



Guyo v Commandant Kenya Prisons Staff Training College & 2 others (Employment and Labour Relations Petition E074 of 2021) [2024] KEELRC 1716 (KLR) (28 June 2024) (Ruling)

Neutral citation: [2024] KEELRC 1716 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E074 OF 2021**

**AN MWAURE, J
JUNE 28, 2024**

BETWEEN

YUSSUF ALIO GUYO PETITIONER

AND

**THE COMMANDANT KENYA PRISONS STAFF TRAINING
COLLEGE 1ST RESPONDENT
COMMISSIONER GENERAL PRISONS 2ND RESPONDENT
MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL
GOVERNMENT STATE DEPARTMENT FOR CORRECTIONAL
SERVICES 3RD RESPONDENT**

RULING

1. The Petitioner filed a Notice of Motion dated 8th August 2023 seeking the following orders that: -
 1. Spent
 2. The Honourable Court be pleased to review and/or set aside its judgment delivered on 14th July 2022 by reviewing order (g) as follows:
 3. The Honourable Court be pleased to order that the 1st Respondent re-admits the Petitioner with the current university that is offering the Diploma course in Criminology and Correctional Science which he was undertaking at Kenyatta University in the School of Security, Diplomacy & Peace Studies and for the Petitioner to resume his position as the 1st Respondent’s trainee.
 4. In the alternative, the Honourable Court be pleased to make an order for compensation of the Petitioner to the tune of Kshs 5,000,000 being damages for breach of the Petitioner’s constitutional rights and damages for unfair termination from his training at Kenyatta



University in the School of Security, Diplomacy & Peace Studies wherein he was undertaking a Diploma course in Criminology and Correctional Science.

5. In the alternative to prayers 2 and 3 above, the Honourable Court be pleased to grant leave to the Petitioner to apply for the following orders:
 - a. An Order that the Honourable Court be pleased to find that the following persons are in contempt of Court for disobeying the orders issued by this Court on 14th July 2022
 - a. The Commandant Kenya Prisons Staff Training College, Mr. Angus Kimega Masoro
 - b. The Commissioner General Prisons, Brigadier (Rtr) John Kebaso Warioba
 - c. The Principal Secretary, Ministry of Interior and Coordination of National Government State Department for Correctional Services, Ms. Salome Wairimu Muhia
 - d. the Accounting Officer (Solicitor General) of the 4th Respondent
 - b. An Order summoning Mr. Angus Kimega Masoro, Brigadier (Rtr) John Kebaso Warioba, Ms. Salome Wairimu Muhia and the Solicitor General to appear before this Honourable Court and show cause to the satisfaction of the Court, why they and each of them should not be held in contempt of Court for disobedience of Court orders that was issued by this Honourable Court on 14th July 2022.
 - c. An Order that the Respondents be committed to and/or detained in civil jail for a term of 60 months.
6. The costs of and incidental to this Application be provided for.
7. The Court do grant such further and other reliefs as the Honourable Court may deem just and expedient to grant.

Petitioner/Applicant's Case

2. The Petitioner avers that pursuant to a Petition dated 03/05/2021, the Court vide a judgment on 14/07/2022 made a declaration that the Petitioner's right to fair administrative action, right to access to justice and right to dignity and security had been contravened and issued the following orders:
 - i. An order of *certiorari* bringing into this Court the decisions of the 2nd Respondent made on 05/07/2018 and subsequently 16/03/2020 and quashing the same to the extent it purports to terminate the Petitioner from training at the 1st Respondent's school without according him after hearing as set out under *the Constitution*.
 - ii. An order of *mandamus* for reinstatement of the Petitioner as a trainee of the 1st Respondent.
 - iii. An order effecting the Petitioner being the 1st Respondent's trainee, resume his previous status as a student of Kenyatta University in the School of Security, Diplomacy & Peace Studies to enable him complete the remaining units in his Diploma in Criminology and Correctional Science.
 - iv. An order of permanent injunction barring the Respondents jointly and/or severally from removing and/or interfering with the Petitioner's training as a prisons office in any manner not provided for in accordance to *the Constitution* and/or law.



3. The Petitioner avers that the Respondents being aggrieved by this decision, filed a Notice of Appeal dated 15/07/2022 against the entire judgment but never filed the Appeal thus the Court's decision was never challenged.
4. The Petitioner avers that he served the Respondents the Court orders on 12/05/2023 hence the Respondents were aware of the consequences of breach.
5. The Petitioner avers that in response the 4th Respondent wrote to his advocates on 14/06/2023 and informed him of the 1st Respondent's termination of arrangements with Kenyatta University, School of Security, Diplomacy & Peace Studies hence the orders are unenforceable due to the new developments.
6. The letter additionally stated that the Petitioner would be enlisted in the next recruitment but failed to indicate when the said recruitment would take place leaving him in a limbo. Further, the Petitioner was not a recruit but a trainee hence enlisting him as a fresh recruit would be detrimental to him.
7. The Petitioner avers that this development was never disclosed to Court hence he believes this was deliberately concealed to circumvent the Petitioner's outcome.
8. The Petitioner avers that the Respondents ought to re-admit him into the current university offering the course therefore disobeyed the Court orders issued on 14/07/2022.
9. The Petitioner avers that the Respondents had knowledge of the Court orders for almost a year and they knowingly violated and undermined the said orders and wilfully refused to take any steps in complying with the same.

Respondents' Case

10. In opposition to the Application, the Respondents filed a replying affidavit dated 19th December 2023.
11. The Respondents aver that the Public Service Commission (PSC) has the preserve for recruitment exercise for prison officers which may be delegated to the 2nd Respondent hence the Respondent have no control to declare the recruitment process independently without directions from PSC.
12. The Respondents aver that they have not been authorised to conduct any recruitment exercise since the order of *mandamus* for reinstatement of the Petitioner was issued on 14/07/2022.
13. The Respondents aver that the Petitioner cannot be reinstated as an individual to undergo training as training for recruits is done systematically for a specified period.
14. The Respondent avers that the Petitioner was acquitted by the Chief Magistrate Court in Thika on 30/05/2019, whereas, the Prisons Staff Training College completed the training exercise under which he was recruited and pass-out ceremony held on 08/03/2018.
15. It is the Respondents' case that upon declaration of vacancies by PSC and authorization of the 2nd Respondent, the Petitioner shall be notified and offered a chance as ordered by the Court. In the event he meets the requirements of recruitment, the Petitioner shall not be disadvantaged.
16. The Respondents aver that the diploma course in Criminology and Correctional Science at Kenyatta University in the School of Security, Diplomacy & Peace Studies was an optional package negotiated by the Prisons Staff Training College and was not mandatory part of the curriculum and has since been terminated and the Petitioner was duly informed.



17. It is the Respondents' case that the Prisons Staff Training College has introduced courses in line with modern correctional science and practices hence the Petitioner shall not be disadvantaged as both the discontinued and current courses were approved by the Kenya Prisons Service.
18. The Respondents aver that they have put requisite measures to readmit the Petitioner at the Prisons Staff Training College once the vacancies are declared and he is recruited and offer him training along other recruit trainees.

Petitioner/Applicant's Submissions

19. The Petitioner submitted that the Respondents never disclosed to himself or the Court during the pendency of the Petition that the 1st Respondent had since terminated arrangements with Kenyatta University, School of Security, Diplomacy & Peace Studies to enable him amend his Petition or to enable the Court grant appropriate reliefs.
20. The Petitioner submitted that the Petition was filed on 12/05/2021 long after the alleged completion of training or pass-out ceremony conducted on 8/03/2018. However, the Respondents deliberately concealed that fact from the Court which had it been disclosed, the Court would have issued appropriate reliefs to the Petitioner.
21. It is the Petitioner's submission that jurisdiction is prerequisite to any Court process and constitutional petitions are no exception. Therefore, if the Court finds it lacks jurisdiction to hear and determine any constitutional petition it should not hesitate to down their tools as in any other Court process.
22. The Petitioner submitted that the applicable law on contempt of Court was restated by the Court of Appeal in *Christine Wangari Gachege vs Elizabeth Wanjiru Evans & 11 Others*, [2014] eKLR, where the Court held that the English law on committal for contempt of Court under Rule 81.4 of the *English Civil Procedure Rules* which deals with breach of judgment, order or undertakings, was applied by virtue of section 5 (1) of the *Judicature Act*. Therefore, the procedure for instituting contempt of Court proceedings is the procedure at the time applicable in England.
23. The Petitioner submitted that Order 52 of the *Civil Procedure (Amendment No. 2) Rules 2012* provides that leave to bring contempt of Court proceedings must be obtained prior to the bringing of the substantive application hence the Petitioner sought leave first.
24. The Petitioner submitted that the Court order issued was clear and ambiguous hence the Respondents' contention that the course he was undertaking was an optional additional package is an attempt to mislead the Court. When the Petitioner was unfairly terminated, he was already taking the course hence it cannot be said again that the course was optional.
25. The Petitioner submitted that the Respondents were personally served with the Court orders and the penal notice on 10/05/2023 and the 2nd Respondent acknowledged receipt on 12/05/2023. The Prisons Staff Training College acknowledged receipt on 15/05/2023 while the office of the Attorney General received the Orders on 12/05/2023. Therefore, the Respondents were duly served with the Court orders and were aware of the consequences of non-compliance.
26. It is the Petitioner's submission that the Respondents were directed to reinstate the Petitioner as a trainee not as a recruit. Therefore, the Respondents' averment that the Petitioner would be notified when PSC declares vacancies and authorizes the 2nd Respondent to carry out the recruit exercise is a deliberate disobedience of the Court orders.



27. Further, if when the judgment was issued, the training had already been completed, then the Respondents ought to have notified the Petitioner of the dates when the next training is supposed to begin and notify the Petitioner to apply and undergo thorough recruitment exercise.
28. The Petitioner submitted that although the Court made declarations for violations of his rights and freedoms, the Court did not award compensation for the said violations.
29. The Petitioner submitted that he suffered damage and loss when he lost the opportunity to complete his training. He would have completed his training and secured a job as a prison officer earning an income of Kshs. 20,740 per month which cumulatively adds up to Kshs. 248,880 annually. The Petitioner was 25 years at the time of his termination, had he completed his training, he would have served up to the age of retirement unless dismissed in accordance with the law, and he would have earned a total income of Kshs. 5,973,120.
30. It is the Petitioner's submission that in the alternative to his reinstatement, he should be awarded compensation of Kshs. 5,000,000 for violations of his rights and unfair termination from training at the 1st Respondent's school.

Respondents' Submissions

31. It is the Respondents, submission that the Petitioner has not met the threshold for review of the judgment dated 14/07/ 2022, as the Petitioner has not demonstrated any of the grounds for review. The facts and circumstances of the case were fully considered by the Court in the initial petition, and the judgment was based on the evidence presented. The Petitioner has not shown the discovery of any new and important evidence or any mistake or error apparent on the face of the record, or any other sufficient reason.
32. The Respondents submitted that for Courts to exercise their jurisdiction to punish for contempt, a party's conduct ought to be a deliberate and wilful disobedience of their orders or processes. They relied on the case of *Republic v Principal Secretary, Ministry of Defence Ex parte George Kariuki Waitihaka* [2019] eKLR.
33. It is the Respondents, submission that they have taken reasonable steps to comply with the Court orders within the confines of the established recruitment and training processes. Requisite measures have been put to re-admit the Petitioner at the Prisons Staff Training College, in the next recruitment, once vacancies are declared.
34. It is the Respondents' submission that the Petitioner's alternative prayer for compensation of Kshs. 5,000,000 is excessive, speculative, and without proper basis. The judgment of 14/07/2022 did not award any specific compensation to the Petitioner, and the current application does not provide a sufficient basis or justification for the Court to grant such an award.
35. The Respondents submitted that the Petitioner has not suffered any quantifiable damages that would warrant an award of compensation. Further, the alleged violations of the Petitioner's constitutional rights have been adequately addressed through the Court order of 14/07/2022, and no exceptional circumstances exist to justify the award of additional compensation.

