



**Kenya Union of Sugar Plantation and Allied Workers v Busia
Sugar Industry Limited (Employment and Labour Relations Cause
56 of 2021) [2024] KEELRC 983 (KLR) (8 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 983 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
EMPLOYMENT AND LABOUR RELATIONS CAUSE 56 OF 2021**

**JW KELL, J
APRIL 8, 2024**

BETWEEN
**KENYA UNION OF SUGAR PLANTATION AND ALLIED
WORKERS CLAIMANT**
AND
BUSIA SUGAR INDUSTRY LIMITED RESPONDENT

RULING

1. The court on the 30th November 2023 issued a judgment in favour of the Claimant/ Applicant in the following terms:-

“The Court enters judgment for the claimant against the respondent as follows:-

- a. That the Respondent is Ordered to avail the Claimant a list of all employees who have since exited their employment and had signed the Form S and to commence deduction of check-off dues from the salaries of the employees who have voluntarily signed the union forms acknowledging membership into the claimant union effective 31st December 2023.
- b. That the Respondent, his agents(s) or manager(s), and /or any other person(s) serving the interests of the respondent is hereby restrained /stopped from threatening, harassing, victimizing, termination and/or dismissing any of its employees, shop stewards or officials of the Claimant on account of this suit or proceedings.

81. No order as to costs.”



2. The Judgment was not satisfied by the Respondent. The Claimant/ Applicant subsequently on the 5th March 2024 filed in court Notice of Motion application of even date seeking the following reliefs:-

- i. Spent
- ii. That Mr. Aiman Yumen , Mr Caleb Anyula and Mr Philip Ipapu being managers of the respondent do appear before this honourable court in persons to show cause why they should not be cited for contempt of court for willful, deliberate and intentionally refusing to obey and implement the orders of this court as per the judgment delivered on the 30th November ,2023.
- iii. That the honourable court be pleased to find and hold that Mr Aiman Yumen, Mr Caleb Anyula and Mr Philip Ipapu being senior managers of the respondent are in contempt and have disobeyed the orders of the court.
- iv. That Mr Aiman Yumen, Mr Caleb Anyula and Mr Philp Ipapu be punished for contempt of Court and be committed to civil jail for a period not less than six months or to impose a punitive fee upon ach of them of not less than one hundred thousand Kenya shillings.
- v. That in the alternative the honorable court be pleased to orders attaching the said managers six -six-month salaries for recovery of all the union dues lost.
- vi. That the honorable court be pleased to issue a permanent injunction against the respondent, respondent's manager (s) or agent (s) or anyone serving the interests of the respondent from interfering or stopping further (future) recruitment process or threatening, victimizing employees who joins or want to join the union.
- vii. That the cost of this application be borne by the respondent.

3. The Application was premised on the following grounds:-

1. That the applicant union filed a suit against the respondent which suit was heard and determined on merit, and this Honourable Court delivered its judgement on the 30th November, 2023.
2. That the judgement directed the respondent as follows-
3. That the respondent is ordered to avail the claimant a list of all employees who have since exited their employment and had signed the Form S and to commence deduction of check-off dues from the salaries acknowledging membership into the claimant union effective 31st December, 2023.
4. That the respondent his agent(s) or managers and/or any other persons serving the interests of the respondent is hereby restrained /stopped from threatening, harassing, victimizing, terminating and or dismissing any of its employees shop stewards or officials of the claimant on account of this suit or proceedings.
5. That the judgment was delivered in the presence of all the parties and that senior Consul Mr. Philip Ipapu who is present in person for the respondent. That Mr Ipapu also doubles up as the Company Secretary and legal officer of the respondent.
6. That Mr Caleb Anyula is the Human Resource Officer and during the hearing sessions he testified and confirmed in court that he is the top manager of the respondent in charge of Human resource department dealing with union and that he always received all communication pertaining to union matters.



7. That Mr Aiman Yumen is the administrative manager and a representative of the Managing Director and that in the absence of the managing director he is personally in charge of all company operations.
 8. That the three managers have both individual and collective responsibility to ensure that the respondent obeys the court orders. That the trio being top managers has connived against to disobey this honorable court by refusing to implement the orders above, well knowing that their application for stay orders was declined.
 9. That the orders issued by this court were very clear, free of any ambiguity and the respondent stands to suffer nothing in obeying them.
 10. That the said managers lead by Mr. Ipapu, having knowledge of the said orders and with full knowledge that there was no stay orders have willfully chosen/elected to disregard and/or disobey the court thus rendering the court orders as meaningless papers work.
 11. That the applicant has made several efforts including writing to the respondent to comply with the court orders but all in vain.
 12. That the applicant General Secretary further sent union official from the head office on the 27th February, 2024 to have a meeting with the management but they adamantly refused to implement the orders.
 13. That the applicant officials visited the company premises on the 27th February, 2024 and discovered that many employees are willing to join the union but the said HR officer and the Administrative manager were still threatening the employees not to join union, that those who had joined and those who are joining will have their contract terminated, which actions are clear disobedience to the orders of this court.
 14. That the said managers have failed to explain to the applicant what difficulties they have in complying and are using their managerial status to demean this court and deny employees the fruits of justice.
 15. That the superior courts have held that the plain and qualified obligation of every person against or to whom an order is directed to obey and any disobedience of such an order would result in the person disobeying it being in contempt and liable for punishment by committal to jail or attachment.
 16. That unless the court grants the orders herein prayed the integrity and dignity of this court, the fundamental rule of law and order, and the inherent powers of the courts will be at stake, hence the freedom and rights of workers will be eroded in the whole country.
 17. That this kind of disobedience to court orders is not only abusive to the legal justice system, but it impacts negatively on the economic strength and value of the applicant union hence paints a negative image of the courts in the public eyes.
 18. That the applicant is certainly sure that this honorable court has both constitutional, legislative and inherent mandate to issue the Orders herein prayed.
 19. That this application is timely and in the interest of justice the orders herein be granted.
4. The application was further supported by the affidavit of Francis Bushuru Wangara, the General Secretary of the union. The affidavit was sworn on the 5th March 2024. The affidavit annexed the judgment of the court in the suit, correspondence and minutes between the parties.



