



**Nakachi v Centric Air Ambulance Limited (Cause E614 of 2021)
[2024] KEELRC 2580 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2580 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E614 OF 2021
NJ ABUODHA, J
OCTOBER 23, 2024**

BETWEEN

PRAXEDES NAKACHI CLAIMANT

AND

CENTRIC AIR AMBULANCE LIMITED RESPONDENT

RULING

1. This ruling is in respect to the Claimant's Application dated 13th February, 2024 which was brought under sections 12 and 13 of the *Employment and Labour Relations Court Act*, sections 38(d) and 40 of the *Civil Procedure Act* and Order 22 Rule 32 of the Civil Procedure Rules (2010).
2. The Application seeks for Peter Kenneth Chege Nduati (The Respondent's Director) to appear in person before the court during the inter partes hearing of the application and on failing to appear warrants of arrest be issued for the arrest and detention and committal to civil jail for a period of six months for failing to honour the decree of that court and further that the OCS Nairobi Area Police station to effect the said arrest of the Peter Kenneth Chege Nduati.
3. The application was supported by the grounds on the face of the Application and the Affidavit of PRAXEDES NAKACHI the Claimant herein who averred that on 5th December, 2023 this court delivered ruling whereupon Peter Kenneth Chege Nduati the director of the Respondent herein was required to show cause why he should not be committed to civil jail for failure to honour the decree of this court.
4. The Applicant averred that his advocates on record on 10th January, 2024 wrote to the said director as well as his advocates on record informing them about the ruling of court and further bringing to their attention of the decretal amount that had become due and payable. That on 12th January, 2024 his advocates extracted an order from the said ruling and served it upon the said director together with his advocates on record.



5. The Applicant further averred that despite notice and sufficient time having been granted for the said director to show cause why he should not be committed to civil jail he has deliberately and willfully failed and/or refused to act. That the neglect of compliance with the judgment, decree and orders of court by the said director was in itself a travesty of justice and called for issuance of further sanctions to protect the integrity of the judicial process.
6. The Applicant further averred that it would be in the interest of justice that the said director be committed to civil jail.
7. In reply the Respondent filed its replying affidavit sworn on 26th February,2024 by Peter Kenneth Chege Nduati and averred that further to his Replying affidavit sworn on 4th July,2023 that the Respondent was not in business and was bankrupt. That the bankruptcy of the Respondent was within the knowledge of the Claimant hence why he is hesitating to execute against the Respondent's bank accounts.
8. The Respondent averred that failure to institute insolvency proceedings was founded on an honest optimism that the Respondent could be turned around. That when it became apparent that the same was not feasible and the claim had been filed he was misadvised that the claim would consequently lead to winding up of the Respondent.
9. The Respondent averred that John Aoka Gecheo was an investor in the Respondent and a member of Maisha Bora Sacco and since the Respondent needed capital injection and John Aoka Gecheo was in a position to access credit from the said sacco it was agreed that he uses the Respondent's motor vehicles (Ambulances) as collaterals to secure the loan.
10. The Respondent averred that in the Replying Affidavit sworn on 4th July,2023 he inadvertently represented that the subject ambulances were obtained through loans from Maisha Bora Sacco. That he intended to state that the ambulance were subject to a loan advanced by Maisha Bora and they were therefore repossessed when there was a default on servicing the loan and they were not fraudulently transferred or at all.
11. The Respondent averred that the loan from Maisha Bora was taken sometime in October,2019 way before this claim was filed hence it could not be intended to defeat the decree herein. That he was merely a director of the Respondent. That the Respondent was a legal person separate from him and the misfortunes of the Respondent should not visited upon him. That he is not the judgment debtor.
12. The application was dispensed of by written submissions.

Determination

13. The court has considered the application, the responses and submissions by the parties. The main issue herein is whether the respondent's director, one Peter Kenneth Chege Nduati should be committed to civil jail for failure to settle the decretal sum in this matter. The court takes cognizance of its ruling delivered on 5th December,2023 where the court directed that the director should show cause why he should not be committed to civil jail.
14. The Respondent is well aware of the judgment and decree of this court. The director is also aware of the court's ruling on the issue of committal to civil jail. The Respondent avers that it is not in a position to settle the decretal sum due to the fact that the company was bankrupt and not running any business. The director also raised the issue of the Respondent being a separate legal entity and that he should not suffer the misfortunes of the company. This court already lifted the corporate entity of the Respondent and found the Director liable. The Director did not appeal the court's judgment or ruling after having



been found severally by the court to have undertaken fraudulent activities to obstruct the Claimant from realizing the decretal sum.

15. The committal of judgment debtor to civil jail is provided for under section 38 of the *Civil Procedure Act* where dishonesty is proved. Section 12 of the *Employment and Labour Relations Court Act* gives this court jurisdiction to handle employment disputes while section 13 of the same Act allows for enforcement of the court's orders as per the *Civil Procedure Act*. Order 22, rule 32 of the Civil Procedure Rules provides for warrant for arrest to direct judgment debtor to be brought to Court as follows: -

Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

16. The court reiterates the case relied in its ruling of 5th December, 2023 of Innocent G. Ondieki v Julius Nakaya Kabole [2019] eKLR where the court held as follows;

“ 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.

17. The court notes from the above provisions that the director has not provided any explanation in spite of stating that the motor vehicles were bought through loan from Maisha Bora which he claims was taken before the claim was filed. The director was served with a Notice to show cause letter dated 20th February, 2024 which was self-explanatory and he has chosen not to do anything. This clearly demonstrates that he is only using tricks to avoid honouring Judgment of the court and that is being dishonest.
18. In the upshot the Respondent's Director, namely Peter Kenneth Chege Nduati is hereby ordered to appear personally before the physical Court on Tuesday, the 10th of December, 2024 to show cause why he should not be committed to civil jail for a maximum of six months for failure to honour the decree of this court.
19. The Court bailiff with, if needed, the assistance of the nearest police station in whose jurisdiction the said Peter Kenneth Chege Nduati resides is hereby directed to enforce this order.
20. It is so ordered.

DATED AT NAIROBI THIS 23RD DAY OF OCTOBER 2024

DELIVERED VIRTUALLY THIS 23RD DAY OF OCTOBER 2024

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

