



Republic v Principal Secretary State Department for Roads & 3 others; Mogere (Ex parte Applicant) (Judicial Review Application E014 of 2025) [2025] KEELRC 2419 (KLR) (4 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2419 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E014 OF 2025
HS WASILWA, J
SEPTEMBER 4, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**PRINCIPAL SECRETARY STATE DEPARTMENT FOR ROADS 1ST
RESPONDENT**

**DIRECTOR HUMAN RESOURCE STATE DEPARTMENT FOR
ROADS 2ND RESPONDENT**

**CHIEF MECHANICAL ENGINEERING STATE DEPARTMENT FOR
ROADS 3RD RESPONDENT**

ATTORNEY GENERAL 4TH RESPONDENT

AND

KENNEDY MOGUCHE MOGERE EX PARTE APPLICANT

RULING

1. The Applicant filed a Notice of Motion dated 16th April 2025 seeking orders that: -
 1. Spent
 2. pending the hearing and determination of the Application, this Honourable court do direct the Respondents to purge the contempt of Honourable Lady Justice Hellen Wasilwa’s court orders issued on 6th March 2025.



3. pending the hearing and determination of this Application, the Honourable court do direct the Respondents/Contemnors Eng Richard G Thitai and Mr. James Gatere shall not have audience before the honourable court unless they purge the said orders
4. pending the hearing and determination of this Application, the transfer of Kimiriny Oloishuro who is to take over the duties of Mr. Kennedy Moguche be stayed.
5. this Honourable court be pleased to grant such further orders it deems necessary to the respondents
6. this Honourable court summons the Respondents /Contemnors before the Honourable court to show cause why they should not be cited for contempt and committed to civil jail for being in contempt of the orders issued on 6th March 2025.
7. this Honourable court be at liberty to impose any other sanction against the respondent which it may deem fit and just.
8. the Respondents be condemned to pay the cost of this application.

Applicant's Case

2. The Applicant avers that this court issued orders on the 6th March 2025 restraining the 1st, 2nd and 3rd Respondent from transferring the Applicant from Regional mechanical office Kajiado to Mechanical headquarters Nairobi.
3. The Applicant avers that the Respondents have refused to comply with the orders issued by this Honourable court and the respondents' contemptuous actions have deprived the Applicants protection and peace of mind.
4. The Applicant avers that the Respondent have issued a transfer to one, Mr. Kirimiriny Oloishuru to take over the duties and responsibilities of the mechanical office ,Kajiado despite the orders issued and further have issued a letter to one Mr. Kennedy Moguche to deputize Mr. Kimiriny Oloishuru.
5. It is the Applicant's case that the Respondents' actions have interfered with the administration of justice and eroded authority and dignity of this Honourable court and continues to subject the applicant and his family to untold suffering and mental torture.
6. The Applicant urges the court to assist him to enjoy the orders of 6th March 2025 which have not been reviewed or set aside

Respondents' Case

7. In opposition to the Application, Respondents filed a ground of opposition dated 14th April 2025 on the following grounds:
 1. That the application is an abuse of the court process, has no merit and is based on misconception of the law
 2. That the application is premature as the applicant has not appealed to the public service commission against the transfer decision thus the same offends the doctrine of ripeness
 3. That the application offends the statutory provisions of section 9(2) (3) of The *Fair Administrative Action Act* on the principle of exhaustion of alternative dispute resolution internal mechanisms for appeal or review.



4. That the transfer as undertaken against the Ex-Parte Applicant is not illegal, ultravires or in breach of any constitutional principles as alleged.
5. The respondents prays that the application be dismissed with costs.

Applicant's Submissions

8. The Applicant submitted that this court issued orders on the 6th March 2025 which the Respondents have failed, neglected or refused to comply with. He relies in Bryce Broadcast & Technologies (K) Ltd v Makotsi & another [2024] KEHC 2152 (KLR) court stated that:

“the essence of law of contempt is to safeguard the Honour of the court and uphold the principles of the rule of law” this goes to show that courts ought to be respected by all [parties before it to ensure continued confidence in the justice system and courts by the general public.”

9. The Applicant enumerated the elements that have to be proven for a party to be held in contempt as was held in the case of Cecil Miller v Jackson Njeru & Another [2017] KEHC 1499 (KLR) where the court stipulated the elements in bid to prove contempt namely:
 - a. The terms of the order (or injunction or undertaking were clear and an ambiguous and were binding on the defendant.
 - b. The defendant had Knowledge of or proper notice of the terms of the order
 - c. The defendant has acted in breach of the terms of the order
 - d. The defendant's conduct was deliberate.
10. It is the Applicant's submission that the terms of the order issued on the 6th March 2025 were clear and an ambiguous and could be well understood, the 4th Respondent being the Attorney General is the chief advisor of the government and has vast knowledge of law, the respondents were well aware of the orders as it was served in their respective offices. That despite the knowledge of the orders the respondents acted in breach of the said orders deliberately.
11. The Applicant submitted that the Respondent should be held in contempt and relied in the holding in Republic v Mwaura & 12 others; Obura & another (Exparte) [2024] KEHC 44 (KLR) where the court stated:

“it is therefore a necessary pre requisite that before one is held in contempt, it must be demonstrated that he was aware of the order or judgment he is alleged to be in contempmt of. In other words proof of service of the order or judgment is necessary unless for reasons to be stated, the court dispenses with service of the order or judgment on alleged contemnror”

Respondents' Submissions

12. The Respondents did not file the submissions.
13. I have examined all the averments and submissions of the parties herein. The applicants have averred that the Respondents are in contempt of this courts orders which directed the respondents not to transfer the applicant. The Respondents on their part aver that they are not in contempt because the applicants have not exhausted the appeal process to the PSC and so offend the doctrine of ripeness.



14. That being the argument before this court, The Respondents have not denied transferring the applicant contrary to this court's orders. They only argue that the applicants didn't exhaust the appeal process. The respondents are in essence admitting to ignoring the orders of the court for their perceived valid reasons. If indeed the Respondents are of the view that the orders this court granted shouldn't have been granted, they had an avenue to either seek review or appeal. The Respondents cannot sit back and decide not to obey the orders as though deciding on them as an appellate court. In the circumstances of this case, the attitude of the Respondent is contemptuous to this court and I therefore find the Respondent contemnors guilty of contempt and find that they are liable to punishment by this court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE

