



REPUBLIC OF KENYA



**Ado & another v Mander Water & Sewerage Company Limited &  
2 others (Employment and Labour Relations Petition E150 of 2021)  
[2024] KEELRC 2590 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2590 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E150 OF 2021  
NJ ABUODHA, J  
OCTOBER 25, 2024**

**BETWEEN**

**SULEIMAN MOHAMED ADO ..... 1<sup>ST</sup> DECREE HOLDER**

**SULEIMAN MOHAMUD ISSAK ..... 2<sup>ND</sup> DECREE HOLDER**

**AND**

**MANDERA WATER & SEWERAGE COMPANY LIMITED .... 1<sup>ST</sup> JUDGMENT  
DEBTOR**

**ABDIKADIR TACHE MOHAMED, THE CHIEF EXECUTIVE  
OFFICER (C.E.O) MANDERA WATER & SEWERAGE COMPANY  
LIMITED ..... 2<sup>ND</sup> JUDGMENT DEBTOR**

**REGISTRAR OF COMPANIES KENYA ..... 3<sup>RD</sup> JUDGMENT DEBTOR**

**RULING**

1. This ruling is in respect of the Applicants' application dated 19<sup>th</sup> June, 2023 which is brought under articles 159(2)(b) & (e), 162(2)(a) of *the Constitution* of Kenya, sections 12 and 13 of the *Employment and Labour Relations Court Act*, Rule 17 of the Employment and Labour Relations Court (Procedure) Rules, 2016, Section 3991(2)(g) of the High Court (Organization and Administration) Act 2015, Rules 39, 40, 41 & 42 of the *High Court (Organization and Administration) Act* and Rules 2016 and Order 40 Rule 3 and Order 51 Rule 1 of the Civil Procedure Rules (2010).
2. The Application sought for an order to issue compelling the 1<sup>st</sup> Respondent's Board Directors: Bare Ali Adan, Amina Osman Muslima, Mohamed Ali Shuria and Saadia Mohamed Kulow and the 2<sup>nd</sup> Respondent ABDIKADIR TACHE MOHAMED to appear before this honorable court on a date to be appointed to show cause why by continued disobedience of the orders and the court be pleased



- to issue an order for committal to civil jail of the above persons for six months or in the alternative be fined Kshs 10,000,000/= each for their blatant disregard of the court orders.
3. The application was supported by the grounds on the face of the application and the Affidavit of Suleiman Mohamed Issak the 2<sup>nd</sup> Decree-Holder/Applicant herein who averred that on 23<sup>rd</sup> September,2021 they moved the court by way of Petition challenging the unconstitutional and illegal attempt by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to remove them from office as board members.
  4. The Applicants averred that the court heard and determined the petition allowing it in their favor as per its judgment of 25<sup>th</sup> January,2022. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents immediately filed an application for stay of execution dated 11<sup>th</sup> February,2022 which was dismissed for lacking in merit.
  5. The Applicants averred that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on 12<sup>th</sup> January,2022 moved this court with another application for the review of the Judgment of the court of 25<sup>th</sup> January,2022 which application was also dismissed with costs. That the earlier orders of the Judgment remained in force.
  6. The Applicants averred that after the court dismissed the two applications their advocates served upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondents a notice of entry of judgment plus court's judgment and decree vide a letter dated 9<sup>th</sup> May,2023 via email on 10<sup>th</sup> May,2023. That the deponent herein also served physical copies to the 1<sup>st</sup> Respondent where he was turned back for having received the same via email. That he went to County Attorney General offices who also confirmed receipt of their documents.
  7. The Applicants averred that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents refused to comply with the said decree in total disregard and contempt of such valid court orders. That their appointment to serve as board members of the 1<sup>st</sup> Respondent was for five years from 8<sup>th</sup> August,2018 to 8<sup>th</sup> August,2023 yet they were left with less than two months to vacate offices yet their dues were never paid.
  8. The Applicants averred that the said officers should be held in contempt of court to uphold the sanctity of the court in obeying its orders.
  9. In reply the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed their replying affidavit sworn on 17<sup>th</sup> January,2024 by Abdikadir Tache Mohamed the 2<sup>nd</sup> Respondent and the former CEO of the 1<sup>st</sup> Respondent herein who averred that the Applicants did not show sufficient grounds before this court for the grant of orders sought. That the Respondents did not disobey any of the court's orders and have at all times abided by the directions issued by the Court.
  10. The Respondents averred that they have never disregarded the courts orders and the prayer to have them committed to civil jail or an alternative fine of Kshs 10,000,000/= was unmerited and unwarranted. That the Applicants did not show that the board of directors were likely to abscond or leave the local limits of the jurisdiction of the court with the object or effect of obstructing or delaying the execution of the decree and as such have failed to justify their prayer for committal to civil jail.
  11. The Respondents averred that the 1<sup>st</sup> Respondent is a public body funded by monies contributed by the Kenyan tax payers and as such all due care and regard has to be maintained while handling its funds. That the 1<sup>st</sup> Respondent is ready and willing to settle all due allowances and benefits of the Applicants herein, the sums payable to them must be computed as per the provisions of the law.
  12. The Respondents averred that in computing the sums payable the operating guidelines are the *Public Finance Management Act*, the Salaries and Remuneration Commission guidelines communicated vide letter dated 16<sup>th</sup> April,2014 and the Government Circular MSPS.2/1A VOLIII/1A (119) dated 2<sup>nd</sup> August,2013.



