



**Mbithi v Public Service Commission & 3 others (Petition 78 of 2018)
[2024] KEELRC 13266 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13266 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 78 OF 2018
B ONGAYA, J
NOVEMBER 28, 2024**

BETWEEN

ANTHONY JOHN MBITHI PETITIONER

AND

PUBLIC SERVICE COMMISSION 1ST RESPONDENT

**CABINET SECRETARY, MINISTRY OF INTERIOR & CO-ORDINATION OF
NATIONAL GOVERNMENT 2ND RESPONDENT**

HON ATTORNEY GENERAL 3RD RESPONDENT

NAIROBI COUNTY 4TH RESPONDENT

RULING

1. The petitioner filed a notice of motion application dated 23.04.2024 in person. The application was made under section 30(5) of the *Contempt of Court Act*, No. 40 of 2016, sections 1A and 3A of the *Civil Procedure Act*, Cap. 21 Laws of Kenya, Order 51 rule 1 of the *Civil Procedure Rules*, and all other enabling provisions of law. The petitioner seeks the following orders:
 - i. That the said Nairobi County Finance Officer, Benadetta Okonda, be ordered to award such compensation as the Court thinks fit for the interest of justice to the applicant.
 - ii. That this Court does further order that the applicant commence a court proceeding.
 - iii. Cost of this application be provided for.
2. The application was supported by the affidavit of the petitioner who averred as follows:
 - a. The petitioner filed a petition through a motion application on 14.08.2018 seeking conservatory orders and restraining the respondents from terminating his employment among other prayers on record.



- b. On 28.06.2018, the petitioner filed a motion application seeking notice to show cause why contempt proceedings cannot be taken against the Minister of Finance, Nairobi County for failure to comply with the Consent Order given on 30.08.2018.
 - c. The said Minister of Finance failed to comply with the order despite the petitioner having reported to duty as ordered, as the petitioner was not assigned duties or paid salaries from 01.09.2018 to date.
 - d. The 4th respondent herein indicated that they are processing documentation to comply with the said order but to date, the petitioner has neither been paid any salaries nor assigned duties without any lawful excuse.
 - e. Due to non-compliance of the Court Order of 30.08.2018, the petitioner has been greatly humiliated, inconvenienced, embarrassed, demeaned and greatly severed financially.
3. The 4th respondent's advocate, Mr. Paul Magolo, indicated to this Court on 30.10.2024 that they rely on their grounds of opposition dated 03.05.2023 filed through J.O. Magolo & Company Advocates. The grounds are as follows:
- i. That the application herein is frivolous, an abuse of this Honourable Court's process and bad in law.
 - ii. That the said application fails to meet the legal threshold.
 - iii. That the application was not personally served on the alleged contemnor.
 - iv. That no sufficient grounds have been given to warrant the Court to grant the orders prayed.
 - v. That the application lacks merit and should be dismissed with costs.
4. The Court has considered the material on record and the application. The Court upholds the grounds of opposition for the 4th respondent. In particular, the Court finds that the applicant while purporting to initiate a contempt application, the applicant has failed to exhibit the certified order said to have been violated and the manner in which the cited person violated the terms of the order. In the circumstances, it should be possible that the applicant considers filing appropriate proceedings towards satisfaction of the said consent order and, if the 4th respondent shall have failed to comply with the terms of the consent order. The respondent has obviously not complied with the court order, as there is no material on record to show such compliance and no orders of the costs of application.

In conclusion, the application is hereby dismissed with no orders on costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 28TH NOVEMBER 2024.

BYRAM ONGAYA, PRINCIPAL JUDGE

