



**Marango & 123 others v Kedong Ranch Ltd (Petition E009 of 2020)  
[2023] KEELRC 375 (KLR) (14 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 375 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
PETITION E009 OF 2020  
HS WASILWA, J  
FEBRUARY 14, 2023**

**BETWEEN**

**GEORGE MARANGO & 123 OTHERS ..... APPLICANT**

**AND**

**KEDONG RANCH LTD ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the applicants' notice of motion dated November 22, 2022, brought pursuant to section 5 of the *Judicature Act*, section 1A, 1B, 3A, & 63 of the *Civil Procedure Act*, order 40 rule 3 and order 51 rule 1 of the *Civil Procedure Rules* and rule 39(2) of the *High Court (Organization and Administration) (General) Rules* and all other provisions of the law, seeking the following orders; -
  - 1) Spent.
  - 2) That the honourable court be pleased to stay the respondent's notice to show cause letter dated November 21, 2022 and the Disciplinary Hearing scheduled for November 24, 2022 pending inter parte hearing of this application and final determination of the contempt proceedings against the respondent's officers for changing the employment contracts of the Applicants by reducing their basic monthly salary from Kshs.10,000/= to Kshs.8,000/= without any prior notice in writing and contrary to the decree of the judgement of the Court issued on 7th June, 2022.
  - 3) That the honourable court be pleased to issue a Notice to Show to Stanley Kinyanjui the respondent's chairman, George Sichangi -Company Secretary, Susan Aoko- Human Resource Manager and Daniel Muli the Financial Controller why they should not be committed to civil jail for a period not exceeding six(6) month for willfully disobeying orders of the court by changing the employment contracts of the Applicants when they reduced the Applicant's basic



monthly salary from Kshs.10,000/= to Kshs.8,000/= without giving any notice in writing and contrary to the decree of the Court issued on 7th June, 2022.

- 4) That the Honourable Court be pleased to issue an order directing the Respondent to reinstate back the Respondent's basic salaries from Kshs. 8,000/= to Kshs. 10,000/= and refund back all the underpayments from September, 2022 to date, the refunds should be paid through the office of the Applicants advocate within seven (7) days from the date of the Order.
  - 5) That the Honourable Court be pleased to issue an order restraining the Respondents either by themselves, their agents, servants or any other person acting on their behalf from harassing, intimidating, threatening or subjecting the Applicants to any disciplinary action pending determination of the Respondents appeal at the Court of Appeal-Nakuru.
  - 6) That the Honourable Court be pleased to make any other orders within its Inherent Jurisdiction.
  - 7) That the costs of this application be provided for.
2. The basis upon this application is made is as follows; -
- a) That judgement in this matter was delivered by the court on 31<sup>st</sup> May, 2022 to wit the Respondent was restrained from changing the employment terms of the Applicants.
  - b) That the Respondent's Chairperson, Mr Stanley Kinyajui, Company Secretary- George Sichangi, Human Resource officer- Susan Aoko and Financial Controller- Daniel Muli aware of the orders of the Court, deliberately reduced most of the Applicants salary from Kshs 10,000 to Kshs 8,000 without giving any reason.
  - c) The Applicants through the 1<sup>st</sup> Applicant wrote a letter dated 18<sup>th</sup> November, 2022 requesting the Respondent to schedule a meeting with them to get an explanation of their slashed salaries.
  - d) In response to the said letter, the Respondent's Chairperson wrote back the letter of 21<sup>st</sup> November, 2022 duped, show cause letter and gave the 1<sup>st</sup> Applicant 3 days to show cause why he should not be dismissed for writing a letter to the chairperson.
  - e) It is averred that the actions of the chairperson in issuing the show cause letter was to intimidate the 1<sup>st</sup> Applicant and silence him to avoid following on the issue of salary cuts on his behalf and on behalf of his colleagues. Furthermore, that the Respondent's chairperson had attempted to transfer the 1<sup>st</sup> Applicant from Naivasha to Nairobi to frustrate him more only for this Court to intervene and quash the said decision.
3. The application is also supported by an affidavit of George Marango Anduru, the 1<sup>st</sup> applicant herein, which basically reiterated the grounds of the application
4. The application is opposed by the Respondent who filed a replying Affidavit, deposed upon by 2022 by Stanley Kinyanjui on 7<sup>th</sup> December, the chairperson of the board of management of the Respondent. In the affidavit the deponent stated that the Orders issued by the Court was to the effect that the Respondent was restrained from changing the term of engagement from permanent and pensionable to contract and for the payment of house allowance arrears which totals to Kshs 3,549,270.
5. He maintained that the Respondent had not contravened any of the said terms. He stated that the Respondent being dissatisfied with the Judgement of this Court preferred an appeal against the entire judgement and obtained stay of execution Orders.



