



Rono v Principal Secretary State Department, Ministry of Interior & Coordination of National Government & another (Judicial Review Application E006 of 2021) [2024] KEELRC 74 (KLR) (25 January 2024) (Ruling)

Neutral citation: [2024] KEELRC 74 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
JUDICIAL REVIEW APPLICATION E006 OF 2021**

**HS WASILWA, J
JANUARY 25, 2024**

BETWEEN

GEOFFREY RONO EXPARTE APPLICANT

AND

THE PRINCIPAL SECRETARY STATE DEPARTMENT, MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVERNMENT 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. This Ruling is in respect of the ex parte Applicant's Notice of motion dated 9th May, 2023, filed pursuant to sections 3 & 50 the *Judicature Act* Cap 8, Section 3A the *Civil Procedure Act*, Section 20 of the *Employment and Labour Relations Court Act* No. 20 of 2011 and all other enabling Provisions of, seeking for Orders that; -
 1. That the Application herein be certified urgent and Leave be granted to the Exparte/Applicant to cite the 1st Respondent for contempt of court and further Ex-parte Orders be issued in terms of Prayer 2 hereunder:
 2. That this Honourable Court be pleased to issue an order of Notice to show cause against The Principal Secretary-State Department Ministry of Interior & Coordination of National Government to show cause why he/she should not be cited for contempt of court for failure to settle the decretal sum plus costs and recurrent interest as adjudged in the Judgment/ Decree given on 9th June, 2022.
 3. That in the event of continued disregard and failure to settle the decretal sum plus costs and interest of Kshs. 2,666,796/= accruing as at 8 May, 2023 together with any additional costs and



interest, then, The Principal Secretary-State Department Ministry of Interior & Coordination of National Government be found to be in contempt of the decree given on 9th June, 2022 and thereon he/she be committed to Civil Jail for a period not exceeding six (6) months for defying and being in flagrant and contemptuous breach of the aforesaid court decree issued by Hon. Lady Justice Hellen Wasilwa.

4. That the Principal Secretary-State Department, Ministry of Interior & Coordination of the National Government is found to be in contempt of the court's decree, as per Prayer 3 herein above, then Warrants of Arrest to issue against him/her to be executed by the Inspector General of Police.
5. That to ensure compliance, the Respondents be directed to deposit the full decretal amount of Kshs. 2 666, 796, together with any additional costs and interest in the Judiciary Bank Account of the Nakuru Law Courts and thereon to furnish proof of such deposit.
6. That the respondents be condemned to pay the costs of this application.
2. The Application is supported by the grounds on the face of the Application and the supporting affidavit of the Applicant Geoffrey Rono, sworn on 9th May, 2023.
3. The applicant stated that Judgment/Decree for orders of mandamus was given in favour of the exparte applicant in this matter on 9th June, 2022 for settlement of an amount of Kshs. 2,182,466.00 plus costs and interest.
4. Subsequently, the Decree and Certificate of Costs were extracted and served upon the respondents. Later a Certificate of Order against the Government was issued and served upon the 2nd respondent -Attorney General. However, that the decretal sum and interest has remained unsatisfied to date, accruing to Kshs. 2,666,796.00 as at 8th May, 2023 in terms of the tabulation made in the application for execution dated and filed in court on 3rd May, 2023.
5. He stated that since the 1st Respondent is a Government Officer; he has legal obligation to settle the said Decree.
6. That despite several demand notices being issued to the Attorney General, the 1st Respondent has failed and/or neglected to settle the said Decree.
7. That on 10th February, 2023, when the office of the Attorney General wrote a letter to the ex-parte/ applicant's counsels being Kanyi Ngure & Co. Advocates and sought to be furnished with Original Copies of the Judgment, Decree and Certificate of Costs against the Government but even upon compliance, no payments have ever been made.
8. That the Respondent are aware of the Orders of the Court but have continued to defy the said Orders, therefore that the orders sought herein should be issued to meet the ends of justice.
9. In response to the Application, the Respondents herein filed a Grounds of Opposition based on the following grounds; -
 1. That the 1st and 2nd Respondents were served with a copy of Decree, Certificate of Costs and Certificate of Order against the Government issued on 9th June 2022 for the sum of Kshs. 2,666,796.
 2. That the 2nd Respondent forwarded the same to the Ministry of Interior and Co-ordination for processing of payment as per the procedure and the Respondents have not refused to settle the same. That the Ministry of Interior and Coordination (1st Respondent) is a government



entity thus such payments require budgeting and appropriation by Parliament before payment of liabilities (Decretal amounts). The liability will therefore need to be budgeted for before settlement. As was held in the case of *Kisya Investments Ltd Vs AG* [2005] 1 KLR 74.

