



REPUBLIC OF KENYA



KENYA LAW

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**Awuor & 37 others v Migori County Government & another (Cause
323 of 2017) [2023] KEELRC 1006 (KLR) (3 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1006 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 323 OF 2017**

S RADIDO, J

MAY 3, 2023

BETWEEN

EVERLYNE ATIENO AWUOR 1ST RESPONDENT
CHRISTINE ACHIENG 2ND RESPONDENT
BENTER ATIENO 3RD RESPONDENT
DORINE ATIENO ODIRA 4TH RESPONDENT
ROSELYNE ACHIENG ONGERA 5TH RESPONDENT
BENTER AKINYI OLUOCH 6TH RESPONDENT
DANIEL OCHIENG OPEE 7TH RESPONDENT
MESHACK KARANJA LICHOGO 8TH RESPONDENT
SAMUEL OKOTH OUKO 9TH RESPONDENT
PETER OUMA OMOLLO 10TH RESPONDENT
CYPRIAN OYIER OKODE 11TH RESPONDENT
ABICH FRED 12TH RESPONDENT
FIDEL OMONDI 13TH RESPONDENT
WYCLIFFE OMONDI OTIENO 14TH RESPONDENT
MICHAEL OLALA AWUOR 15TH RESPONDENT
RUTH AUMA OTIENO 16TH RESPONDENT
DOROTHY ADHIAMBO 17TH RESPONDENT
LORNA AKOTH OLOO 18TH RESPONDENT
JULIUS OUMA OMBELE 19TH RESPONDENT



NELLIUCE W OWUOR	20 TH RESPONDENT
EUNICE A OMOLLO	21 ST RESPONDENT
MILLICENT AKOTH GOR	22 ND RESPONDENT
EUNICE AWUOR OSUNDUKA	23 RD RESPONDENT
DICKENS OKOTH ODHIAMBO	24 TH RESPONDENT
EDEKIA AKELLO GOR	25 TH RESPONDENT
MAUREEN AMIMO ANYANGO	26 TH RESPONDENT
JACKSON NDUTH M	27 TH RESPONDENT
ELIUD CHAMBE	28 TH RESPONDENT
ABRAHAM OTIENO ALUODO	29 TH RESPONDENT
FRANCIS OKOTH AWITI	30 TH RESPONDENT
MERCY OGUTU	31 ST RESPONDENT
PHILIP OMONDI	32 ND RESPONDENT
DOROTHY AKOTH OWAKA	33 RD RESPONDENT
BONFACE OCHIENG MIGEDA	34 TH RESPONDENT
TIMOTHY AJOWI OKECH	35 TH RESPONDENT
BEBARD OKELLO NYANENGO	36 TH RESPONDENT
ASHA ADHIAMBO ODHIAMBO	37 TH RESPONDENT
BOSS VINCENT ATENDO	38 TH RESPONDENT

AND

MIGORI COUNTY GOVERNMENT	1 ST RESPONDENT
MIGORI COUNTY PUBLIC SERVICE BOARD	2 ND RESPONDENT

RULING

1. Before the Court is a Motion dated 10 January 2023 by the Claimants seeking orders:
 - (3) That this Honourable Court be pleased to commit His Excellency George Ochillo Ayacko, the Governor of Migori County Government and Hon Oscar Olima and/or his successor in title being the County Secretary, Migori County Government to civil jail for six months for being in contempt of this Court's decree issued on July 22, 2019.
 - (4) That alternatively, the Court impose a fine of an amount the Court deems fit upon His Excellency George Ochillo Ayacko and Hon Oscar Olima and/or his successor in title for disobeying the decree of the Court.
 - (5) That costs of this application be borne by the Respondents.