6. It is his contention that the issues raised by the Applicants in the application are new that ought to be litigated in a fresh suit and not in an application. Furthermore, that the Court does not have jurisdiction to hear the application having rendered its judgment, is now functus officio.
7. The affiant stated that the prayer 2 of the application seeking stay of the notice to show cause and disciplinary hearing is spent because the Board already sat and made a decision to dismiss the 1<sup>st</sup> Applicant.
8. The deponent stated that the reason why the 1<sup>st</sup> applicant was dismissed was because he issued a letter dated November 18, 2022 addressed to the Respondent's Executive management demanding for all staff to be paid severance pay by December 31, 2022 and for all staff to be issued with parcels of land failure to which the employees will down their tools on November 22, 2022. Consequently, the management issued the 1<sup>st</sup> applicant with notice to show cause for gross misconduct with a hearing scheduled for 24<sup>th</sup> November, 2022.
9. It is averred that the disciplinary meeting proceeded as scheduled but the 1<sup>st</sup> applicant refused to talk or participate in the same, therefore the decision to dismiss the 1<sup>st</sup> applicant was justified. A computation of his terminal dues was done and paid. Also that he was issued with a certificate of service.
10. On allegation of salary cuts, the Affiant avers that initially the Applicant were paid a cumulative sum of Kshs. 10,000 which included Kshs, 8000 as basic salary and Kshs 2,000 as overtime, however after deliberation, the Respondent resolved to separate the same but that the Applicants are still paid Kshs 10,000.
11. The deponent stated that the application is not merited as the Applicant is using it to litigate fresh issue that ought to be litigated in a fresh suit. He thus prayed for the application to be dismissed with costs to the Respondent.
12. The application was disposed of by way of written submissions.

### **Applicants' Submissions.**

13. The Applicant identified three issues for determination; Whether the order of injunction issued by the court on May 31, 2022 against the respondent covered also changing of the basic salaries of the applicants and whether the respondent's management team are in contempt of the orders of the court; Whether the dismissal of the 1<sup>st</sup> applicant by the respondent was warranted for writing a letter requesting for a meeting to discuss the changes in the basic salaries of the Applicants and Whether the applicants should be granted the orders sought.
14. On the first issue, it was submitted that the Court had issued orders for a permanent injunction restraining the Respondent from changing any terms of contract and for employment to remain on permanent and pensionable basis. It was argued that the unilateral review of salaries from Kshs. 10,000 to Kshs 8,000 was in violation of court orders as the changes affect the terms of contract as contemplated under section 10 of the *Employment Act*, that listed the particulars of employment in any written contract and section 10(2)(h) of the *Employment Act* that has gone ahead and listed the remuneration, scale or rate of remuneration as the method of calculating that remuneration and details of any other benefits. Further that the salary cut was made unilaterally without any consultations of the Applicants and thus in violation of this Courts orders and the Respondent's officials should be held in contempt.
15. On the second issues, it was submitted that the letter of November 18, 2022 addressed to the respondent's management was only written after several visits to the Human Resource office seeking an



explanation of the unilateral salary cut for over 100 applicants herein. He argued that the letter was only seeking audience of the respondent's management which was taken out of context and the respondent termed it gross misconduct and terminated the 1<sup>st</sup> applicant services without any valid cause.

16. In conclusion, the applicants submitted that they have made out a case against the respondent and urged this court to allow the application as prayed.

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

17. The respondent on the other hand submitted on two issues; whether the respondent is in contempt of court and whether the court is functus officio.
18. The respondent submitted that for a contempt of court application to succeed the party citing must prove three things; terms of the orders breached; knowledge of these terms by the respondent and failure by the respondent to comply with the terms of the order. He argued that the standard of proof is higher than the one needed in civil case. In this he relied on the case of *Gatharia K Mutikia v Baharini Farm Limited* [1985] KLR 227.
19. It was submitted that the Respondent has fully complied with the orders of Court issued in the Judgement of May 31, 2022. On the alleged salary cuts, it was submitted that the payslips of the applicants were basically restricted to reflect the basic salary of Kshs 8,000 and overtime of Kshs 2,000 adding up to Kshs 10,000 which they were earning initially as a cumulative pay.
20. On whether the court is functus officio, the respondent submitted that once the court delivered its judgement in this matter, its powers were reduced and cannot hear such an application because the current application raises fresh issues which were not litigated upon in the main suit. They relied on the case of *Menginya Salim Murgani v Kenya Revenue Authority* [2014] eKLR where the court held that; -
- “It is a general principle of law that a court after passing Judgment, becomes functus officio and cannot revisit the Judgment on merits, or purport to exercise a judicial power over the same matter, save as provided by law.”
21. It was argued that, the issue of dismissal of the 1<sup>st</sup> Applicant cannot be used in justification of the application before court, rather, that the 1<sup>st</sup> applicant should have filed a fresh suit to agitate on the issue of his termination.
22. The respondent in conclusion, urged this court to dismiss the application with costs for lacking in merit.
23. I have examined all the averments of the parties herein.
24. I rendered a judgment in this case on 31/5/2022. Vide another ruling of 29/9/2022, I allowed a stay of execution of the Judgment of 31/5/2022 pending appeal filed by the applicants.
25. In view of this order I became functus officio and cannot in the circumstances make any further orders on this file.
26. I will therefore down my tools as concerns this application and give no other orders.

**RULING DELIVERED VIRTUALLY THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**



**Wangare holding brief Njeri for Petitioners – present**

**Caroline Njari for Respondent – present**

**Court Assistant – Fred**

