



REPUBLIC OF KENYA



KENYA LAW
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Wafula v Board of Management Masima High School & another (Cause E066 of 2023) [2024] KEELRC 1321 (KLR) (30 May 2024) (Ruling)

Neutral citation: [2024] KEELRC 1321 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E066 OF 2023**

S RADIDO, J

MAY 30, 2024

BETWEEN

STEPHEN WANJALA WAFULA CLAIMANT

AND

BOARD OF MANAGEMENT MASIMA HIGH SCHOOL 1ST RESPONDENT

PRINCIPAL, MASIMBA HIGH SCHOOL 2ND RESPONDENT

RULING

1. In a Ruling delivered on 25 October 2023, the Court issued the following orders:
 - i. The Respondents to pay the applicant all accrued salaries from February 2023 to date.
 - ii. The Respondents to allow the applicant back to work unless and until lawfully suspended.
2. On 30 January 2024, the Claimant filed a Motion seeking orders:
 - i. ...
 - ii. THAT the Honourable Court be pleased to issue a notice on the Principal, Masimba High School and the Board of Management to show cause why contempt of court proceedings should not be commenced against them.
 - iii. A declaration be made that the Principal, Masimba High School and the Board of Management, the Respondents herein are guilty of contempt of the orders which were issued by this Honourable Court on the 25th October 2023.
 - iv. This Honourable Court be pleased to order that the Principal, Masimba High School and the Board of Management, the Respondents herein be committed to civil jail for a term not exceeding six (6) months or for such a period as the Court shall deem fit for the disobedience of the orders which were issued by this Honourable Court on the 25th of October 2023.



- v. The Respondents be restrained from filing any pleadings, documents and/or taking any further/other proceedings in this matter until it purges its contempt.
 - vi. This Honourable Court directs the OCS, Masimba Police Station to provide the Claimant/applicant with the necessary security in realising the orders of this Honourable Court.
 - vii. THAT all necessary and consequential orders or directions be given in order to meet the ends of justice and uphold the authority, dignity and honour of the Court.
 - viii. Any other or further relief as this Honourable Court may deem fit and appropriate to grant.
 - ix. Costs of this application be provided for.
3. On 15 February 2024, the Court directed the Respondents to file and serve responses to the contempt application ahead of oral highlights on 26 February 2024.
 4. The Respondents filed a replying affidavit on 20 February 2024
 5. On the same day, the Respondents filed a Motion seeking stay of execution of the Ruling. The Court directed the Claimant to respond to the stay application.
 6. On 26 February 2024, the Court directed the parties to file and exchange submissions. The Claimant filed his submissions on 9 April 2024, and the Respondents on 13 May 2024.
 7. The Court has considered the contempt application, affidavits and submissions.
 8. The Respondents have not denied knowledge of the Court orders issued on 25 October 2023. The Respondents have also not denied that they have failed to comply with the terms of the orders.
 9. The explanation offered by the Respondents for not complying with the orders is that they lodged an appeal against the Ruling with the Court of Appeal and an application seeking a stay of execution, which application had been listed for hearing before the Court of Appeal.
 10. The Respondents further indicate that they have not complied with the order because the facts and circumstances giving rise to the instant Cause are the subject of investigations by the Police (allegation that the Claimant received an untaxed salary around June 2023).
 11. The explanations brought forth by the Respondents cannot be an excuse for non-compliance with the clear orders issued by the Court on 25 October 2023. A party cannot give an excuse for failing to comply with a Court order merely because the party has lodged an Appeal with the Court of Appeal.
 12. Even where a party does not agree with a Court order, the party is under an obligation to comply with the terms of the Court order, unless and until it has been vacated or set aside.
 13. The Respondents have not given any plausible reasons why they have failed to pay the Claimant his salaries while he still stays in their employment. The Respondents have not disclosed the authority for withholding the Claimant's salaries after the Court order. The employment relationship even if strained is still intact.
 14. The Court finds that the Respondents are in willful disobedience of the Court orders of 25 October 2023.

Orders

15. The Court finds the Respondents in contempt of court orders issued on 25 October 2023.



16. The Claimant to have costs of the application.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 30TH DAY OF MAY 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Akanga Matende & Co. Advocates

For Respondents Office of the Honourable Attorney General

Court Assistant Chemwolo

