



**Kenya Concrete Structural, Ceramic Tiles, Woodplys and Interior Design
Workers Union v Cibien Engineering & Construction Company (Cause
E805 of 2023) [2024] KEELRC 13200 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13200 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E805 OF 2023
SC RUTTO, J
NOVEMBER 22, 2024**

BETWEEN

**KENYA CONCRETE STRUCTURAL, CERAMIC TILES, WOODPLYS AND
INTERIOR DESIGN WORKERS UNION APPLICANT**

AND

CIBIEN ENGINEERING & CONSTRUCTION COMPANY RESPONDENT

RULING

1. The Claimant/Applicant moved this Honourable court by way of a Notice of Motion Application dated 18th September 2024, seeking the following orders:
 1. That this Court be pleased to declare and hold that, having been served/being aware of the Orders this Honorable Court given on 9th February, 2024, Respondent/Contemnors herein, Mr. Mohamed Anzar Zain being the Chief Executive Officer of the Respondent have disobeyed those orders and hence in civil contempt of Court.
 2. That, the said Respondent/Contemnors herein, Mr. Mohamed Anzar Zain being the Chief Executive Officer of the Respondent be sanctioned as this court may deem fit and appropriate including committing to civil jail for a period of six months or to pay the sum of Kenya shillings five hundred or both.
 3. The Contemnors herein be denied audience by this Honorable Court until they purge the contempt of the Court which has impeded and continues to impede the course of justice in this matter.
 4. That the contemnors have started to victimize and dismiss the Claimant's members and the court should give an order to protect the employees e.g Mr Solomon Kogo.



5. The costs of this application be borne personally, jointly and severally by the Contemnors, on full indemnity basis.
2. The application is premised on the grounds on its face and is supported by the affidavit sworn by Dishon Angoya who has described himself as its General Secretary. Mr. Angoya avers that this Court by way of a Ruling delivered on 9th February 2024, ordered the Respondent/Contemnor to forthwith commence deductions and remittance to the Claimant/Applicant's Gazetted Bank Account, dues from the employees who have duly signed Form S and acknowledged union membership to the Claimant/ Applicant, which orders were duly served upon the Respondent/Contemnors.
3. Further, in a Ruling delivered on 26th July 2024 this Court dismissed the Respondent/Contemnor's Review Application dated 26th March 2024, giving way for compliance with the Ruling dated 9th February 2024 by the Respondent/Contemnors.
4. Mr. Angoya avers that Mr. Mohamed Anzar Zain being the Chief Executive Officer of the Respondent is its accounting officer hence conversant and capable of complying with the Ruling and Orders of this court.
5. That the Contemnors' continued willful acts of contempt and disregard for this Honorable Court's authority and orders has continued to prejudice and render the Claimant/Applicant unable to adequately represent her members and as such will continue to be decimated by the uncontrolled, malicious and wanton continuing acts of the Contemnors herein.
6. The Claimant/ Applicant severally and subsequently made several attempts to access his office and discharge his duties acquired by virtue of his designation but to no avail owing to the adamancy of the Respondent now Contemnors.
7. It is Mr. Angoya's deposition that no lawful reason has been given or can possibly be given by the Contemnors herein for their said disobedience of the court orders.
8. Mr. Mohammed Anzar Zain, the Respondent's Chief Executive Officer, responded to the application through his Replying Affidavit dated 14th October 2024. Mr. Mohammed avers that as an employee of the Respondent, he takes directions from and answers to the Respondent's board of directors, who ultimately make all the important decisions and give directions for implementation.
9. Mr. Mohammed further contends that he is neither the Respondent herein nor has the Honourable Court made any order or decree herein seeking his personal adherence and or obedience to, for which he may be cited in contempt for.
10. That the Respondent has absolutely no objection to making deductions from the salaries/wages of its employees who have indicated and or confirmed to it their membership with the Claimant union and has made efforts towards the same over time, save that the Claimant's alleged members in their staff have themselves been uncooperative thus undermining the Respondent's efforts of compliance.
11. Mr. Mohammed deposes that there has been a delay that inadvertently ensued as the Respondent sought to confirm which of its employees had confirmed their membership of the Claimant and which ones had declined the same.
12. That by 8th October 2024, they were able to confirm that only 10 of their employees may be members of the Claimant and the Respondent issued them with a notice informing them that, barring any communication to the contrary, it shall with effect from the 31st October 2024 commence deductions of union dues from their salaries/wages for onward remittance to the Claimant in accordance with



the information on Form "S". That further, one of their employee Kenneth Mutai who had joined the union, resigned and is now uncooperative as to his status.