5. The application was opposed by the Respondent vide replying affidavit sworn by Ipapu Philip Jackah advocate who was also sued as a senior manager of the respondent.
6. Mr. Ipapu averred that the application as filed is brought against an unknown entity identified in the alleged judgement under reference and the subject of this application and further the contemnors are not associated with the respondent named in this application, a clear indication of the want of proper service.
7. That the application has been brought without any basis for the orders sought therein particularly considering that the Respondent requested the Applicant to avail to it the Form - S in order to enable the Respondent to contextualize those employees who have left employment and those still in the employment of the respondent in line with the judgement of the court, which the applicant has failed to avail to the Respondent .
8. That, this application is brought in breach of strict procedural rules relevant to contempt of court proceedings as the contemnors have not been properly served.
9. That, the respondent has not extracted and annexed to this application a certified copy of the Decree capable of being executed for which the Respondent is said to be in contempt of.
10. That, it is in the wider interest of justice that the applicant do simply avail to the Respondent a copy of the Document requested /Form S for perusal and consideration by the Respondent.
11. The parties canvassed their case orally.
12. The application was brought under articles 27(1), 29(a) and 159 of *the Constitution* and section 12 of the Employment and *Labour Relations Act* as well as rule 17 of the *Court procedural rules*.
13. The court in dealing with labour relations matters cannot apply procedural technicalities as unions representatives are not lawyers. Indeed that is the spirit of article 159 (2)(d) of *the Constitution* of Kenya to wit:- ‘d) justice shall be administered without undue regard to procedural technicalities;’ I say so because the law cited by the Applicant was not direct on issue of contempt.
14. Currently we do not have a substantive law on contempt following the decision in *Kenya Human Rights Commission vs. Attorney General & Another* [2018] eKLR, where Justice Mwita declared that the entire *Contempt of Court Act* No 46 of 2016 to be invalid for lack of public participation as required by Articles 10 and 118(b) of *the Constitution* and found that the said *Act* as enacted encroached upon the independence of the Judiciary. The decision is law for now.
15. Consequently, we revert to previous position where the law with respect to the procedure for institution of contempt of Court proceedings in this country was and therefore is section 5 of the *Judicature Act* (Cap 8 Laws of Kenya). That section provides:
 - (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.
 - (2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.’



16. Therefore, the court finds that the law that governs contempt of court proceedings is the English law applicable in England at the time the contempt was committed is as held by Justice Odunga in *Alfred Mutua v Boniface Mwangi* [2022] eKLR at paragraph 14 where the court upheld the decision of the Court of Appeal in *Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others* [2014] eKLR, Where the Court recognised that the only statutory basis for 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*. The court upholds the decision by Justice Odunga.
17. It was the finding of the court that the respondent explained itself satisfactory as to why they did not comply with the judgment. The Applicant did not deny that the Respondent had requested them for the FORM S so as to commence deduction and that the Applicant had failed to submit the same. The argument of victimisation and subsequent recruitment by the Applicant was not relevant to the enforcement of the judgment of the court. The court finds the test in contempt proceedings to be as stated in in *Samuel M.N. Mweru & Others v National Land Commission & 2 others* (2020)eKLR where the court held that the test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed deliberately or malafide. I did not find a case of wilful disobedience of the court judgment. I found no merit in the instant application.
18. The Application for contempt dated 5th March 2024 is dismissed with no order as to costs.
19. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUNGOMA THIS 8TH DAY OF APRIL 2024.

J.W. KELI

JUDGE

IN THE PRESENCE OF

C/A Brenda Wesonga

For applicant – Jeremiah Akhonya, Industrial Relations Officer

For Respondent- Ipapu Jackah

Further Court orders

1. The court finds that the respondent is willing to comply with the judgment of the court. In order to settle the issue before court and satisfaction of the judgment the court directs that the Applicant submits within 3 days of this ruling the FORM S to the Respondent. The Respondent to comply with the decision of the court in 30 days and deductions under the FORM S be effected without failure in the April payroll. The respondent to give reasons in writing to the Applicant on any employee who name appears in the FORM S and the employer fails to make deduction.
2. Mention on 14th May 2024 to confirm compliance and close the court file.
3. It is so Ordered.

J.W. KELI

JUDGE

IN THE PRESENCE OF

C/A Brenda Wesonga



For applicant – Jeremiah Akhonya, Industrial Relations Officer

For Respondent- Ipapu Jackah