Analysis and Determination

36. Having considered the application, affidavits and submissions on record, the Court finds the issue for determination is whether the applicant has sufficient grounds to justify review of the Court's judgment delivered on 14th July 2022.



37. The applicant seeks for review of this Court's judgment to apply for contempt of Court order against the respondents or in the alternative an order for compensation of the petitioner to the tune of Kshs 5,000,000/- being the damages for violation of the petitioners rights and unfair termination.
38. Section 80 of the *Civil Procedure Act* provides:
- Any person who considers himself aggrieved—
- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.
39. Also section 45 Rule 1 of the *Civil Procedure Rules 2010* provides as follows:-
- (1) Any person considering himself aggrieved—
- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the Court which passed the decree or made the order without unreasonable delay.
40. The tenets for review of a judgment are basically (a) discovery of new and important matter in or evidence and mistake or error apparent on the face of record and finally a sufficient reason.
41. The petitioner in this case seems to have received new and important information from the respondent that was not within his knowledge.
42. The Court gave orders by its judgment made on 14th July 2022 but was not aware that as per its orders to re-admit the petitioner back for training as a trainee at Kenyatta University the respondent had terminated arrangement with Kenyatta University School of security and diplomacy and peace studies where petitioner was undertaking a diploma.
43. In other words, this was information that was in the knowledge of the respondent when the petition was being canvassed but the same was not disclosed. Actually when the petitioner sent a letter to the respondent on 12th May 2023 the respondent responded and disclosed that information on 14th June 2023.
44. As the Court was ordering the re-admission of the petitioner as a trainee this information was not known to the petitioner and therefore also to the Court that this program was no longer available for the respondent's staff.
45. Now the respondent is offering to admit the petitioner as a new recruit when they re-open the program but not as a trainee. The Court order referred to a trainee. The Court in particular ordered in prayer F that the petitioner being the first respondent's trainee to resume his previous status as a student of Kenyatta University School of Security, Diplomacy and Peace Studies to enable him complete units in



his diploma in Criminology and Correctional Causes. Obviously, when the Court made these orders was not seized of information that the said training had been terminated. That was information that was in the purview of the respondent and yet the respondent did not disclose the same until the order were made.

46. The way this Court orders read are therefore not capable of being implemented seeing there is no other training of respondents trainee by Kenyatta University. That means this is new information that was not within the knowledge of the petitioner and not due to his laxity or dalliance on his part.
47. The Court therefore holds the application vide the notice of motion dated 8th August 2023 is merited and the Court therefore will review its judgment delivered on 14th July 2022 and rules that orders a, b, c, d, g, h and i are in place but instead replaces only prayers e and f of the earlier ruling with prayers 3 of the current application vide notice of motion dated 8th August 2023.
48. As for prayer 4 and 5 of this application there is no legal framework to support monetary compensation of Kshs 5,000,000/- or for grant of leave to file contempt proceedings against the commandant of Kenya Prisons Staff training college and the others as per the aforesaid prayer no 5 and so the two prayers 4 and 5 are declined.
49. The petitioner is granted cost of this application.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 28TH DAY OF JUNE, 2024.

ANNA NGIBUINI MWAURE

JUDGE

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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