13. Mr. Mohammed is not aware of any of the Respondent's employees who has been harassed or dismissed on account of being a member of the Claimant herein and to this end, challenged the Claimant to supply them with full particulars of any such employee.

Submissions

14. Pursuant to the directions issued by the Court on 29th October 2024, the application was canvassed by way of written submissions. All parties complied and I have considered their respective submissions.
15. In its submissions, the Claimant/Applicant has urged that the Respondent has admitted in its Replying Affidavit that they have not effected the court orders to deduct and remit union dues.
16. That it is clear that the Court orders have not been obeyed with respect to its existing members. That the Court has the authority to punish the Respondent itself and impose a fine against Mr. Mohammed Anzar Zain, its Chief Executive Officer.
17. On its part, the Respondent submitted that leave must be sought before proceeding with an application for contempt. In support of this position, the Respondent relied on the case of Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others (2014) eKLR. According to the Respondent, the instant contempt application is wrongfully before this court as leave was not sought before filing.
18. The Respondent further submitted that from its actions, it has made clear and deliberate steps towards compliance with the orders of the court. That in the circumstances, the Respondent cannot therefore be found to be guilty of contempt of court as the crucial element of willful disobedience is not manifest.
19. The Respondent further posited that it is not and has not been in contempt of the orders of this Court. The case of Gatharia K. Mutikika v Bahraini Farm Ltd (1985) KLR 227 was cited in support of the Respondent's arguments.
20. It was further submitted that the Respondent is a corporation with a separate legal identity from its shareholders and directors. That the corporate veil has to be lifted in order to hold the directors liable or guilty of any alleged offense. It was the Respondent's position that a corporation's employee cannot be held liable for contempt in this case as the veil of incorporation has not been pierced.

Analysis and Determination

21. The Court has carefully considered the application, the Respondent's Replying Affidavit as well as the rival submissions and isolated the following issues for determination;
 - a. Was the leave of the court necessary before taking out the contempt of court proceedings?
 - b. Is the Respondent guilty of contempt of court?
 - c. Did Mr. Mohammed Anzar Zain, on behalf of the Respondent have a duty to comply with the court order?

The question of leave

22. It is the Respondent's position that the instant application is wrong before the court as leave was not sought before filing.



23. In the Kenyan context, the law governing contempt of court proceedings is the English law applicable in England at the time the alleged contempt is committed. In this regard, Section 5 of the [Judicature Act](#) imposes a duty on the High Court, the Court of Appeal and law practitioners to ascertain the applicable law of contempt in the High Court of Justice in England, at the time the application is brought.
24. Previously, the rules of the Supreme Court made under the Supreme Court of [Judicature Act](#), 1973 provided the procedure for commencing the contempt of court proceedings. Under the said procedure, an application to the High Court of England for committal for contempt of court would not be granted unless leave to make such an application has been sought and granted.
25. However, following the implementation of the famous Lord Woolf's "Access to Justice Report, 1996" the Rules of the Supreme Court of England are gradually being replaced with the Civil Procedure Rules, 1999.
26. In the year 2012, the Civil Procedure (Amendment No. 2) Rules 2012 came into force and Part 81 thereof effectively replaced order 52 RSC in its entirety. With respect to this, Part 81 (Applications and proceedings in relation to contempt of court) provides different procedures for four different forms of violations to wit;

“Rules 81.4 relates to committal for "breach of a judgement, order or undertaking to do or abstain from doing an act.”

