



**Oyier & 21 others v Nakuru Public Service Board (Petition  
4 of 2017) [2023] KEELRC 288 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 288 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
PETITION 4 OF 2017  
HS WASILWA, J  
JANUARY 31, 2023**

**BETWEEN**

**PATRICK OYIER & 21 OTHERS ..... APPLICANT**

**AND**

**NAKURU PUBLIC SERVICE BOARD ..... RESPONDENT**

**RULING**

1. The petitioner/ applicant filed an application notice of motion dated October 25, 2022, brought pursuant to section 1A, 3A of the [Civil Procedure Act](#), laws of Kenya and order 50 rule 1 of the [Civil Procedure Rules, 2010](#) seeking for the following Orders;
  - 1) Spent.
  - 2) That the honourable court to determine the amount payable to the applicants in terms of accrued salaries, allowances and emoluments from the July 1, 2015 to the April 30, 2017 to be the sum of Kshs 8,980,798/as ordered in paragraph 35 of the Judgment and the court to direct that the same be paid to the applicant's advocates on record herein within 7 days after the determination.
  - 3) That the honorable court be pleased to find that all the members of the respondent including Benjamin Njoroge-the secretary of the respondent, Charles Mwai-the Chairman of the respondent and Simon Rabwet the Vice Chairperson of the respondent in contempt of the courts' Judgment delivered on the November 4, 2021 and the subsequent decree/order emanating therefrom.
  - 4) That consequent to prayer (3) herein above being granted, the honorable court be pleased to issue warrants of arrest against the Members of the respondent mentioned in prayer 3 above for committal to civil jail for a duration not exceeding six (6) months for disobedience of court Judgment/orders.



- 5) That the honourable court be pleased to order that the property of the respondent and or the individual members of the respondent mentioned in prayer 3 above be attached, be sold, and out of the proceeds the court to award compensation and damages which shall be assessed by the court to compensate the applicants.
  - 6) That this honourable court be pleased to issue such other or further punitive orders in respect of the said contempt as may be necessary for the ends of justice to be met.
  - 7) That the honourable court be pleased to order the officer commanding Nakuru police station to provide security and assist in the implementation of the above orders upon their issuance.
  - 8) That the costs of the application be borne by the respondent.
2. The application herein is premised on the grounds that; judgement in this petition was delivered by the court on November 4, 2021 in favour of the petitioners and in presence of counsel for the respondent. Despite being aware of the said Judgement, the respondent has failed to issue the appointment letters to the petitioner as directed by the court in paragraph 32 and 33 of the Judgement.
  3. It is also stated that the respondent refused and or failed to pay the petitioners the awarded sum of Kshs 8,980,798 being back dated salaries and allowances calculated as evidence by the supplementary affidavit of Jeremiah Mokua Oteki dated April 4, 2019. Additionally, that it failed to pay the party to party costs assessed at Kshs 564.180 as appearing in the certificate of costs.
  4. It is the applicant's case that the respondent, contrary to the Direction of this Court, issued employment letters to the petitioners on permanent and pensionable basis with effect from 2017 instead of July 1, 2015 as ordered by this court. Thus the respondent continue to breach and violate the orders of this court and their officers should be held in contempt of court orders.
  5. The application is supported by the affidavit of Jeremiah Mokua Oteki , one of the petitioners in this matter, deposed upon on the October 25, 2022, which reiterates the grounds of the application.
  6. The application is opposed by the respondent who filed grounds of oppositions and preliminary objected both which are dated October 28, 2022. The grounds of opposition were as follows; -
    - a) That the application offends the provisions of the *Government Proceedings Act* in regards to execution against the Government.
    - b) That the application is vexatious, bad in law and an abuse of court process.
    - c) That the application falls way below the threshold provided for under the relevant rules for citing contemnors, enforcing the execution of the decree.
    - d) That the cited members of the respondent namely; Benjamin Njoroge, the secretary of the respondent, Charles Mwai-the chairman of the respondent and Simon Rabwet- the vice person of the respondent are not aware of the judgment herein, have never participated in the proceedings herein nor have they been in contempt of the decree/ order in question.
    - e) That the orders sought in the application cannot be enforced against the parties cited.
  7. In addition, the respondent raised a preliminary objection on the following grounds;
    - a) That the application offends the provisions of the *government proceedings Act* cap 40 laws of Kenya and the execution against the Government which the respondent is a department of.



- b) That the applicant has not exhausted the avenues available for executing the decree against the respondent before commencing contempt proceedings.
  - c) That the cited contemnors have never taken part in the proceedings herein nor were they personally served with the proceedings, judgement and decree on which the application is based.
  - d) That the application is bad in law, vexatious and an abuse of the court process as it offends the mandatory provisions of order 51 rule 2 of the Civil Procedure Rules and section 25(2) of the Government Proceedings Act, Contempt of Court Proceedings Act, 2016 as far as notices to the Government are concerned.
8. The application and the preliminary objection were disposed of by way of written submissions.

