



**Bett & 27 others v County Government of Uasin Gishu & 2 others
(Petition 20 of 2020) [2024] KEELRC 939 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 939 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
PETITION 20 OF 2020
MA ONYANGO, J
APRIL 25, 2024**

BETWEEN

JOEL CHERUIYOT BETT & 27 OTHERS PETITIONER

AND

COUNTY GOVERNMENT OF UASIN GISHU 1ST RESPONDENT

COUNTY SECRETARY, UASIN GISHU COUNTY 2ND RESPONDENT

UASIN GISHU COUNTY PUBLIC SERVICE BOARD 3RD RESPONDENT

RULING

1. On 15th June 2023, this court delivered its judgement in this suit and issued the following orders in favour of the Petitioners:-
 - a. A declaration be and is hereby issued that the Petitioners employment with the Respondent is not casual but converted to regular employment by operation of the law with the rights and benefits under the Employment Act, 2007;
 - b. The Respondents are hereby directed to issue to the Petitioners contracts of employment with terms and conditions similar to those issued to other employees in similar positions within the next 30 days;
 - c. The Respondents shall bear the petitioners' costs of this Petition.
2. On 15th August 2023, the Petitioners through their advocate on record Mr. Kagunza, filed the instant application seeking the following orders:
 - i. Spent



- ii. That summons be issued against Edwin Bett, the County Secretary of Uasin Gishu County, Sammy Kotut the CEC of Uasin Gishu County, Francisca Bowen the County Public Service Board of Uasin Gishu County, Dr. Paul Wangwe the Chief Officer of Health-Clinical services of Uasin Gishu County to appear before this Honourable Court and show cause why they should not be committed to civil jail for such term as the court may deem fit.
 - iii. That Edwin Bett the County Secretary of Uasin Gishu County, Sammy Kotut the CEC of Uasin Gishu County, Francisca Bowen the County Public Service Board of Uasin Gishu County, Dr Paul Wangwe the Chief Officer pf health –clinical services of Uasin Gishu County be cited for contempt of court and be committed to civil jail for a term of six(6) months until they purge their contempt and complies with the judgment of this honourable court delivered on 15th June 2023 and or they be ordered to purge the contempt on terms this Court deems fit.
 - iv. That in lieu of the third prayer, Edwin Bett the County Secretary of Uasin Gishu County, Sammy Kotut the CEC of Uasin Gishu County, Francisca Bowen the County Public Service Board of Uasin Gishu County, Dr Paul Wangwe the Chief Officer pf health –clinical services of Uasin Gishu County be cited for contempt of Court and be fined a sum of at least Kshs 1,000,000 each and that the court do make any such order for purposes of enforcing its judgment delivered on 15th June 2023.
 - v. That the Court be pleased to grant any other or further orders, for the purposes of protecting the dignity and authority of the court
 - vi. That costs be awarded to the applicants.
3. The grounds relied upon are that the alleged contemnors have flagrantly and deliberately disobeyed the judgement of this court delivered on 15th June 2023, that the terms of the judgment were clear and unambiguous and were binding on them and that they had knowledge of or proper notice of the said judgment.
 4. In opposition to the application, the Respondents filed Replying affidavits sworn on 3rd October 2024 by Edwin Bett, the 1st Respondent’s County Secretary and Dr Paul Wangwe, the 1st Respondent’s Chief Officer Health.
 5. In those affidavits, the Respondents aver that they received the Notice from the Deputy Registrar on 30th June 2023 indicating that judgment had been delivered in the instant suit but it was not until 2nd August 2023, that the Respondents were properly seized of the particulars of the judgment and resultant decree.
 6. They further state that after receipt of the judgment, the Respondents were constrained from fully complying with the same for reasons that: in the itemized budget estimates for the financial year 2023/2024, no budgetary allocation had been made to cater for the impugned conversion of the staff from causal basis to permanent basis; that the intended conversion is likely to cause wasteful expenditure for the limited budgetary allocation because the reason why the applicants were employed on a temporary basis is because their roles were non-essential and limited to offering support to permanent employees in their docket and that further, the conversion of the Applicants’ engagement with the County Government would most likely constitute a duplication of roles; that due to the advancement in technology and automation of many services, there has a transition in the workforce as the County Government now hires fewer workers to do the same job with the assistance of machines; that in any event, if the Applicants’ employment was to be converted from causal to permanent basis, it would lead to a duplication of functions, emergence of ghost workers and non-essential staff who



will be maintained at the expense of the Residents of Uasin Gishu County; and lastly, that the County Public Service Board has not planned for the conversion of the 28 Applicants' employment within the County's budget for the year 2022/2023.