Rule 81.11- Committal for "interference with the due administration of justice" (applicable only in criminal proceedings)

Rule 81.16- Committal for contempt "in the face of the court"), and

Rule 81.17- Committal for "making false statement of truth or disclosure statement.”

27. Contrary to the position taken by the Respondent that the instant application is wrongfully before the court for want of leave, it is evident from Rule 81.4 aforementioned, that leave of the court before institution of an application such as this, is no longer necessary. Such was the determination in the case of *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others* [2014] KECA 840 (KLR) where it was held that:

“An application under Rule 81.4 (breach of judgment, order or undertaking) now referred to as “application notice” (as opposed to a notice of motion) is the relevant one for the application before us. It is made in the proceedings in which the judgment or order was made or the undertaking given. The application notice must set out fully the grounds on which the committal application is made and must identify separately and numerically, each alleged act of contempt and be supported by affidavit(s) containing all the evidence relied upon.

The application notice and the affidavit or affidavits must be served personally on the respondent unless the court dispenses with service if it considers it just to do so, or the court authorizes an alternative method or place of service.

It is clear from this summary that leave, now called “permission” is not required where committal proceedings relate to a breach of a judgment, order or undertaking. That position must be contrasted with the requirement in Rules 81.12 – committal “for interference with



the due administration of justice” and 81.17 – Committal “for making a false statement of Truth or disclosure statement” underlined for emphasis

28. This position was reaffirmed by the Court of Appeal in the case of *Shimmers Plaza Limited v National Bank of Kenya Limited (Civil Appeal 33 of 2012)* [2015] KECA 945 (KLR) thus:

“We find on the basis of the new Civil Procedure Rules (of England) which are now contained in the Second Supplement to the 2012 White Book that no leave is required before bringing an application, like the one before us, for committal for contempt relating to breach of this court’s order.”

29. In light of the foregoing, I find that this application is properly before the court as it was not necessary for the Claimant/Applicant to seek leave before filing the same.

Whether the Respondent is guilty of contempt of court

30. The crux of the Claimant’s application is that the Respondent has willfully and without lawful excuse disobeyed and continues to disobey the orders of this Court issued by way of a Ruling delivered on 9th February 2024, ordering the Respondent to forthwith commence deductions from the employees who had duly signed Form S and acknowledged membership to the Claimant Union, and remit the same to the Claimant’s gazetted bank account.

31. The Respondent has denied violating the court’s order and contends that it has made efforts towards confirming the membership of its employees to the Claimant Union. According to the Respondent, the said employees have been uncooperative thus undermining its efforts of compliance.

32. In view of the above rival arguments, the question that must be answered is whether the Respondent is guilty of contempt of court.

33. The Black’s Law Dictionary (9th Edition), defines contempt of court to mean:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.

34. Contempt of court can also be termed as the conduct or wrongdoing that conflicts with, or challenges the authority of the court. An essential ingredient for successful contempt proceedings is that the alleged contemnor must have committed a willful or deliberate disobedience or breach of an order.

35. Courts have affirmed that the essence of contempt proceedings is to safeguard the supremacy of the law. As such, the reason courts will punish for contempt is to safeguard the rule of law, which is fundamental in the administration of justice.

36. Such was the determination in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* (2013) eKLR where the court observed that;

“The reasons why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of Justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding Judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguard the rule of law.”



37. The learned Judge went ahead to state as follows;

“I am of the same persuasion that the reason why power is vested in courts to punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. The law of contempt has evolved over time in order to maintain the supremacy of the law and the respect for law and the respect for law and order. As it was in the time of Chief Justice Mckean in 1786 so it is today that courts have a duty to ensure that Citizens bend to the law and not vice versa. Indeed, if respect for law and order never existed, life in society would be but short, brutish and nasty. It is the supremacy of the law and the ultimate administration of justice that is usually under challenge when contempt of court is committed. This is so because, a party who obtains an order from court must be certain that the order will be obeyed by those to whom it is directed. As such, the obedience of a court order is fundamental to the administration of justice and the rule of law. A court order once issued binds all and sundry, the mighty and the lowly equally, without exception. An order is meant to be obeyed and not otherwise.”