### **Applicant's Submissions.**

9. The applicant submitted on three issues; whether the amount payable to the applicants in terms of accrued salaries, allowances and emoluments from the July 1, 2015 to the April 30, 2017 is the sum of Kshs 8,980,798/- as ordered in paragraph 35 of the Judgment and whether the court should direct that the same be paid to the applicant's Advocates on record herein within 7 days after the determination; Whether the respondents are in contempt of the court order/decree and Whether the respondent's notice of preliminary objection dated November 28, 2022 should be dismissed.
10. The applicants submitted that the respondent were well aware of the judgement of the court and the tabulations of dues payable was calculated and forwarded for their action to no avail. It was argued that having known the judgement of the court, the respondent ought to have acted upon it failure to which they are to be held in contempt of court. On that basis, they defined what contempt is by citing Black's Law Dictionary that;
- “Contempt is a disregard of, disobedience to, the rules, or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”
11. They also relied on the case of Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another[2005] 1KLR 828 Ibrahim J (as he then was) 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 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.”
12. The applicant argued that to demonstrate a case of contempt, the applicant must prove four main ingredients as held in Katsuri Limited v Kapurchand Depar Shab [2016] eKLR , which listed ingredients as follows;
- i. the terms of the order,



- ii. Knowledge of these terms by the respondent,
  - iii. Failure by the respondent to comply with the terms of the order.
  - iv. the defendant's conduct was deliberate.
13. Based on the foregoing, it was submitted that the respondent was aware of the judgement of the court and even issued employment letters, however instead of backdating the same to July 1, 2015 as directed by the court, they issued backdated it to 2017. Also that they failed to pay the back wages and costs of the Suit as ordered by the court. Which inaction is in clear violation of the court orders and they should therefore be held in contempt.
14. With regard to the respondent's preliminary objection, it was submitted that the preliminary objection is devoid of merit because the Government Proceedings Act chapter 40 only applies to proceedings against the Government of Kenya or the county Governments and not a department or a state agency. If parliament had intended that the aforesaid act applies to government agencies and or departments it could have indicated as much. It was argued that section 56 and 57 of the County Government Act defines the respondent as a corporate entity, capable of being sued in its own name, therefore that these proceedings are against the respondent which is a body corporate with the ability to and be sued in their own name. He added that the proceedings are not against the County Government of Nakuru. Accordingly, they urge this court to find and hold that the respondent's notice of preliminary objection is bereft of merit and proceed to have the same dismissed with costs and in turn allow the application as prayed.

#### **Respondent's Submissions.**

15. The respondent on the other hand submitted that for an application for contempt of court to succeed the applicant must prove four elements; that the terms of the orders were clear and unambiguous, that the respondent and the contemnors had knowledge of or a proper notice of the orders, that the respondents and the contemnors have acted in breach of the terms of the orders, which conduct was deliberate and the decree/ orders must be served on the contemnors before such an application for contempt is filed. On that basis it was argued that the applicant has not proved any of the said elements. Also that the said decree and certificate of costs has never been served to either the respondent, the contemnors or the advocates on records as such an application for contempt based on that fact cannot lie.
16. It was argued further that even though the said decree was not served personally on the contemnors, none of the orders was breached by the respondent because, the respondent has reinstated all the employees as ordered by the court and on the payments due, negotiations have advanced and a settlement proposal was forwarded to the applicants' advocates which is at the tail end of payment. He argued that the delay in payment was due to change of office bearers occasioned by the August, 2022 general elections and not deliberate to warrant the respondent's officers being held in contempt.
17. The respondent in conclusion, submitted that the delay in execution of the orders of the court was not deliberate and that the application herein has been filed prematurely. He prayed for the application to be dismissed while the preliminary objection is upheld. To support these arguments, he relied on the case of Samuel MN Mweru and others v National Land Commission and 2 others [2020] eKLR.
18. I have examined the averments and submissions of the parties herein. The applicants are seeking to execute the judgment of this court dated November 4, 2021 and they seek to execute through contempt proceedings and through sale and attachment of the property of the members of the respondent.



19. The respondents filed a preliminary objection in respect of the application and grounds of opposition where they basically plead that the respondents is a government entity and therefore execution cannot proceed against them in breach of the provision of cap 40 laws of Kenya.
20. The respondent opposed that preliminary objection contending that the respondent in the main petition the Nakuru public service board is not “government” but a creature of statute under section 56 of the county government act and therefore cap 40 does not apply to it.
21. Cap 40 laws of Kenya is an act relating to civil liabilities and rights of the government to aid to civil proceedings by and against the government. section 2 of cap 40, in reference to civil proceedings by or against the government or to civil proceedings to which the government is a party provides that this shall be construed to include a reference to civil proceedings to which the AG or any other government department is such a party.
22. The respondent herein is the County Public Service Board, CPSB under the county government.
23. section 56 (1) of the *County Government Act* states that;-

“each county shall in accordance with Article 235 of the constitution have its own public service to be known as county public service”.
24. Under article 235 of the *constitution* the law is clear that the county government is the one responsible within a framework of uniform norms and standards prescribed by an act of Parliament for establishing and abolishing offices in its public service.
25. The CPSB is in effect a creature of each particular county government and cannot be construed as an entity alienated from the county government.
26. In the circumstances of this case then, the respondents herein being a creature of the county government are in my view part and parcel of the county government though with specific powers and obligation. Execution against the CPSB therefore must be conducted in accordance with the law and in particular as per cap 40 of the LSK.
27. It is my finding therefore that the execution the applicants are trying to conduct against the respondents is against the provision of cap 40 Laws of Kenya and cannot therefore proceed.
28. I do find the preliminary objection merited and I therefore find the application before court also merited and is therefore allowed as prayed.

**RULING DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF JANUARY, 2023.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

**Godia holding brief for Nyangacha for petitioners - present**

**Nyakoe for respondent – present**

**Court Assistant - Fred**

