



Kenya Union of Clinical Nurses v Kirinyaga County Public Service Board; Public Service Commission & another (Interested Parties) (Miscellaneous Application E002 of 2021) [2025] KEELRC 2369 (KLR) (13 August 2025) (Ruling)

Neutral citation: [2025] KEELRC 2369 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
MISCELLANEOUS APPLICATION E002 OF 2021
ON MAKAU, J
AUGUST 13, 2025**

BETWEEN

KENYA UNION OF CLINICAL NURSES APPLICANT

AND

KIRINYAGA COUNTY PUBLIC SERVICE BOARD RESPONDENT

AND

PUBLIC SERVICE COMMISSION INTERESTED PARTY

THE HON ATTORNEY GENERAL INTERESTED PARTY

RULING

1. This ruling relates the Respondent’s Notice of Preliminary Objection dated 13th May 2025 which seeks for the dismissal of the Applicant’s Notice of Motion dated 20th March 2025 on the following grounds:
 - a. The applicant’s application offends the provisions of Order 29 of the Civil Procedure Rules 2010.
 - b. The applicant’s application offends the provisions of section 21 of the *Government Proceedings Act* 2022.
2. The objection was disposed of by written submissions. In brief, the respondent contended that the application amounts to execution of a judgment against the Government prematurely without complying with the procedure under section 21 of the *Government Proceedings Act* and Order 29 rule 2 of the Civil Procedure Rules. It averred that the applicant has not obtained any certificate of order against Government and no Judicial Review proceedings have been undertaken prior to commencing



the purported execution. Several precedents were cited to fortify the objection and I will refer to them shortly.

3. The respondent, on the other hand averred that the Preliminary Objection lacks merits as the motion dated 20th March 2025 is citing the officials of the respondent for contempt of this court's decree and therefore not execution proceedings. It was submitted that the motion being brought under Article 159(2) (d) of *the Constitution* and section (4) of the *Judicature Act* does not require invocation of the procedure under section 21 of the *Government Proceedings Act*. It was further submitted that the motion is not a fresh proceeding to warrant any compliance with Order 29 of the Civil Procedure Rules. Several precedents were also cited in support of the applicant's position.
4. Having considered the motion, Affidavits, the Preliminary Objection and the written submissions, the main issue is whether the impugned motion is procedurally defective.
5. The motion basically seeks to punish Mr. Newton Njenga and Teddy N Muchiri, the secretary/Chief Executive Officer and Chairperson of the respondent herein for contempt of this court's Order and Decree of 9th August 2024. It alleged that the two officials of the respondents have deliberately elected to disregard and dishonour the said court orders. Considering the above averments, it is clear that the applicant's motion is not execution proceedings but contempt court proceedings under section 4 of the *Judicature Act* and Article 159(2)(d) of *the Constitution*.
6. In the Republic v The Attorney General & Another Ex parte James Alfred Koroso (2013) eKLR, Odunga J (as he then was) held that before seeking to punish a public officer for contempt of court for failure by the government to comply with a court decree, the applicant must first institute Judicial Review proceedings and obtain order of mandamus to compel the officer to comply with the decree. The Judge stated that: -

“Where therefore a public officer decline to perform the duty after the issuance of an order of mandamus, his/her action amounts to insubordination and contempt of court hence an action may perfectly be commenced to have him cited for such. Such contempt proceedings are no longer execution proceedings but mean to show the courts displeasure at the failure by a servant of the state to comply with the directive of the court given at the instance of the Republic, the employer of the concerned public officer and to uphold the dignity and authority of the court.”
7. I entirely agree with the above decision because the only reason to punish the cited officers on behalf of the respondent would be if it is demonstrated that they are the ones with the legal duty to do what the decree of the court requires the respondent to do. The only way to establish that fact is through judicial review proceedings to obtain order of mandamus. It is not until the order of mandamus is obtained compelling the officers to perform their public duty, and the officer fails to perform the duty, that contempt proceedings can be initiated against the officers.
8. In the circumstances of this case, I must agree with the respondent that the application dated 20th March 2025 seeking to punish the two cited persons for contempt is premature and therefore procedurally defective. My firm position is that a public officer cannot be summoned from his/her office and punished for the failure by the Government to comply with a court decree. The applicant must do what is procedurally right. Consequently, I must uphold the preliminary objection and strike the notice of motion dated 20th March 2025 with costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 13TH DAY OF AUGUST, 2025.

ONESMUS N MAKAU



JUDGE

ORDER

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

