



Oiro v Nairobi City County Government (Judicial Review Cause E026 of 2021) [2024] KEELRC 1170 (KLR) (19 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 1170 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW CAUSE E026 OF 2021**

SC RUTTO, J

APRIL 19, 2024

**IN THE MATTER OF AN APPLICATION BY FRANCIS OCHIENG OIRO
AND IN THE MATTER OF THE NAIROBI CITY COUNTY**

BETWEEN

FRANCIS OCHIENG OIRO APPLICANT

AND

THE NAIROBI CITY COUNTY GOVERNMENT RESPONDENT

RULING

1. The Applicant took out a Notice of Motion Application dated 26th October 2023, brought under Sections 1A, 1B and 3A, of the *Civil Procedure Act*. The Motion which is supported by the grounds appearing on its face and the Affidavit of Mr. Seth Ojienda, counsel on record for the Applicant, seeks the following orders:
 - a. Spent
 - b. That this Honourable Court be pleased to issue Notice to Show cause Order against the Chief Officer Finance and County Secretary, County Government of Nairobi to attend Court and show cause why he should not be cited for contempt of court order issued on the 16th October 2023.
 - c. That the Honourable Court be pleased to find the Chief Officer Finance and County Secretary, County Government of Nairobi in contempt of Court for willful and deliberate disobedience of the court's Decree dated 16th October 2023.
 - d. That the Chief Officer Finance and County Secretary, County Government of Nairobi be committed to civil jail on such terms as the Honourable Court may deem fit unless and until they purge the contempt by honoring the court's order dated 16th October 2023.



- e. That the costs of this Application be borne by the Respondent.
2. Grounds in support of the Motion are that:
- a. This Court issued a decree on 16th October 2023 for an Order of mandamus to compel the Respondent to comply with the decree issued on 11th June 2021 and the Certificate of Taxation dated 11th June 2021 by settling the sum of one million two hundred and forty six and fifteen shillings (Kshs 1,246,015.00) being the decretal amount plus cost of the suit in petition No 198 of 2019 *Francis Ochieng Oiro versus the Nairobi City County Government*.
 - b. Despite the said decree and penal notice being served upon the Respondent, the Chief Officer Finance and County Secretary, County Government of Nairobi has willfully and blatantly disobeyed the Court order and has shown contempt for the dignity of the court.
 - c. The Chief Officer Finance and County Secretary, County Government of Nairobi is under obligation to pay funds in the capacity of the accounting officer.
 - d. The Chief Officer Finance and County Secretary, County Government of Nairobi has consented to or connived at the commission of the contempt or has failed to take necessary steps to comply with the judgment and decree dated 16th October 2023.
 - e. The Applicant is seeking an order finding the Chief Officer Finance and County Secretary, County Government of Nairobi in contempt of Court for willful and deliberate disobedience of the court's Decree dated 16th October 2023.
 - f. The Applicant is seeking for an order committing the Chief Officer Finance and County Secretary, County Government of Nairobi the contemnor, to civil jail on such terms as the Honorable Court may deem fit unless and until he purges the contempt by honoring the court's order dated 16th October 2023.
3. The Respondent did not respond to the Application.

Submissions

4. Placing reliance on the cases of *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* (2005) KLR 828, T.N Gadavarman Thiru Mulpad v Ashok Khot and Anor (2006) 5 SCC and Peter K Yego & Others v Pauline Wekesa Kode, Acc. No. 194 of 2014, the Applicant submitted that the Respondent officers are in contempt, as they were properly served by the Court Decree on 27th October 2023. Therefore, they maliciously and deliberately disobeyed the orders issued by the Court.
5. It was further submitted by the Applicant that in the present Application, it has been sufficiently demonstrated that the Respondents deliberately disobeyed Court orders as the same was served upon them and they even failed to attend court on several occasions when called upon.

Analysis and Determination

6. From the record, it is apparent that the singular issue falling for the Court's determination is whether the Application is merited.
7. In the instant case, the Applicant seeks to have the Chief Officer, Finance and the County Secretary of the County Government of Nairobi appear in Court and show cause why they should not be cited for



contempt and be committed to civil jail on such terms as this Honorable Court may deem fit unless and until they purge the contempt by honoring the court's order dated 16th October 2023.

8. Section 5 of the Judicature Act confers jurisdiction on the superior courts to punish for contempt and uphold the dignity and authority of subordinate courts.
9. The Black's Law Dictionary (9th Edition), defines contempt of Court to mean:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.
10. An essential ingredient for successful contempt proceedings is that the alleged contemnor must have committed a willful or deliberate disobedience or breach of an order.
11. Courts have affirmed that the essence of contempt proceedings is to safeguard the supremacy of the law. Fundamentally, the reason courts will punish for contempt is to safeguard the rule of law, which is central in the administration of justice.
12. It is also instructive to note that contempt of Court is in the nature of criminal proceedings hence, proof of a case against a contemnor is higher than that of balance of probability. This is logical since the liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed. This position was restated by the Court in the case of Gatharia K. Mutikika v Baharini Farm Limited [1985] KLR 227.
13. Having perused the principal prayers in the Motion hereof, I note that it seeks to have the Chief Officer Finance and County Secretary, of the County Government of Nairobi cited for contempt. Notably, the officers sought to be cited for contempt have not been identified by name and it is not clear who they are. Put differently, the Applicant did not give the names of the Chief Officer, Finance and the County Secretary of the County Government of Nairobi. As it is, the said officers are not parties to these proceedings. In the circumstances, I cannot help but question who is being cited for contempt.
14. Given the nature of contempt of court proceedings, the onus was on the Applicant to be clear as to who the contemnors are and to effect service upon them appropriately.
15. In light of the foregoing, I am inclined to disallow the Application dated 26th October 2023 with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF APRIL 2024

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Ayugi instructed by Mr. Ojienda for the Applicant

No appearance for the Respondent

Kemboi Court Assistant

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of



21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

