



REPUBLIC OF KENYA



KENYA LAW
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**Matheka v Nyaga & 2 others (Employment and Labour Relations Petition
E015 of 2022) [2024] KEELRC 193 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 193 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E015 OF 2022
MN NDUMA, J
FEBRUARY 8, 2024**

BETWEEN

JOHN BOSCO MATHEKA PETITIONER

AND

MURITHI NYAGA 1ST RESPONDENT

KENYA AIRLINE PILOTS ASSOCIATION 2ND RESPONDENT

REGISTRAR OF TRADE UNIONS 3RD RESPONDENT

RULING

1. The petitioner/applicant in the application dated 21/12/2022 prays for an order in the following terms:-
 1. That the Honourable Court be pleased to find and hold that the 1st Respondent herein and the Executive Council members of the 2nd Respondent, are in contempt of the Honourable Court's orders given on 27th of October 2022 vide judgment delivered by the Honourable Justice Mathews Nduma Nderi.
 2. That the Honourable Court be pleased to hold that as a consequence of the acts of contempt by the 1st Respondent and the Executive Council members they shall be detained in prison for a period of six months or such period that the court may please or be fined such amount that the court may please.
2. The premise of the orders sought is that the court issued a judgment dated 27/10/2022 in favour of the applicant, to reinstate the applicant back to the office of Treasurer of the 2nd respondent after he was unlawfully removed from office by the 1st respondent, the Executive Council of the 2nd respondent.



3. That the applicant obtained a decree on 3/11/2022 and has severally in person and through his advocate written to the respondents and their advocate asking them to comply with the court orders but have failed and or neglected to do so in blatant contempt of the court orders aforesaid.
4. That the respondents' advocates also failed to allow the applicant to continue acting as a signatory of the 2nd respondent's bank account in defiance of express directions by the court in its judgment.
5. That the respondents in open defiance of the court order by a letter dated 19/12/2022 proceeded to remove the applicant from membership of the Executive Council of the 2nd respondent and also removed him from the position of Treasurer and National office.
6. That the respondents also removed the applicant from membership of the association of the 2nd respondent.
7. That the said actions are illegal and in defiance of the court orders.
8. That the allowance due and owing to the applicant, remain unpaid despite express orders of the court for the respondents to pay the allowance from the month of December 2021 in the sum of Kshs 260,000/=.
9. That the respondents be found guilty of willful defiance of court orders and they be punished accordingly as prayed in his application.
10. The applicant filed written submissions dated 17/1/2023 in support of the application in which the applicant urges the court to find that the respondents are in contempt of the judgment of the court dated 27/10/2022 and that they be found guilty accordingly and be detained in person for a period of 6 months or such period as the court may please.

Replying affidavit:

11. The 1st respondent filed a replying affidavit dated 24/1/2023 in which he denied allegations made by the applicant and in particular states that the 2nd respondent's action of removing the petitioner from the position of Treasurer and from its membership is within its Constitutional mandate and did not in any way violate the court orders since the court did not bar the 2nd respondent from removing the applicant from any office or from its membership for lawful cause.
12. That before the applicant was removed from office, he had access to his office and was at liberty to execute the partial money decree in respect of his allowance. That the court orders and the present application were never served on individual members of the Executive Council. That the applicant has not demonstrated any willful defiance of the court orders by the respondents. That the application lack merit and it be dismissed.

Determination:

13. The court has considered depositions by the parties and submissions filed and from the outset, the court notes that the matters the subject of this application were partly dealt with by the court in its ruling dated 5th October 2023 in respect of an application by the petitioner/applicant in which the applicant sought to attach the accounts of the 2nd respondent in execution of the judgment and the decree of the court the subject of the present application.



14. In that ruling, the court stated as follows:-
20. It is not in dispute that the respondent paid on 15/5/2023, the decretal sum in two cheques in the sum of Kshs 525,000/= being the decretal sum due and Kshs 231,644/= being the taxed costs in the matter.
 22. Clearly, the amounts paid cover the decretal sum up to the month of February, 2023 the month when the applicant was again removed from the office of Treasurer and according to the respondent not entitled to any further payments thereafter.
 24. The issue as to the removal of the applicant from office of Treasurer in February 2023 has not been the subject of any litigation, and therefore, the court finds that it is improper for the applicant to enforce any payments of monthly allowance after February, 2023 until the lawfulness or otherwise of the removal from office of the applicant in February 2022, has been determined.”
15. To date, the aforesaid position articulated by the court in its ruling of 5/10/2023 remains. Clearly, the matter for reinstatement of the claimant to the position of Treasurer dealt with in the judgment of the court dated 21/2/2023 has been overtaken by events and cannot be addressed by the present application filed before the applicant was removed from office and from membership of the 2nd respondent.
16. The applicant has clearly been paid his allowances in terms of the said judgment and order of the court and the issue of contempt of court in that respect does not arise at all.
17. The applicant has failed to prove that the respondents were in contempt of the court orders when they resolved to remove him from the position of Treasurer and from the membership of the Association on the facts placed before the court in the present application.
18. As the court said earlier, this matter would adequately be addressed in a suit addressing the legality or otherwise of the said removal.
19. Accordingly, the application lack merit and is dismissed. Each party to bear their own cost of the suit.

MATHEWS N. NDUMA

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF FEBRUARY, 2024

Appearances

Mr. Achola for claimant

Mr. Ochieng for Respondents

Ekale: Court Assistant

