



Kenya Aviation Workers Union v Kenya Airports Authority (Cause E913 of 2022) [2024] KEELRC 921 (KLR) (8 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 921 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E913 OF 2022
BOM MANANI, J
APRIL 8, 2024**

**BETWEEN
THE KENYA AVIATION WORKERS UNION CLAIMANT
AND
THE KENYA AIRPORTS AUTHORITY RESPONDENT**

RULING

Background

1. On December 14, 2023, the court found the Respondent in contempt of its decision that was rendered on May 16, 2023. Consequently, the Respondent was directed to purge the contempt by either: -
 - a. Depositing the outstanding trade union dues and agency fees with the Claimant within ten (10) days of that order; or
 - b. Depositing the aforesaid dues into an escrow account to be set up in the joint names of the parties within twenty one (21) days of the order.
2. The court ordered that the time for compliance with its orders shall exclude the Christmas vacation during which time does not run. Further, the court ordered that should the Respondent fail to comply with the orders, its Managing Director, whether acting or substantive, shall be sentenced for contempt of court. Meanwhile, the court indicated that the Respondent shall not be granted audience until it complies with the said orders.
3. The above ruling was delivered in the presence of counsel for both parties. Therefore, it is not in doubt that the Respondent is aware of the order and the obligations that the court imposed on it.
4. There is no indication that the Respondent has challenged the order either before this court or the Court of Appeal. This is notwithstanding that it has knowledge of the order. Therefore, it is apparent



- that it (the Respondent) has been in defiance of and continues to deliberately defy an existing court order.
5. On February 28, 2024, the cause was placed before the court for mention for further directions. The court record shows that although this date was fixed in the presence of counsel for the parties, the Respondent's representatives did not attend court as appointed.
 6. On this date, the Claimant's Advocate informed the court that the Respondent had not complied with the directions that issued on December 14, 2023. Thus, Counsel asked the court to set down the cause for sentencing of the Respondent for its continued defiance of valid court orders.
 7. The court set down the cause for sentencing on March 18, 2024. A further order was made that the Respondent be served with a notice for this purpose.
 8. The record shows that on March 1, 2024, the Claimant served the respondent with a hearing notice for March 18, 2024. The same notice was also served on the Federation of Kenya Employers, the Respondent's representatives in the cause.
 9. An affidavit of service to that effect was subsequently placed on the court file. Attached to the affidavit is a copy of the hearing notice dated February 28, 2024 showing that the document alerted the Respondent and its representative that the cause was scheduled for sentencing on 18th March 2024 and that they were required attend.
 10. The face of the notice bears a stamp by the Respondent showing that it (the Respondent) received the document on March 1, 2024 at 12.37 pm. There is also an email extract dated March 1, 2024 showing that the Claimant's Advocates sent a copy of the notice to the Federation of Kenya Employers, the Respondent's representatives in the cause on March 1, 2024 at 14.41 pm. This mode of service is said to have been pursuant to order 5 rule 22B of the [Civil Procedure \(Amendment\) Rules, 2020](#).
 11. On 18th March 2024, the cause was placed before the court for sentencing. Once again, neither the Respondent nor its representatives attended court despite the fact that they both had been served for this date.
 12. The Claimant's Advocates asked the court to impose its sentence. They asked the court to hand the Respondent a harsh sentence in order to ensure respect for its orders. The court reserved its ruling for April 8, 2024.
 13. Having found that the Respondent had defied lawful court orders and continues to do so, the only matter that remains is for the court to penalize it (the Respondent) for this conduct. Section 38 of this [Civil Procedure Act](#) empowers this court to order the detention in prison of a party who deliberately fails to give meaning to its order or decree. In addition, the section allows the court to enforce its orders in any other manner as the nature of the relief sought may demand.
 14. That the court has power to punish an individual for defying its orders in order to enforce respect for the rule of law is not in doubt (see [Kenya Medical Practitioners' Pharmacists and Dentists Union & 2 others v Registrar of Trade Unions & 2 others; Commissioner for Labour & 5 others \(Interested Parties\)](#) (Appeal E087 of 2022 & Petition E194 of 2022 (Consolidated)) [2023] KEELRC 2025 (KLR) (4 August 2023) (Ruling)). The record shows that the court has afforded the Respondent the opportunity to purge its contempt of court to no avail. In the premises and in order to ensure respect for the rule of law, it is only proper that a penalty be imposed for this continued defiance.

Determination

15. In the premises, the court issues the following orders:-



- a. The managing director of the Respondent is given one final opportunity to, within twenty one (21) days of this order, comply with the court orders which were rendered on 16th May 2023 and 14th December 2023 or show cause why he should not be committed to civil jail for the continued defiance of the said orders.
- b. In default, the respondent is hereby sentenced to pay a fine of ksh. 1,000,000.00 for the continued disobedience of a lawful court order failing which its managing director shall serve a prison sentence in civil jail for two (2) months. During the term of imprisonment of the aforesaid officer, the claimant shall pay for his subsistence in jail.

DATED, SIGNED AND DELIVERED ON THE 8TH DAY OF APRIL, 2024

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant/Applicant

.....for the Respondent

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