38. And further, in *Econet Wireless Kenya Limited v minister for Information & Communication of Kenya & Another*, the court stated as follows;

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect of whom, an order is made by the court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”

39. That said, the next logical question to ask is what elements are necessary to establish civil contempt of court.

40. In the case of *Sheila Cassatt Issenberg & Watoto World Centre v Antony Machatha Kinyanjui* [2021] KEHC 5692 (KLR) the court considered the elements to be proved in civil contempt proceedings as follows;

“The Cromwell J, writing for the Supreme of Canada in *Carey v Laiken*, 2015 SCC 17 (16th April 2015), expounded on the three elements of civil contempt of court which must be established to the satisfaction of the court, thus:

- i) The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.
- ii) The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.



- iii) The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.”

41. Fundamentally, the applicant must prove;
- i. the terms of the order;
 - ii. Knowledge of these terms by the Respondent; and
 - iii. Failure by the Respondent to comply with the terms of the order.
42. Back to this case, in the Ruling delivered on 9th February 2024, the Court issued the following principal order:
- The Respondent do forthwith commence deductions and remittance to the Claimant/Applicant’s gazetted bank account, dues from the employees who have duly signed Form S and acknowledged union membership to the Claimant/Applicant union.
43. It is an undisputed fact that this Court issued the order in question and that the Respondent was aware and had knowledge of the terms of the order. The only remaining issue to be determined is whether there was compliance with the court order.
44. Mr. Mohammed avers in his Replying Affidavit that the Respondent has made efforts to comply with the court order by confirming who among its employees is a member of the Claimant Union. He further avers that there has been a delay as some employees had confirmed membership while others had declined to do so. That as of 8th October 2024, only 10 employees had confirmed membership.
45. What is evident from Mr. Mohammed’s averments in his Replying Affidavit is that the Respondent is yet to effect union dues deductions from its employees who have signed Form S and acknowledged membership to the Claimant Union and remit the said dues to the Claimant/Applicant’s gazetted bank account.
46. The bottom line is that the Respondent has not complied with the court order issued on 9th February 2024.
47. In its application dated 4th October 2023, which gave rise to the Ruling delivered on 9th February 2024, the Claimant annexed a copy of Form S constituting the notice and authority to deduct union dues from the Respondent’s employees who had acknowledged membership to the Union.
48. In its Ruling, the Court considered the provisions of Section 48(3) which provides as follows:
- (48)(3) An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee’s wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction.
49. The court proceeded to hold that an employee’s acknowledgment through Form S constitutes sufficient instructions within the meaning of Section 19(g) of the *Employment Act*. The court thus discounted the Respondent’s argument that it was yet to receive any written instructions from its employees authorizing union dues deductions.
50. It is therefore apparent that the reasons now being advanced by the Respondent for not complying with the court order are the very same reasons it advanced when it was arguing against the application dated 4th October 2023.



51. Following the court order and interpretation of Section 48(3) as read alongside Section 19(g) of the *Employment Act*, it was clear that Form S was sufficient for purposes of union dues deductions and the Respondent did not require a separate authority to effect union dues deductions from the employees who had signed up for membership to the Union by signing Form S.
52. It is therefore not clear to this court why the Respondent embarked on another separate exercise to ascertain whether its employees were indeed members of the Claimant Union whereas they had signed Form S.
53. In the event any of the Respondent's employees had not signed up for membership but had union dues deductions effected from their salaries, it follows that such an employee would have objected to the said deductions and the Respondent would have been obliged to stop the same.
54. It was therefore totally unnecessary for the Respondent to embark on a mission to ascertain membership of its employees to the Claimant Union. If anything, the same borders on intimidation.
55. What's more, from the copies of the letters annexed to Mr. Mohammed's Affidavit, it is evident that the Respondent embarked on the exercise to confirm membership to the Claimant Union on 5th September 2024. This was close to seven (7) months after the court had issued the order in question. As such, I cannot help but question why the Respondent has been dragging its feet in complying with the court order.
56. Further to the foregoing, the record bears that the Respondent moved the court under an application for Review dated 26th March 2024. In its Ruling which was delivered on 26th July 2024, the court reiterated its orders of 9th February 2024 and directed the Respondent to comply accordingly.
57. It is therefore astonishing that to date, there is no compliance with the court order.
58. The net effect of the foregoing is that the Respondent is deliberately ignoring and/or disregarding lawful court orders. It is quite clear that the Respondent herein has paid scant respect to the terms of the court order and consequently, acted in clear contempt of this Court.
59. It has been said times without number that the duty to obey the law by all individuals and institutions is paramount in the maintenance of the rule of law, good order and the due administration of justice.
60. As stated by Romer, L.J. In *Hadkinson v Hadkinson*, (1952) ALL ER 567,

