



Republic v Lake Basin Development Authority; Chere (Exparte Applicant) (Judicial Review E015 of 2022) [2023] KEELRC 682 (KLR) (16 March 2023) (Ruling)

Neutral citation: [2023] KEELRC 682 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

JUDICIAL REVIEW E015 OF 2022

CN BAARI, J

MARCH 16, 2023

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PROCEEDINGS
IN THE NATURE OF CERTIORAR, MANDAMUS AND PROHIBITION**

AND

IN THE MATTER OF ARTICLE 23(F), 41 AND 50 OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW
REFORM ACT, CHAPTER 26 OF THE LAWS OF KENYA**

AND

IN THE MATTER OF SECTION 69 AND 71 OF THE PUBLIC SERVICE COMMISSION ACT

AND

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE
RULES AND ALL OTHER ENABLING PROVISIONS OF THE LAW**

BETWEEN

REPUBLIC REPUBLIC

AND

LAKE BASIN DEVELOPMENT AUTHORITY RESPONDENT

AND

FREDRICK ONYANGO CHERE EXPARTE APPLICANT



RULING

1. Before court is the *ex-parte* applicant's application dated November 2, 2022, brought under certificate of urgency seeking the following reliefs: -
 - i. Spent.
 - ii. That the managing director of Lake Basin Development Authority, together with the respondent be held in contempt of court for wilful disobedience of the court orders issued on October 11, 2022.
 - iii. That upon being held in contempt, the said officer be jailed for a period of 6 months, and this court be pleased to impose a fine of KShs 1,000,000.00 or such other sum as it deems fit against the respondent for disobeying court orders or for such other sum as it deems just and appropriate.
 - iv. In the alternative to prayer 3, this court be pleased to mete out such punishments as it may deem appropriate to the contemnors.
 - v. That the said officer be ordered to purge the contempt.
 - vi. That the respondent herein be ordered to bear the costs of this application.
2. The prayers sought are anchored on the grounds set out in the face of the application, the crux being that on October 7, 2022, the *ex-parte* applicant sought and obtained leave to institute judicial review proceedings against the respondent's decision to terminate him from employment, and that the orders were served upon the respondent's office on October 12, 2022.
3. The *ex parte* applicant further avers that order 2 of this court, required that the leave granted operates as a stay of the enforcement and/or implementation of the letters of summary dismissal addressed to the applicant on September 22, 2022.
4. The *ex parte* applicant avers that respondent replied via its letter dated October 14, 2022, affirming receipt of the said letter and asserted that in its interpretation of the said order, it did not allow for his reinstatement but rather, it ordered for stay of implementation or enforcement of the said order awaiting the outcome of the instant proceedings.
5. The respondent opposed the application *vide* a replying affidavit sworn on December 1, 2022, where the deponent re-asserted that it was aware that the respondent had obtained leave to commence judicial review proceedings, and that the decision to summarily dismiss the *ex-parte* applicant had been fully implemented leading to his removal from the payroll.
6. It is the respondent's assertion that both the application and order for stay were belated, and that the order of the court was impractical as it could not have been acted upon without compromising government procedures, information and records.
7. Parties canvassed the application through written submissions and which have been duly considered.



Determination

8. 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.”
9. Mativo J in *Samuel M N Mweru & others v National Land Commission & 2 others* [2020] eKLR, held that to succeed in an application for contempt, an applicant must prove that the terms of the order were clear and unambiguous and were binding on the defendant, the defendant had knowledge of or proper notice of the terms of the order, the defendant has acted in breach of the terms of the order, and the defendant's conduct was deliberate.
10. Further, in *Kenya Tea Growers Association v Francis Atwoli and 5 others* [2012] eKLR Lenaola J cited with approval the case of *Clarke and others v Chadburn & others* [1985] 1All ER (PC), 211 where the court stated:

“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal....”
11. The respondent does not deny knowledge of the orders subject of this application. Their only ground for non-compliance is that at the time the orders were granted, the *ex parte* applicant had already been dismissed and removed from the respondent's payroll, and hence the stay orders were no longer capable of compliance as there was nothing left to stay.
12. The orders said to have been violated were granted on October 7, 2022, and the letter summarily dismissing the *ex parte* applicant was issued on September 22, 2022. I would thus agree with the respondent that the dismissal could have been effected prior to the issuance of the stay orders. This leads me to the conclusion that the disobedience was not deliberate.
13. Further, this court has now issued final orders, whose effect is to quash the decision to summarily dismiss the *ex parte* applicant and which cannot be said to be incapable of compliance.
14. In the circumstances, and for the foregone reasons, I dismiss this application with no orders as to costs.
15. The applicant is however at liberty to lodge further contempt proceedings should the orders issued in today's judgment not be complied with.
16. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 16TH DAY OF MARCH, 2023.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Okelloh present for the *Ex-Parte* Applicant.

Mr. Ojuro present for the Respondent

Christine Omolo – C/A

