



**Muthui v Kenya Rural Roads Authority (KERRA) (Petition  
E210 of 2021) [2023] KEELRC 793 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 793 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E210 OF 2021  
M MBARŪ, J  
MARCH 28, 2023**

**BETWEEN**

**MARGARET WANJA MUTHUI ..... PETITIONER**

**AND**

**KENYA RURAL ROADS AUTHORITY (KERRA) ..... RESPONDENT**

**RULING**

1. The petitioner filed application dated February 15, 2023 under the provisions of Section 3, 4(a), 5, 28(b) and 30(1) of the *Employment and Labour Relations Court Act*, Section 12(3)(viii) of the *Employment And Labour Relations*, cap 234, Section 3A and 63(e) of the *Civil Procedure Rules* and seeking for orders that;

The court be pleased to order the director general (chief executive officer) of the respondent to personally attend court to show cause why he should not be committed for contempt of court for blatantly disobeying the court's decree (orders) given in the judgment delivered on June 30, 2022 and the subsequent directions/orders given in the ruling delivered on December 19, 2022;

The court be pleased to order that the director general (chief executive officer) of the respondent having wilfully and deliberately disobeyed this court's decree (order) given on June 30, 2022 and subsequent directions/orders in the ruling delivered on December 19, 2022 he be given an appropriate conviction of six (6) months civil jail and/or fine may be deemed necessary in the circumstances.

The respondent be condemned to pay costs of this application.

2. The application is made on the grounds that following judgment and decree herein and clarification of the same the respondent has refused to comply, there is blatant disregard of court orders and an exercise in impunity and the director general and chief executive officer of the respondent should punished



for contempt of court. The same officer has previously disobeyed orders in ELRC E027 of 2021 by refusing to reinstate the petitioner all meant to wilfully disregard the court orders.

3. The petitioner filed her Supporting Affidavit and avers that following judgment herein the respondent has deliberately and wilfully refused to comply and is now bringing the reputation of the court into disrepute. Since June 30, 2022 when judgment issued, there is no reinstatement or payment of the due salaries as the court directed. The claimant moved court over contempt and the court was kind to clarify to the respondent its judgment and orders but the respondent has not taken heed and should be punished for contempt and committal to civil jail for 6 months and or a fine.
4. In reply, the respondent filed the Replying Affidavit of Eng Philemon K Kandie the director general and who avers that on December 19, 2022 the court delivered a ruling with clarifications that the petitioner's employment is regulated under letter dated June 15, 2015 and that there is no stay of execution in ELRC No E027 of 2021 and the respondent being aggrieved by the ruling lodged a Notice of Appeal in Nairobi Civil Appeal No E051 of 2023 which was certified urgent on February 8, 2023 for hearing on March 7, 2023.
5. A meeting was held on February 15, 2023 on the implementation of the court orders herein where the petitioner was present and it was resolved that the petitioner would reconcile her salary arrears with the salaries department so that payment is effected end of February, 2023. It was also agreed that the petitioner should report back to state department of Roads, Ministry of Roads and Transport where she had been discharging her duties in accordance with the judgment and ruling in ELRC No E027 of 2021 for the purpose of clearance and release back to the respondent.
6. Eng. Kandie also avers in reply that the petitioner did liaise with the salaries unit to reconcile her salaries in accordance with the court orders and including payment of any arrears by end of February, 2023 but failed to go to the Roads Ministry for administrative clearance and reporting back to the respondent and instead opted to return to court seeking committal proceedings. The petitioner has therefore refused to take orders from the respondent taking into account that there is stay of execution in ELRC No E027 of 2021 and the ruling herein was issued in error and the orders sought herein should not issue but be dismissed with costs.
7. In further response, the petitioner filed Further Affidavit sworn by Nicholas Sumba Advocate for the petitioner and who avers that the respondent's director general is only explaining why he has persistently disobeyed court orders instead of seeking to comply.
8. Sumba Advocate also avers that as counsel for the petitioner he is aware that the respondent represented through the office of the Attorney General has since withdrawn all appeals and who has directed the respondent to comply with this court judgment and rulings and therefore there is no exiting appeal so as to allow the petitioner to resume her duties.
9. Both parties attend and made oral submissions and the issues which emerge for determination are whether there is contempt of court and whether the court should punish the respondent's officer and director general Eng Philemon K Kandie for contempt.
10. First, on December 19, 2022 parties attended court for delivery of a ruling following the petitioner's application dated August 30, 2022 seeking similar orders as herein that Eng Philemon K Kandie being the chief accounting officer of the respondent as the director general and chief executive officer be committed for contempt of court and be jailed for 6 months and or be fined for disobeying the judgment and decree herein. The court, taking into account matters on-going between the parties and putting into context ELRC No E027 of 2021 opted and clarified the gist of the judgment herein to



ensure compliance by the respondent. The matter of contempt of court was therefore not directly addressed to allow the respondent and particularly the director general, Eng. Kandie to comply.