2. The grounds in support of the Motion were that despite the judgment of the Court directing the Respondents to verify the credentials of the Claimants and offer them employment on a permanent basis within 30 days, the Respondents had taken no action to comply with the Court order; that the Respondents had instead drawn and issued to the Claimants contracts for 3-months; that the Court had on 11 February 2021 directed that show cause for contempt to be issued to the Respondents; that the County Secretary had given instructions that the Claimants contracts be terminated on 19 September 2022 and that the decree had been served upon the Respondents.
3. When the Motion was placed before the Court on 20 February 2023, it directed the Claimants to serve the Respondents ahead of the giving of instructions on 2 March 2023.
4. On 2 March 2023, there appeared to be a question on the representation of the Respondents (Ms Wayungu requested the Court to allow them time to resolve the issue and further that they be given time to respond to the application).
5. Consequently, the Court directed the Respondents to sort out the question of legal representation.
6. The Court also directed the Respondents to file and serve their response(s) before 10 March 2023. The parties were also directed to file and exchange submissions.
7. As a result, the Respondents filed on 15 March 2023 Grounds of Opposition and a replying affidavit sworn by the County Secretary.
8. The Claimants submissions were not on record by the agreed timeline of 17 March 2023. The Respondents filed their submissions on 24 March 2023.
9. The Court has considered the Motion, Grounds of Opposition, affidavits and submissions.
10. It is not in doubt that the Court issued an order in the following terms:
 - (a) The 38 Claimants undergo a verification exercise to confirm their suitability for confirmation (sic) they now serve on three months fixed contracts, and for long period based on the minimum qualification (Form IV certificates) and also other professional relevant certificates obtained.
 - (b) That the Respondents to conduct and complete the exercise within 30 days of this judgment and file a report accordingly, failing which, all the 38 employees shall be deemed to be on permanent and continuous employment of the Respondent and are entitled to all minimum benefits provided by the *Employment Act*, 2007 and any other better benefits already enjoyed by them.
11. Apparently, the Respondents did not comply with the orders and the Claimants moved the Court to find them in contempt.
12. In a Ruling delivered on 11 February 2021, the Court rendered itself thus:
 17. In the present case, the organ responsible for implementing the Court order is the 2nd Respondent, Migori County Public Service Board. The decisions of the Board are communicated by the County Secretary to the designated officer responsible for implementing the decision of the Board.
 18. In the present case, there is no evidence that the Board sat to do the verification of the Claimants/applicants as directed by the Court nor is there evidence that the County Secretary



communicated to any officer, including the Governor to implement the judgment and decree of the Court.

19. Accordingly, whereas the Governor cannot be said to in willful disregard of the court order, the County Secretary who is the authorized officer in this case has not demonstrated any willingness to either comply with the Court order and or to seek enlargement of time within which to comply with the court order.
 20. Given that implementation of the court order is incumbent on the Board as an organ, the Court has not found that the County Secretary is directly responsible for the failure of the Board to implement the court order.
 21. The Court therefore finds that the applicants have not proved that the Governor and County Secretary are in willful contempt of the Court order.
 22. The Court however directs the applicants to serve a 30 days' notice on the Board, through the County Secretary to show cause why they should not be held in contempt of court for failing to confirm in employment the Claimants/applicants as ordered by the Court in its judgment delivered on 9/7/2019.
13. The Court is basically dealing contempt application and it makes the following determinations.
 14. First, for a contempt application to succeed, the party alleging contempt should demonstrate the existence of a court order, service or knowledge of the order on the persons alleged to be in contempt and that there has been willful disobedience or failure to comply with the order.
 15. In the instant case, the Court directed the Claimants on 11 February 2021 to serve a 30 days' notice on the County Public Service Board to show cause why it should not be held on contempt.
 16. The Claimants have not shown that they complied with the order by serving the notice. What is on record is a demand notice dated 30 September 2022 giving the Respondents 14 days' notice.
 17. Two, the Claimants have not disputed the Respondents assertions and evidence that a suitability exercise was conducted by the County Public Service Board in February 2021 and that only 12 of the Claimants were found suitable.
 18. Three, the Claimants have not place before the Court any evidence that the Respondents issued any one of them with a 3-months fixed contract.
 19. The single copy of the contract exhibited to the supporting affidavit was issued to one Jabes Oluoch Ogweno, who was not a party to the Cause.
 20. Four, the Court already had occasion to address the question of contempt in the Ruling of 11 February 2021, and it made a determination that the Governor and the County Secretary were not in contempt because the organ with the responsibility to comply with the judgment of the Court was the County Public Service Board.
 21. The Accounting Officer of the County Public Service Board is the Secretary/Chief Executive Officer. The person holding that office has not been made a party to these contempt proceedings.
 22. The Governor and the County Secretary have no direct role in the implementation of the orders/decrees of the Court issued on 9 July 2019.
 23. The Court cannot, therefore, hold them in contempt.



24. Five, the Claimants did not produce a copy of the letter dated 19 September 2022 through which the Respondents purportedly conveyed the decision to bring to an end the Claimants contracts.
25. The Court further notes that the judgment of the Court did not restrict the Respondents from lawfully terminating the contracts of the Claimants.
26. If at all the Respondents have terminated the Claimants' contracts, such a dispute constitutes a fresh cause of action which should be progressed as contemplated under the applicable legal framework.
27. Lastly, the letters dated 5 October 2022 and 11 October 2022 exhibited by the Claimants, do not in any way communicate that the Claimants contracts had been determined. The letters spoke to conversion of casual contracts into fixed-term contracts and the freezing of recruitment, employment, promotion and staff re-designation.

Conclusion and Orders

28. Arising from the above, the Court declines to find the Governor and the County Secretary, Migori to be in contempt of the judgment or orders of the Court.
29. The Motion is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 3RD DAY OF MAY 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimants Gordon Ogola, Kipkoech & Co. Advocates

For Respondents Okongo Wandago & Co. Advocates

Court Assistant Chrispo Aura