3. That the Execution of decrees against the Government is not undertaken as in the ordinary civil cases, but must be in accordance with Provisions of the *Government Proceedings Act*.
 4. That it will therefore be an injustice for the Honorable Court to pronounce itself in the timeline and or/duration within which the respondents will settle the decretal sum seeing that this timeline cost is already covered by the interest the decretal sum continues to earn.
 5. That this Notice of Motion application dated 9th May 2023 is therefore premature considering the fact that the additional costs of this application shall be borne by the tax payer which will be an injustice.
 6. That the process of settling the Decretal sum has already begun.
 7. That it is in the interest of justice, equity and fairness that this Honorable Court does dismiss this application and parties ordered to bear their own costs.
10. The Application herein was disposed of by written submissions.

Ex-parte Applicant's Submissions.

11. The Ex parte Applicant submitted on one issue; whether the Application and orders sought therein are merited. It was argued firstly that the judgment/decree given by court in this matter was meant to compel the 1st respondent through Orders of Mandamus to satisfy the judgment of the court given on 11th November, 2016 in the case *Nakuru E.L.R.C. Cause no. 403 of 2014*. The court while pronouncing itself in the judgment of 9th June, 2022 stipulated that the 1st respondent was all along aware of his obligation to satisfy the judgment given in *Nakuru E.L.R.C. cause No. 403 of 2014*.
12. It was argued that the respondents were duly notified of their obligation to settle the judgement of 9th June, 2022 through the demand letters dated 28th June, 2022, 30 January, 2023 and 10 February, 2023, this is thus a confirmation that the Respondents intentionally breached the decree and thus leave to punish for contempt of the Court orders is not required. In this he cited the Court of Appeal case of *Christine Wangari Gachege V Elizabeth Wanjiru Evans & 11 Others [2014]* eKLR where the court expressed itself as follows:

“Therefore, today the only statutory basis of contempt of court law in so far as the Court of Appeal and the high Court are concerned is Section 5 of the *Judicature Act*...Though the Court of Appeal of England and Wales was established in 1875, some 92 years before the commencement date of the *Judicature Act*, Cap 8, Laws of Kenya, the Act in the cited Section 5 simply directs that this court like the High Court must make reference to the powers exercised by the High Court of Justice in England and not those exercised by its counterpart, the Court of Appeal of England and Wales.....It is clear from this summary that leave now called ” ’ permission ” is not required where committal proceedings relate to a breach of a judgement order or undertaking. That position must be contrasted with the requirement in Rules 81.12 - committal “for interference with the due administration of justice” and 81.17 - Committal “for making a false statement of Truth or disclosure statement”...We find on the basis of the new Civil Procedure Rules of England which are now contained in the Second Supplement to the 2012 White Book that no leave is required



before bringing an application like the one before us for committal for contempt relating to breach of this court's order.”

13. Similarly, that in this case and based on the circumstances, the 1st respondent has deliberately failed to honour the court's decree and in effect has deprived the ex-parte applicant the fruits of his judgment since the year 2016 when the primary decree was issued in Nakuru E.L.R.C Cause No. 403 of 2014 and considering that government budgets for its expenditure after every financial year, there is no tangible excuse as to why the government failed to budget for the decretal amount in this case from the time of the primary decree in November, 2016 and/or from the time of the order of mandamus given through the decree of 9 June, 2022 till date. He argued that in the circumstances, it is only fair and just that the 1st respondent is found to be in contempt of the court's decree for purposes of ensuring compliance with the said decree.

14. To support his argument, the Applicant relied on the case of *Republic Vs Principal Secretary Ministry Pf Interior and Coordination of The National Government EX-Parte Daniel Waweru Njoroge & 17 Other [2021]* Eklr where the High Court held as follows:

“As things stand, the respondent has not explained whether he has made any efforts to include the debt herein in the Ministry budget estimates of any given year since 2019 when judgement was delivered. Such action would give Parliament material for allocating his ministry the funds that are required. It is trite that Parliament will not allocate any funds to government Ministries without budget estimates. Perhaps the respondent's ministry has not made any efforts to address the issue and are not in a hurry to do so. Non-allocation of funds by Parliament is not a justifiable excuse or failure to satisfy, a decree by a Government Ministry and I hereby so find the applicant herein has established before this court that the respondent was served and has been aware of the judgement and of the order of mandamus. No satisfactory reason has been given for failure to disobey the court order issued on 17th September 2019. It has been established that the respondent has not made an effort to satisfy the decretal amount upon which he can purge the contempt. In my view, the respondent having been served with the order more than two years ago has unqualified obligation to obey the said order unless and until it is discharged...Contempt proceedings are subtle and criminal in nature and call for courts to impose criminal sanctions where one is found guilty of contempt. It is my finding that respondent willfully and intentionally defied the orders of this Court made on 7th September, 2019 to pay Kshs 2,664, 686.75 to the applicants in satisfaction of the decretal amount. Consequently, I find him guilty of contempt of the said orders. The respondent shall meet the costs of these proceedings. Sentencing is hereby reserved on the 18th January, 2022 and summons requiring attendance of the respondent personally to issue and be served by the Applicant's advocate.”