7. The Respondents aver that they have since preferred an appeal against the said judgment, that the appeal is merited and has high chances of success. Further, that they have filed an application for stay of execution of this court's judgment which is pending determination. They aver that if the orders of contempt sought are granted, it will render the intended appeal and the application for stay nugatory.
8. The application was disposed of by way of written submissions. The 1st, 2nd and 3rd Respondents submissions were filed on 6th November 2023 while the Petitioner's submissions were filed on 14th November 2023.

The Petitioners' submissions

9. In their submissions dated 10th November 2023, the Petitioners submit that the alleged contemnors namely Edwin Bett the County Secretary of Uasin Gishu County, Sammy Kotut the CEC of Uasin Gishu County, Francisca Bowen the County Public Service Board of Uasin Gishu County and Dr Paul Wangwe the Chief Officer of Health-Clinical Services of Uasin Gishu County were served with the duly executed decree on 30th June 2023 which they duly received and retained their copies.
10. That instead of complying by issuing contracts of employment with the terms and conditions similar to other employees within 30 days as directed by the court, the alleged contemnors, vide the internal memo dated 29th June 2023, proceeded to terminate the employment of the Petitioners and chased them away from their respective work stations.
11. The Petitioners submit that it was incumbent upon the alleged contemnors to comply with the orders of this court. According to them, the judgment delivered on 15th June 2023 has not been set aside or reviewed by a court of competent jurisdiction, and thus, it is still valid and the alleged contemnors ought to have complied with it.
12. The Petitioners cited the decisions in Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County (Ex parte David Mugo Mwangi) (2018) eKLR, Refrigerator & Kitchen Utensil Ltd v Gulabchand Popatlala Shah & Others, Civil Application No. NRB 39 of 2019, Wildlife Lodges Ltd v County Council of Narok and Another (2005)2 EA 334(HCK), Central Bank of Kenya & Another v Ratilal Automobiles Limited & others Civil Application No. NRB 247 of 2006 and B v Attorney General (2004)1klr 431 in support of the position that the Respondents should be cited for contempt.

Respondents' submissions

13. In their submissions the Respondents reiterated the averments made in their Replying Affidavits and further submitted that they were not present when the judgment of the court was delivered and therefore they cannot be held in contempt for the judgment whose particulars were unknown to them.
14. They further aver that the Applicants did not take steps to ensure service of the said orders upon them personally. They submit that the Petitioners have not met the threshold for grant of contempt orders relying on the decisions in Patrick L Otieno Oyoo t/a Otieno Oyoo Company Advocates v Africa Merchant Assurance Company Limited & Another, Diamond Trust Bank Kenya Limited (Garnishee/ Applicant (2021) eKLR, Tito Kiprop (Suing as the Legal Representative of Philip Chepkwony) v Benjamin Tarus & 4 others (2021) eKLR and Kobilu farm limited & Another v Elfam Limited & Another (2020) eKLR.



15. The Respondents submit that the alleged breach of the terms of the order was not intentional and that even if they had been served with the Notice, Judgment and Decree on time, and were intent to comply with the orders, the same would pose a great challenge to execute. The Respondents have relied on the cases of Samuel M.N Mweru & Others v National Land Commission & 2 others (2020) eKLR and Oilfield Movers Limited v Zahara Oil and Gas Limited (2020) eKLR to buttress the position that their actions were not deliberate but were beyond their control.
16. The Respondents thus urged the court to dismiss the instant application.

Determination

17. I have considered the instant application, the rival affidavits and submissions filed by the Petitioners and the alleged contemnors. The issue for determination is whether the alleged contemnors are guilty of contempt of this court's judgment delivered on 15th June 2023.
18. The elements of civil contempt were restated by the learned authors of the book Contempt in Modern New Zealand at page 36 thus: -
 - “ There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that: -
 - (a) the terms of the order (or injunction or undertaking) were clear and unambiguous 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; and
 - (d) the defendant's conduct was deliberate.
19. In the instant case the alleged contemnors have not raised any issue over the clarity of this court's judgment delivered on 15th June 2023 and evidently, the first limb on the principles of civil contempt being that the orders of the court are clear and unambiguous is satisfied.
20. On the second limb, the Respondents have disputed that they were aware of the Court's orders. They aver in the Replying Affidavits that they became aware of the court's judgment on 2nd August 2023.
21. As stated by them, the judgment in this case was delivered on 15th June 2023. In that judgment the Respondents were required to regularize the Petitioners' terms of employment in compliance with the court order within 30 days.
22. From the record in the court file, before the judgment was delivered, the court had directed parties to file written submissions. The County Attorney filed submissions on behalf of the Respondents on 17th April 2023. On 18th April 2023, Mr. Mutai, Counsel for the Alleged contemnors was in court appearing on behalf of the Respondents when the matter was fixed for judgment on 15th June 2023 in the presence of both parties. The judgment was delivered as scheduled on 15th June 2023. Both parties having been aware of the date of judgment and having not attended court or notified the court of their inability to attend court for delivery of judgment, the court went ahead and delivered judgment in their absence and directed that the parties be notified.
23. On 28th June 2023 the Respondents lodged an appeal through a notice of appeal of even date meaning that they were aware of the judgment. This was even before the parties were notified of delivery of



judgment by the Deputy Registrar by notice dated 27th June 2023 which was received, stamped and signed by the office of the County Attorney on 30th June 2023 at 12.30pm. It is further not contested that the Respondents appeared in person through the County Attorney in this matter.

