



**Apuko v County Assembly Of Homabay & 42 others (Constitutional Petition
E030 of 2022) [2023] KEELRC 735 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 735 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CONSTITUTIONAL PETITION E030 OF 2022**

**CN BAARI, J
MARCH 23, 2023**

BETWEEN

FAITH ADHIAMBO APUKO APPLICANT

AND

COUNTY ASSEMBLY OF HOMABAY & 42 OTHERS RESPONDENT

RULING

1. Before court is the applicant's notice of motion application dated June 23, 2022, seeking orders that:
 - i. Spent
 - ii. The 1st to 43rd respondents/contemnors herein, be held to be in contempt of the orders of the court made on June 16, 2022, and be ordered to serve such time in prison custody as the court may determine or until such time that they shall have purged the contempt.
 - iii. The 1st to 43rd respondents/contemnors herein, be held to be in contempt of the orders of the court made on June 16, 2022, and they be ordered to pay such amounts of money as fine, as court may in its discretion order as punishment for such contempt, and in default their property be sequestrated, attached and sold to recover the fine so ordered paid.
 - iv. Spent
 - v. Spent
 - vi. All the actions and decisions of the respondents taken or made in breach of the orders of the court given on June 16, 2022, and or actions resulting from it be declared null and void and of no effect.
 - vii. Spent
 - viii. Costs of this application be provided for.



2. The application is supported by grounds on the face and the affidavit sworn by the applicant. The crux of the application is that the respondents refused to comply with the court order issued on June 16, 2022, and proceeded to initiate a process for the removal of the applicant herein.
3. The applicant further contends that the respondents being leaders and holding positions in the public offices, should have been at the forefront in demonstrating constitutional and statutory tenets and principles. It is the applicant's further assertion that the orders sought should be granted in the interest of justice.
4. The respondents did not oppose the application with their advocates on record only stating that the respondents left office after the last general election and could not find one to swear a replying affidavit. The application is thus considered unopposed.
5. The applicant filed submissions on the application and which have been duly considered.

Determination

6. The *Black's Law Dictionary (Ninth Edition)* defines contempt of court as:

“Conduct that defies the authority or dignity of a court. And because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
7. The purpose of contempt proceedings is to safeguard the rule of law and not to install the dignity of the court. In *Johnson v Grant*, 1923 SC 789 at 790 Lord President Clyde stated:

“...The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged.”
8. The orders of June 16, 2022, subject of the instant application, prohibited the removal of the applicant herein from office of clerk of the County Assembly of Homabay. From the court record, the order was served on June 17, 2022, through the email of the Speaker of the County Assembly (Speakerhomabay@gmail.com).
9. The applicant contends that the Assembly proceeded with the motion to remove her from office contrary to the orders of the court. In *Samuel M. N Mweru and other V National Land Commission & 2 others* [2020] eKLR, it was held that for a party to succeed in an application for contempt, the party must satisfy the court on the following four elements:
 - i. That the terms of the order were clear, unambiguous and were binding on the defendant.
 - ii. The defendants had knowledge of or proper notice of the terms of order
 - iii. The defendant has acted in breach of the terms of the orders, and
 - iv. The defendants conduct was deliberate.
10. The court notes that from the record, the orders were served through the speaker of the assembly, who is not party to this suit. Further, there were only two respondents in the application giving rise to the orders subject of this application. This thus means that the additional 41 respondents were not party to the application, and there is no prove that they were aware of the orders of the court.



11. It is also not disputed that the Applicant is to date, the holder of the Office of Clerk to the County Assembly of Homabay. This in my view is not indication that the orders were violated. In *Gatharia K. Mutikika v Babarini Farm Limited* [1985] KLR 227, the court stated:

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities....
Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject...”

12. It therefore follows that the applicant has not shown firstly, that the respondents were aware of the orders of the court; that the orders were violated, and finally that the violation was deliberate.

13. I find the motion devoid of merit and is hereby dismissed.

14. The respondents did not defend the application. I therefore make no orders on costs.

15. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 23RD DAY OF MARCH, 2023.

CHRISTINE N. BAARI

JUDGE

Appearance:

Ms. Omondi h/b for Mr. O. Obiero for the Petitioner.

Mr. Ojuro Present for the Respondents

Christine Omolo – C/A

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