15. The Ex parte Applicant also cited the case of *Republic Vs Principal Secretary Ministry of Defence Ex Parte George Kariuki Waithaka [2019]* Eklr at, where the Court held thus:

“.. 48. Non-allocation of funds by Parliament is not an acceptable defence or justifiable excuse for non-payment of decretal sums ordered to be paid by Government officials, in the absence of any evidence of any attempts made by the responsible Government official to commence the process of such allocation. In the present case, this is particularly relevant given that the present contempt of Court proceedings commenced in April 2017, and the Respondent did not indicate what steps if any, have been taken since then to effect payment of the monies due to the Applicant. 49. The Respondent also relied on the provisions of section 21 4 of the



Government Proceedings Act to argue that the said provisions exempt him from contempt of court Proceedings. The said section provides as follows: “Save as provided in this section, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government of any money or costs, and no person shall be individually liable under any order for the payment by the Government or any Government department, or any officer of the Government as such, of any money or costs.”

16. He finally relied on the case of Henry Musemate Murwa Vs Francis Owino Principal Secretary Ministry of Public Service Youth And Gender Affairs & Another [2021] Eklr, where the Court held that;

“Counsel's argument that it is unconstitutional to hold a public officer liable to settle a public debt also misses the point. The prayers in the motion do not require the cited alleged contemnor to personally settle the debt. The prayers are that the alleged contemnor being the accounting officer having failed to obey the Court order requiring him in his capacity as accounting officer to settle the debt has failed to comply with the Court order. The authorities cited by the Respondents in respect of personal service upon the Contemnor are no longer valid as it has been held subsequently that knowledge of the Court orders are sufficient... The Applicant has two judgments, one in Cause No. 564 of 2011 and in High Court JR 128 of 2017. The two judgments have not been set aside. No appeal has been filed in respect thereto. The two judgments are valid. The Respondents are aware of both but have since the judgments were delivered, failed to pay. Dr, Francis Owino having not denied that he was the accounting officer at the time of service of the Judgement in High Court JR 128 of 2018, I find him guilty of disobedience of this Court's Orders of 26th July, 2018. The said Dr, Francis O Owino is directed to appear in Court on 28th September, 2021 for purposes of sentencing.”

17. In conclusion it was submitted that the Ex-parte Applicant has made out a case warranting issuance of the orders in terms of prayers 3, 4 and 5 of the application and costs of the application.
18. At the time of writing this Ruling the Respondent had not filed any submissions.
19. I have examined all the averments and submissions of the parties herein. The application has proceeded ex parte after the respondents failed to file their submissions despite direction from this court.
20. The applicants had previously sought an order to compel the respondents to settle the decretal sum awarded in Nakuru ELRC Cause No. 403/2014 which the court had allowed vide its ruling on 9/6/2022.
21. After this ruling, the respondents failed to settle as ordered hence this application for contempt.
22. The respondents on their part had filed a response in this application for contempt and indicated that the applicants were proceeding unprocedurally because execution against the government can only proceed under the government proceedings Act and therefore the application is premature.
23. I have looked at the provisions of the government Proceedings Act. Under Section 13 of the Act, proceedings against the government shall only proceed after due notice which in this case are none issue, this claim having been instituted and judgment having been entered against the AG.



24. In the responses filed by the AG, it is apparent that requisite notice has been served upon the AG since the AG stated that;

“ The process of settling the decretal sum has already begun”.

25. The counsel on record had already intimated to this court that they had already forwarded this claim to Nairobi for processing of the payment.

26. To site the government for contempt in the circumstances would not be the appropriate remedy in my view.

27. I believe the best way to proceed is to issue a Notice to Show Cause against the respondents officer to explain why there has been delay in processing the pay.

28. This I therefore do and order.

29. Costs in cause.

RULING DELIVERED VIRTUALLY THIS 25TH DAY OF JANUARY, 2024.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Kanyi Ngure for Applicant – present

Ademayon for Respondent – present

Court Assistant – Fred

