



Republic v County Secretary the County Government of Bungoma & 5 others; Kenya County Government Workers Union Bungoma County Branch (Exparte Applicant) (Judicial Review E001 of 2022) [2023] KEELRC 765 (KLR) (23 March 2023) (Ruling)

Neutral citation: [2023] KEELRC 765 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
JUDICIAL REVIEW E001 OF 2022**

**JW KELL, J
MARCH 23, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**COUNTY SECRETARY THE COUNTY GOVERNMENT OF
BUNGOMA 1ST RESPONDENT**

**SECRETARY COUNTY PUBLIC SERVICE BOARD BUNGOMA
COUNTY 2ND RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER COUNTY GOVERNMENT
FINANCE BUNGOMA 3RD RESPONDENT**

**THE CHIEF OFFICER IN-CHARGE OF FINANCE COUNTY GOVERNMENT
OF BUNGOMA 4TH RESPONDENT**

**THE GOVERNMENT COUNTY GOVERNMENT OF BUNGOMA 5TH
RESPONDENT**

COUNTY GOVERNMENT OF BUNGOMA 6TH RESPONDENT

AND

**KENYA COUNTY GOVERNMENT WORKERS UNION BUNGOMA COUNTY
BRANCH EXPARTE APPLICANT**

RULING

1. The notice of motion dated December 19, 2022 seeks the following orders:-
 - a. That this application be certified as urgent and the same be heard *exparte* in the first instance.



- b. That Mr Joseph Wakoli Wambati, County Secretary , the County Government of Bungoma, Mr Joseph Makata, Secretary County Public Service Board Bungoma, County, Mr Chrispinus Barasa, County Executive Committee Member Finance, County Government of Bungoma, M/S. Dinah Naswa Makokha, The Chief Officer in charge of Finance County Government of Bungoma and hon Kenneth Lusaka Makelo, the Governor County Government of Bungoma be cited for contempt of court for deliberately disobeying a valid court order given by this court on July 7, 2022 and a valid certificate of costs issued by the Deputy Registrar on September 12, 2022 and hence be punished.
 - c. That summons be issued to Mr Joseph Wakoli Wambati, County Secretary, the County Public Service Board Bungoma County, Mr Chrispinus Barasa , County Executive Committee Member, Finance County Government of Bungoma, M/S Dinah Naswa Makokha, the Chief Officer in charge of Finance County Government of Bungoma and hon Kenneth Lusaka Makelo, the Governor County Government of Bungoma to appear before this court and show cause why they should not be committed to civil jail for a period of six (6) months.
 - d. That costs of this application be born by the respondents.
2. The respondents opposed the application *vide* replying affidavit of Joseph Wakoli Wambati dated January 30, 2023 which was to effect that orders issued by court in judgment were incapable of being implemented.
 3. Various reasons were given for the non-compliance including challenging jurisdiction of the court under section 77 of the [County Government Act](#) to issue impugned judgment. The judgment in question was delivered on May 13, 2020 and has never been set aside. It is a valid judgment of the court. The application concerns non compliance with order of mandamus issued by court on July 7, 2022 and certificate of costs dated September 12, 2022 by the respondents.
 4. An order of court must be complied with unless set aside. The court is not concerned with previous proceedings between the parties and the history of the judgment and orders leading to the instant application for contempt of court orders. The court is only concerned with the non-compliance with valid court orders by the respondents.
 5. What concerns the court is the disobedience of the mandamus court order as issued on July 7, 2022. The court was satisfied from the application that the respondents were served with the court order. The court found that in the replying affidavit of Wambati dated January 30, 2023 the respondents were aware of the said court orders.
 6. The respondents in the said replying affidavit of Wambati, admitted in paragraph 26 and stated 129 persons were verified in a task force set up by the Governor. The list was not annexed and even the alleged number which was said to have left. The respondents have not made any attempt to comply with the court order even by employing the said verified staff or by payment of costs under certificate of costs dated September 12, 2022.
 7. The court finds that the knowledge of the existence of court order as demonstrated above and non-compliance suffices for contempt proceedings. The court finds contempt of court and cites the persons listed on the orders for contempt.
 8. The application is allowed as prayed.
 9. The court hereby summons the said persons Mr Joseph Wakoli Wambati, County Secretary, the County Public Service Board Bungoma County, Mr Chrispinus Barasa, County Executive Committee Member, Finance County Government of Bungoma, M/S Dinah Naswa Makokha, the Chief Officer



in charge of Finance County Government of Bungoma and hon Kenneth Lusaka Makelo to appear before it on April 17, 2023, for them to show cause why they should not be committed to civil jail for six months or fined as the court will deem fit and just.

10. It is so ordered.

DELIVERED, SIGNED AND DATED AT BUNGOMA OPEN COURT ON 23RD DAY OF MARCH, 2023.

JEMIMAH KELI,

JUDGE.

In the presence of:-

Court Assistant: Lucy

Exparte Applicant : Wamalwa

respondents: Mr Makokha

Mr Makokha: We seek for stay.

Court Order:

Denied. Contempt has to be purged first.

It is so ordered.

