a reasonable opportunity to respond to the charges levelled against him. This can be seen by the rushed timeline, that is, the 24-hour deadline to respond to a voluminous 195-page investigative report and the denial to consult with his former colleagues in preparation of a defence. Additionally, the contemnors withheld and restricted access to material evidence needed for his defence, as he denied access to internal systems, relevant documentation, and his own email account, frustrating the Applicant's right to a fair hearing and thereby breaching both the court's order and rules of natural justice.
30. The Applicant submitted that the Respondent's conduct violated the sub judice rule, which prohibits parties from deliberating and determining matters actively pending before court. The issues raised in the disciplinary proceedings including the allegations in the 195-page report, are the same subject of the Petition No. E013 of 2025 and the judicial review application. Proceeding to make a final determination through a termination letter while the court was seized of the matter amounts to undermining the judicial process.



31. It is the Applicant's submission that the Court did not lift or vary the injunctive relief already in place, particularly with respect to retaliatory actions arising out of the very subject matter pending before the Court. In any event, the Respondent's action of extending the suspension on 14th March, issuing a show-cause on 24th March, the subsequent disciplinary hearing and dismissing the Applicant on 28th March cannot be described as new or independent infractions; they were directly connected to, and arose from, the same facts and internal reports that are the subject of the ongoing judicial review application.
32. The Applicant submitted that Respondents have not just disobeyed a court order; they have defied the authority of this court. This court is called upon not only to protect the rights of the Applicant, but also to defend the integrity of judicial pronouncements.
33. The Applicant submitted that unless the cited contemnors are punished and compelled to purge the contempt, the message sent would be that corporate actors are above the law.

Respondent's Submissions

34. The Respondent submitted that element of a clear and unambiguous order has not been proved, on grounds that this court on 14th March, 2025, clarified that the orders of 12th March 2025 were limited to the disciplinary proceedings of 18th November 2024, which were in relation to the Applicant's conduct on 26th October 2024 during the Greater Western Edition of Safarilympics at the Eldoret Sports Club. Further, by its ruling of 5th March 2025, this court clarified that the orders issued on 2nd December 2024 staying disciplinary proceedings against the Applicant were specific to the disciplinary proceedings of 18th November 2024. The only part of the order of 12th March 2025 which remained is the restraining of Safaricom from intimidating, victimizing or harassing the Applicant.
35. The Respondent submitted that the court's clarification paved way for it to proceed with the disciplinary proceedings in relation to the issues of the BTN contract. The disciplinary proceedings were conducted on 27th March 2025 in accordance with the Disciplinary Policy and the Applicant was summarily dismissed. Subjecting the Applicant to disciplinary proceedings in relation to alleged misconduct cannot amount to intimidation, victimization or harassment.
36. It is the Respondent's submissions that the Applicant has not shown in what way the disciplinary proceeding in relation to BTN contract amounts to "intimidating, victimizing or harassing" him. The Respondent contends that the language of the order is vague and does not set out the specific obligations which the Respondent is said to have breached. Contempt proceedings cannot be founded on ambiguous directives.
37. The Respondent submitted that as to whether there has been harassment, intimidation, or victimization of the Applicant is a matter of fact that can only be proved by way of evidence either oral or documentary to be placed before the court by way of an affidavit and or oral testimony. No such evidence has been placed before this court. Further, if the Applicant has any complaint as to the grounds for termination and /or the process followed, he has a right to sue for wrongful termination.
38. The Respondent submitted that the Applicant has neither demonstrated how the orders of 2nd December, 2024 were not complied with nor demonstrated how the further actions undertaken regarding the disciplinary hearing on the 18th November 2024 were in disobedience of the court orders.
39. It is the Respondent's submissions that the principle of sub judice does not apply to instigation of disciplinary proceedings by employers against employees, at the workplace. It relied on the case of *Mwaniki v Registered Trustees of the Sisters of Mercy [Kenya] t/a Mater Misericordiae Hospital & 2*



others (Cause E573 of 2020) [2023] KEELRC 917 (KLR), in which Justice James Rika held that: “The purpose of the principle of sub judice is to stop the filing of a multiplicity of suits between the same parties, over the same subject. It does not apply to instigation of disciplinary proceedings by Employers against Employees, at the workplace. Such proceedings cannot be a suit, within the description of Section 2 of the *Civil Procedure Act*. A party relying on the principle must show that there is more than one suit over the same subject matter; that one suit was instituted before the other; that the suits are between the same parties or their representatives; and that both suits are pending before courts of competent jurisdiction. The principle is based on Section 6 of the *Civil Procedure Act*. It relates to suits filed before the Courts of competent jurisdiction. It applies to civil proceedings, not disciplinary proceedings at workplaces.”

40. The Respondent submitted that the standard of proof required in cases of contempt is higher than that acquired in an ordinary civil case. In *MNN v JMM ((Miscellaneous Application No. E024 of 2021))* (2022) KEHC 12488 (KLR), it was held that before a finding of contempt can be made, there must be a demonstration of wilful and deliberate disobedience of a court order.
41. The Respondent submitted that it genuinely believed that there are no orders preventing the suspension of the Applicant pending investigations on a totally unrelated issue. Therefore, the issue of deliberate and intentional or unintentional violation of the court’s dignity, repute or authority does not arise.
42. I have considered the averments and submissions of the parties herein. On 14/3/25 this court was asked by the respondents herein to clarify on the orders hitherto issued by court on 12/3/25. I was able to consider the application before court in relation to this judicial review application. I clarified that the orders of 12/3/25 were in relation to proceedings of 18/11/24. This could therefore not be a bar to any other legitimate disciplinary proceedings against the applicant.
43. As explained by the respondents herein the proceedings that were thereafter conducted against the applicants were in relation to other events emanating from the apparent conduct of the applicant on 26th October 2024 during the greater Western edition of the Safari lympics at the Eldoret Sports club.
44. It therefore my finding that the action of the respondents was not in contempt of this court’s orders and therefore the application for contempt is found without merit and is therefore dismissed accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