13. The Respondents averred that the amounts set out in the Applicants' letter dated 28<sup>th</sup> September, 2023 do not add, abide by the standards set out in the SRC Guidelines nor the Government Circular. That the said letter demanding Kshs 3,028,000/= as an allowance was not only erroneous but also unjustifiable and could not be paid out of public funds as the same was not supported by any provisions of the law.
14. The Respondents averred that according to the judgment entered on 25<sup>th</sup> January, 2022 the court ordered the 1<sup>st</sup> Respondent to pay the Applicants herein their due allowances and benefits for the term of their respective appointments. That the Applicants left office sometime in June 2020. The records of the Board and its committee meetings of the 1<sup>st</sup> Respondent during the said period show that 16 Board (Member) sittings were held, 3 Human Resource sittings and 4 finance committee sittings were held totaling 23 sittings.
15. The Respondents averred that the 1<sup>st</sup> Applicant was the chair of the Board's Committee on HR, Technical and Administration and was also a member of the Finance Committee. That the foregoing two committee allowances were Kshs 15,000/= and Kshs 10,000/= per committee sitting respectively. The 1<sup>st</sup> Applicant was thus entitled to Kshs 245,000/= only.
16. The Respondents averred that the 2<sup>nd</sup> Applicant was a member of two committees, HR, Technical & Administration, and Audit & Risk Management and also entitled to Kshs 10,000/= per committee sitting. That he was entitled to Kshs 190,000/=
17. The Respondent averred that they computed the total amount the Applicants were entitled to as per the number of board meetings, committee sittings and cost of the suits which amounted to Kshs 666,550/=. That the total sums due to the Applicants were communicated to their Advocates with further communication that if they were agreeable to the same to forward to the 1<sup>st</sup> Respondent their approval of the same so as to enable processing of the payments.
18. The Respondents averred that the 1<sup>st</sup> Respondent was ready and willing to pay the decretal amount but there had been delays in the same due to computational problems that ought to first be resolved. That the orders sought in the application should be dismissed as they did not demonstrate any reason to justify committal to civil jail as sought as the Respondents did not disobey the orders of the court.
19. The application was dispensed of by written submissions.

### **Determination**

20. The court has considered the application, the response and submissions by the parties. The main issue herein is whether notice to show cause should issue to the 1<sup>st</sup> respondent's board of directors Bare Ali Adan, Amina Osman Muslima, Mohamed Ali Shuria and Saadia Mohamed Kulow and the 2<sup>nd</sup> Respondent Abdikadir Tache Mohamed to show cause why they should not be ordered committed to civil jail for failure to obey the court orders in the Judgment of 25<sup>th</sup> January, 2022.
21. The Judgment in question stipulated that the Applicants were to be paid their allowances and benefits for their term without giving a clear figure. The parties have severally been given opportunity by this court to agree on what amount was payable to the Applicants. The parties have not filed any consent on the amount payable for the same to be adopted as an order of court.
22. The court therefore takes the view that until the amount is clear and the Respondents demonstrated refusal to pay despite being called upon to do so, an order for contempt of court or committal to civil jail cannot issue. What is certain before this court is the taxed costs of Kshs 231,550/=. The Respondents



have acknowledged that the 1<sup>st</sup> Respondent is ready and willing to pay so long as computation is done as per the law. The parties have not yet agreed on what is payable to the Applicants.

23. The committal of judgment debtor to civil jail is provided for under section 38 of the [Civil Procedure Act](#) in enforcing the court's decree. In *Jedida Chepkoech Mutai (Suing as The Legal Representative of the Estate of Julius Kipkorir Mutai (Deceased) vs. Cherono Beatrice* [2018] eKLR, it was stated that -

‘As I understand it, the general position in law is that the arrest contemplated under section 38 and 40 of the [Civil Procedure Act](#) is not unconstitutional. All that is required in proceeding under the two provisions is that there has to be strict adherence to the law.

24. In *Solomon Muriithi Gitandu & Another vs. Jared Maingi Mburu* [2017] eKLR the court held that -

‘In the case of *Braeburn Limited -V- Gachoka and another* (2007); it was held inter alia;

“A person is not liable to be committed to civil jail for inability to pay a debt but a dishonest and fraudulent debtor is liable to be punished by way of arrest and committal.”

25. In this case the Respondents' herein are willing to pay the Applicants once computation is done as per the guidelines of the [Public Finance Management Act](#), the Salaries and Remuneration Commission guidelines communicated vide letter dated 16<sup>th</sup> April, 2014 and the Government Circular MSPS.2/1A VOLIII/1A(119) dated 2<sup>nd</sup> August, 2013.

26. The court therefore does not find any dishonesty in the Respondents more so the 1<sup>st</sup> Respondent being a public body operating on tax payer's money for which it ought to be accountable can only pay out such money once ascertained using the operating guidelines. The Parties must therefore first agree on the right computations before the Respondents can be held in contempt. In that respect, the parties are therefore directed to compute the allowances and benefits payable to the Applicants as per [Public Finance Management Act](#), the Salaries and Remuneration Commission guidelines communicated vide letter dated 16<sup>th</sup> April, 2014 and the Government Circular MSPS.2/1A VOLIII/1A(119) dated 2<sup>nd</sup> August, 2013 within thirty days (30) days from the date of this ruling and file the consent in court for adoption as an order of the court.

27. In the event of inability to agree, let each part independently file their computation for the Court to determine the correct computation

28. In conclusion the Applicants' application dated June 19, 2023 is found premature, unmerited and is hereby dismissed with no orders as to costs.

29. The matter to be mentioned on 16<sup>th</sup> of December, 2024 to confirm compliance.

30. It is so ordered.

**DATED AT NAIROBI THIS 25<sup>TH</sup> DAY OF OCTOBER, 2024**

**DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF OCTOBER, 2024**

**Abuodha Nelson Jorum**

**Presiding Judge-Appeals Division**