24. The Court of Appeal (Karanja, Mwera & Mwilu JJA) in *Shimmers Plaza Limited vs National Bank of Kenya Limited* (2015) eKLR held as follows with respect to notice of court orders to litigants who are represented by Counsel: -

“Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client’s case.”

25. The Responses by the Alleged Contemnors to the instant application further negates the plea of lack of knowledge of the judgment of this court by the Alleged contemnors. The notice of Appeal is dated 28th June 2023 and the Internal Memo for release of all casual/temporary staff is dated 29th June 2023. The memo has a received stamp of 30th June, 2023. How can the Alleged contemnors persuade anybody that they were not aware of the court’s judgment on the day the memo was issued a day after they filed Notice of Appeal?
26. I am convinced that the Alleged Contemnors were aware that judgment had been delivered in this Petition by 28th June 2023 when they lodged the appeal and that the notice of 29th June 2023 to release the Petitioners was a deliberate and calculated defiance of this court’s orders.
27. With regard to the last limb being whether the conduct of Respondents was deliberate, I am satisfied that they were from the analysis above, especially that the Respondent was aware of the Judgment date but failed to appear in court, and that notice of appeal was filed a day before the memos defying the orders of this court were issued. Further, even after formal service of the orders, Alleged Contemnors took no action to recall the offending memo.
28. The Respondents in their Alleged Contemnors indicated in their submissions that even if they were aware of the orders issued by the court, and were intent to comply with the orders, the same would pose a great challenge to execute as there was no budgetary allocation to cater for the conversion of the casuals to permanent terms as ordered by the court.
29. A court order is binding on every party against whom it is addressed and until it is set aside or reviewed, it remains valid and must be complied with even if it is wrong or the parties it is directed to does not believe in it. Article 159(1) of *the Constitution* provides that judicial authority is derived from the people and vests in, and shall be exercised by the courts and tribunals established by *the Constitution*. The courts are thus empowered to punish for contempt to safeguard the peaceful and orderly development of society and the rule of law.
30. The Constitutional Court of South Africa, in the case of *Burchell v. Burchell*, Case No 364 of 2005 emphasized the importance of compliance with court orders to the Rule of Law in the following terms:

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. *The Constitution* states that the rule of law and supremacy of



the Constitution are foundational values of our society. It vests the judicial authority of the state in the courts and requires other organs of state to assist and protect the courts. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”

31. In *T. N. Gadavarman Thiru Mulpad v Ashok Khot and Anor* [2006] 5 SCC, the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus:

Disobedience of this Court’s order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court orders are to be followed and complied with.

32. Here at home, Ibrahim J. (as he then was), while dealing with the question of contempt in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, underscored the importance of obeying court orders, stating:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”

33. The alleged contemnors are all public servants. *The Constitution* of Kenya underscores the importance of the rule of law as a national value and principle of governance in Article 10. Public servants are supposed to be at the forefront, leading by example in applying the values and principles of governance.

34. A person against whom a court order has been made must comply. If there is any difficulty in complying, that person must approach the court at the earliest possible opportunity to explain their position or approach a higher court to plead their case. As was stated in *Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County (Ex Parte David Mugo Mwangi)* [2018]:

“It must however be membered that court orders are not made in vain and are meant to be complied with. If for any reason a party has difficulty in complying therewith, the honorable thing to do is to come back to the court and explain the difficulties faced by the need to comply with the order. Once a court order is made in a suit the same is valid unless set aside on review or on appeal.”

35. The fact that it is impossible to implement a court order is as pleaded by the Alleged Contemnors is therefore not a valid reason or excuse to disobey the same and cannot be a defence in an application to cite an alleged contemnor for contempt.



36. Having found the conduct of the alleged contemnors to have been deliberate and wilful disobedience of this court's orders, I find them all guilty of contempt for disobedience of this court's orders made on 15th June 2023 and cite them accordingly.
37. The contemnors are directed to attend court in person on a date to be taken at the time of delivery of this ruling for sentencing.
38. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON

THIS 25TH DAY OF APRIL, 2024

MAUREEN ONYANGO

JUDGE

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ELD PET. NO 20 OF 2020 RULING