11. Secondly, proceedings herein and those under ELRC No E027 of 2021 are foundationally different. There is a judgment in each case.
12. There is no effort by the respondent whatsoever in these proceedings seeking merging of the two files or clarification. In the ruling of December 19, 2022 the court on its own motion opted to undertake clarifications taking into account the veracity of contempt of court proceedings and the potential implication of the orders sought seeking to commit the director general of the respondent to civil jail for 6 months and or with a fine.
13. Contempt of court is a matter now addressed by superior courts at length. This happens where a response having been fully aware of the courts orders, goes ahead and deliberately fails to comply with the same without any good justification as held in MNN v JMM [2022] eKLR.
14. The rationale of a judgment, decree and orders of court is that a party having moved court, upon the reasons addressed, the orders issued should be obeyed by the party the same is directed at. It is not a case of either or to obey. On the orders made, unless set aside, the requirement is to obey.
15. In giving this emphasis, the court in Econet Wireless Kenya Limited v Minister for Information and Communication of Kenya Authority [2005] eKLR held that;

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 whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void

16. In his Replying Affidavit dated February 24, 2023 Eng Kandie avers that;

I am aware that on December 19, 2022 this court delivered a ruling on the petitioner's application dated August 29, 2022. The clarifications were that:

- a. The petitioner' employment is regulated under the letter dated June 15, 2015.
- b. That there is no stay of execution in ELRC No E027 of 2021;
- c. There is a clarification herein with regard to the petitioner's employment with the respondent;
- d. ...

17. Eng Kandie further avers that since the court ruling, the parties held a meeting on February 15, 2023 where the petitioner was present and it was agreed that she should attend at the salaries unit to reconcile her salary arrears and that she should attend at the Department of Roads, Ministry of Roads and Transport for Clarence before reporting to the respondent.
18. Inherently, Eng Kandie is conversant, aware and engaged in this matter and has not challenged the existence, knowledge of or need for compliance with the judgment and decree herein. To urge the court that the petitioner should attend before the salaries until to reconcile her salary arrears whereas the employer is the custodian of all work records pursuant to Section 10(6) and (7) of the Employment



Act, 2007 and that the petitioner should first attend before the Department of Roads, Ministry of Roads and Transport for clearance so that she can report to the respondent as the employer is deliberate and wilful effort directly targeted at negating the judgment and decree herein. The court finds no justification why, upon clarification of the judgment and decree herein on December 19, 2022 the respondent, if keen to obey the orders herein has not complied since June 30, 2022.

19. Such I find to be a direct affront on the maintenance of the rule of law, order, authority and the dignity of the court which should be upheld at all times even where a party does not agree with the orders issued against him or her. in this instance, the respondent having enjoyed clarification of the judgment and decree of June 30, 2022 but opted to proceed and deliberately disobey the same, the court will not shy away from its responsibility to deal firmly with apparent and proved contempt.
20. In this regard, the finding that there is contempt of court, and contempt of court being an offence of a criminal character, the jurisdiction of the court of committing for contempt being unlimited, matters above addressed especially the ruling of December 19, 2022 the following orders are hereby issued;
  - a. I do allow application dated February 15, 2023 and impose upon the Respondent’s director general and chief executive officer a fine of Kshs 100,000 (One Hundred Thousand Shillings) for being in contempt of court orders of June 30, 2022. The said fine to be paid within thirty (30) days failing which the Respondent shall be committed to civil jail for a period of three (3) months.
  - b. The fines above shall be paid personally by Eng Philemon K Kandie pursuant to Article 226 (5) of the Constitution; and the
  - c. The petitioner is awarded costs of this application.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 28TH DAY OF MARCH, 2023.**

**M. MBARŪ JUDGE**

In the presence of:

Court Assistant: Japhet Muthaine

..... and .....

