



Otieno v Multimedia University of Kenya & another (Miscellaneous Application E299 of 2023) [2024] KEELRC 766 (KLR) (11 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 766 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E299 OF 2023**

BOM MANANI, J

APRIL 11, 2024

BETWEEN

ROBERT KENNEDY OTIENO APPLICANT

AND

MULTIMEDIA UNIVERSITY OF KENYA 1ST RESPONDENT

COUNCIL OF MULTIMEDIA UNIVERSITY OF KENYA 2ND RESPONDENT

RULING

Background

1. The Applicant is an employee of the 1st Respondent. The two have been embroiled in a legal dispute relating to their employment relation. The dispute was adjudicated by the Employment and Labour Relations Court through Case No. 243 of 2020 (ELRC No. 243 of 2020).
2. In the court's judgment that was delivered on 8th December 2022, the learned Judge ordered, inter alia, that the Respondents process the Applicant's accrued leave of twenty (20) days within fourteen (14) days of the decision failing which the said leave days were to be considered as commuted into leave pay of Ksh. 192,740.52 and that the same was to be paid to the Applicant together with interest at court rates. The court also awarded the Applicant costs of the suit assessed at Ksh. 100,000.00.
3. The Applicant contends that the Respondents has not complied with the aforesaid decision. As such, he has moved the court through the instant application seeking for various orders to wit the following:-
 - a. That the court subjects the sum of Ksh. 192,740.52 awarded to him in ELRC No. 243 of 2020 to interest as ordered by the court.
 - b. That the court orders the Respondents to provide a list of all their bank accounts for purposes of enforcement of the decree in ELRC No. 243 of 2020.



- c. That the court grants him leave to institute contempt of court proceedings against the Respondents for their failure to adhere to the court's decision in ELRC No. 243 of 2020.
 - d. That the court finds that the Respondents are in contempt of the decision in ELRC No. 243 of 2020.
 - e. That the court blocks the bank accounts of the 1st Respondent until the amounts that were decreed in his favour in ELRC No. 243 of 2020 are paid.
 - f. That the court imposes a fine of Ksh. 100,000 on each of the Respondents.
 - g. That the court orders that the Respondents shoulder the costs of the instant application.
 - h. That the court issues any other order that it deems fit to grant in the interest of justice.
4. The Respondents have objected to the application on points of law. It is their position that the application is *res-judicata*. As such, it should be struck out.
 5. In a bid to fight off the Respondents' contention that the motion is *res-judicata*, the Applicant has filed an affidavit sworn on 13th February 2024 in which he avers that the issues that are raised in the instant application are not the same as those that were addressed in ELRC No. 243 of 2020. It is his position that the application is concerned with contempt of court proceedings.
 6. For purposes of this ruling, the court consolidated the application and preliminary objection by the Respondents. The parties were asked to canvass their respective positions on the matter through written submissions which they did.

Analysis

7. It is apparent that the parties had a legal dispute that was considered in ELRC No. 243 of 2020. It is also apparent that the court rendered its decision on the dispute on 8th December 2022. A copy of the decision is attached to the application under consideration.
8. Rule 32(2) of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 which regulate the court's practice provides as follows:-

"Rules on execution of an order or decree shall be enforceable in accordance with the Civil Procedure Rules."

9. Order 22 of the *Civil Procedure Rules* (CPR) deals with the process of execution of decrees and orders of courts. Specifically, Order 22 Rule 6 of the *CPR* provides as follows:-

"Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree, or, if the decree has been sent under the provisions hereinbefore contained to another court, then to such court or to the proper officer thereof; and applications under this rule shall be in accordance with Form No. 14 of Appendix A.

Provided that, where judgment in default of appearance or defense has been entered against a defendant, no execution by payment, attachment or eviction shall issue unless not less than ten days' notice of the entry of judgment has been given to him either at his address for service or served on him personally, and a copy of that notice shall be filed with the first application for execution."



10. Clearly, the general position in law is that if a Decree Holder wishes to enforce it, he is required to apply for enforcement of that decree in the manner that is prescribed above. He does so by completing the request for execution of the decree in form 14 in Appendix A in the [CPR](#).
11. This application is then actioned through the appointment of a court bailiff to attach and sell the Judgment Debtor's property or by issuing a notice to the Judgment Debtor to show cause why he should not be committed to jail for failure to settle the terms of the decree. In the event the Judgment Debtor has no property to be attached but is owed by a third party, the Decree Holder may take out Garnishee proceedings against such third party under Order 23 of the [CPR](#). For the avoidance of doubt, all these proceedings must be commenced in the cause in which the decree issued.
12. It has been emphasized time and again that where the law provides for the procedure to address an issue, that procedure ought to be exhausted before resorting to any other alternative. In this case, the law provides for the mode of enforcement of decrees. Therefore, a Decree Holder who wishes to enforce a decree must follow this procedure before resorting to other processes.
13. Whereas the Applicant has the freedom to pursue contempt of court proceedings where a court order has not been implemented, it is unclear why he would elect not to execute the decree that he holds using the procedure that is set out above in the first instance. It is unclear why he would resort to instituting contempt proceedings before exhausting the mechanism for enforcement of decrees under the [CPR](#).
14. The Respondents contend that the Applicant should have moved the court to enforce the decree in the manner prescribed in law. I agree with this observation.
15. The Respondents also point out that some of the issues that the Applicant raises in the application are *res-judicata*. I have considered this argument against some of the reliefs that the Applicant seeks through the application and agree that they indeed are *res-judicata*. For instance, the request that the court applies interest on the sum of Ksh. 192,740.52 is a matter that was determined in ELRC No. 243 of 2020. It is therefore not available for adjudication by this court.
16. On the other hand, the issue of freezing and attaching the 1st Respondent's accounts is a matter that falls within the purview of Garnishee proceedings under Order 23 of the [CPR](#). In my view, it ought not to be the subject of a contempt of court application.

Determination

17. The upshot is that I find that:-
 - a. The dispute between the parties relates to execution of the court's decree in ELRC No. 243 of 2020.
 - b. The law provides for effective mechanisms to enforce such decree without the necessity of invoking contempt of court proceedings in the first instance.
 - c. Such enforcement of the decree should be through the same cause in which it (the decree) was issued.
 - d. For these reasons, I decline to entertain the instant motion.
 - e. As such, the application is dismissed.
 - f. Each party to bear own costs.

DATED, SIGNED AND DELIVERED ON THE 11TH DAY OF APRIL, 2024



B. O. M. MANANI

JUDGE

**In the presence of:

..... for the Applicant

.....for the Respondents

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