“It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C., said in *Chuck –vs- Cremer* (1) (1 Coop. temp.Cott 342):

“A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.”



61. The Respondent in this case had knowledge of the order to effect union dues deductions from its employees who had signed Form S and remit the said deductions to the Claimant's gazetted bank account. Further, the order is clear and unambiguous and binding on the Respondent. Be that as it may, the Respondent has breached the order with no plausible explanation. Therefore, the Respondent is guilty of contempt of court.
62. Having found the Respondent guilty of contempt of court, the next question that comes to the fore is whether Mr. Mohammed on behalf of the Respondent had a duty to comply with the court order.

Duty of Mr. Mohammed to comply with the court order

63. In his Replying Affidavit, Mr. Mohammed has contended that he is an employee of the Respondent and that he is neither the Respondent nor has the court made any orders seeking his adherence.
64. First, it is obvious that the Respondent is not a natural person with the capacity to effect compliance with court orders. Second, Mr. Mohammed being the Chief Executive Officer of the Respondent is no doubt, the highest-ranking officer in the Respondent company. He is therefore responsible for managing the daily operations of the Respondent which includes complying with court orders on its behalf.
65. In view of Mr. Mohammed's assertion, I cannot help but question how else the Respondent was to comply with the court order if not through him. If anything, it is Mr. Mohammed who has sworn all the Affidavits in this case on behalf of the Respondent.
66. In considering the salient features in an application for contempt of court, the court in the case of *Felicity Mutete Mutula v Nairobi City County Government (Being the Natural & Presumptive Legal Successor of the Defunct City Council of Nairobi)* [2021] KEHC 8458 (KLR) observed that where the contemnor is a company or other corporation, the committal order may be made against any director or other officer of that company.
67. Without belabouring the point, Mr. Mohammed being the Chief Executive Officer of the Respondent was duty-bound to comply with the order of the court in this case.
68. Before I pen off, I must mention that the Respondent's submissions that it is a separate legal identity from its shareholders and directors does not apply in this case, for the reason that Mr. Mohammed has been brought in these contempt proceedings in his capacity as a Chief Executive Officer of the Respondent and not as a director or shareholder. Indeed, there is no indication that he is one of the directors or for that fact, a shareholder in the Respondent company. Therefore, the issue of lifting the veil of incorporation does not arise.

Order

69. Accordingly, the application dated 18th September 2024 is allowed and the Court makes the following final orders;
 - a. The Court finds Mr. Mohammed Anzar Zain, the Chief Executive Officer of the Respondent, and on its behalf, in contempt of the court order and Ruling delivered on 9th February 2024. He is convicted accordingly.
 - b. Summons be issued against Mr. Mohammed Anzar Zain to appear in court on a date to be set for sentencing and mitigation.
 - c. Costs of the application to be borne by the Respondent.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF NOVEMBER, 2024.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Jemo holding brief for Mr. Angoya (Union Rep.) for the Claimant/Applicant

Mr. Agingu for the Respondent

Millicent Court Assistant

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 had 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 Civil 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.

STELLA RUTTO

JUDGE

