



Karanja & 14 others v Nyandarua County Government & another (Employment and Labour Relations Cause 433 of 2016) [2023] KEELRC 2230 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEELRC 2230 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE 433 OF 2016
HS WASILWA, J
SEPTEMBER 28, 2023

BETWEEN

PAUL WAINANINA KARANJA & 14 OTHERS APPLICANT

AND

NYANDARUA COUNTY GOVERNMENT 1ST RESPONDENT

NYANDARUA COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

RULING

1. This Ruling is in respect of the Applicants' notice of motion dated May 24, 2023, filed pursuant to Rule 17 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* and section 30 of the *Contempt of Court Act, 2016*, seeking for the following Orders; -
 1. Spent.
 2. That this Honourable Court be pleased to serve a notice of not less than 30 days on the Respondents requiring them to show cause why contempt of Court proceedings should not be commenced against them in respect of the following acts of contempt;
 - a. Failure to settle the Advocates costs of the suit in ELRC Cause No 433 of 2016 up to date.
 - b. Failure to comply with the Orders of the Court in ELRC Judicial Review Miscellaneous Application number E007 of 2022 to date.
 3. That the costs of the Application be provided for.
2. The Applicant stated that the Application is premised on the fact that the Respondents have disobeyed the Court orders made by this Court on June 12, 2018 and on May 2, 2023, therefore that they are undermining the Authority of this Court.



3. It is stated that on June 12, 2018, this Court issued a certificate of costs against the Government and on April 16, 2019 a certificate of costs against Nyandarua County Government was issued for payment of Kshs 337,800, advocates taxed costs.
4. Despite service of the certificates of costs, the Respondents have failed to satisfy the said court Orders, necessitating the filling of Judicial Review Application seeking for an order of Mandamus to compel the Respondent to pay the said sums of money, which Court allowed in its Judgement of May 2, 2023 and awarded costs of the said JR to the Applicant herein.
5. That in the event the Respondents fail to show cause why they they should not be cited for contempt, the Respondent's officer Muigai Wainanina and Dr. James Mwangi Kungu be committed to civil jail for disobeying Court Orders.
6. The Applicant reiterated that the Respondent have greatly undermined the authority of this Court and urged this Court to maintained its sanctity by allowing the Application herein.
7. The Application is opposed by the Respondents who filed a joint affidavit sworn on June 12, 2023 by Frank Muchina, the 1st Respondent's County Secretary and Head of County Public Service. In his affidavit, the affiant stated that in the Judicial Review Application E007 of 2022, it was ascertained by this Court by its judgement of May 2, 2023 that the certificate of Costs issued on June 12, 2018 was not served upon the Respondents as alleged. Thus the allegations that the Respondents have disobeyed Court Orders issued on June 12, 2018 is without any basis.
8. He stated that the allegations that this Court ordered for payment of costs arising from the Certificate of costs of June 12, 2018 with interest from the date of filling the suit is misleading. Instead that this Court on the JR application awarded the Applicant costs of the said Application from the date of filling the said Application which was from December 22, 2022.
9. The affiant stated that the taxed costs of Kshs 337,800 that arose from this Suit is not disputed and has never been disputed, but can only be paid on the current financial year 2023/2024 which commenced on July 1, 2023 and not in the former financial year 2022/2023.
10. It is stated that the preparation of County budget is bound by the provisions of section 12 of *the Constitution of Kenya* and the *Public Finance Management Act* whereby the allocation and utilization of public funds entails preparation of annual budgets and disbursement of funds to County Government from the Treasury. He stated that the Respondents herein are not in control of the process and can only await allocation of the said money from the treasury in order to pay the Applicants.
11. The affiant reiterated that the Respondents have not deliberately disobeyed the Court Orders of this Court as alleged and stated that hey are only able to pay the Applicants the said taxed costs upon receiving money from the National treasury. He added that being that the current application is filed on May 24, 2023, the Applicants are misleading the Court on stating that the Respondents have refused to pay them, because the Respondents had expressly indicated their commitment to pay the said monies in financial year 2023/ 2024 in the JR Application.
12. He stated that the allegations that Muigai Wainaina and Dr. James Mwangi Kungu are department head is misleading and the prayer to have them committed to Civil jail is misconceived. He stated that no one at the Respondents employ should be committed to Civil Jail unjustly.
13. In view of the above, the affiant stated that they are willing to pay the Applicant costs but can only do so upon receiving funds from the National treasury which they have not received to date. He thus urged this Court to dismiss the Application hereon with costs.



14. In rejoinder, the Applicants filed a supplementary affidavit deposed upon on June 23, 2023 by Davidson Warutere Iregi, the advocate ceased of the conduct of this matter on behalf of the Applicants.
15. In the supplementary affidavit counsel reiterated the contents in support of the Notice of motion and stated that the Respondent are evading the main issue herein and the allegation that they are bound by the County budget is without any basis as held in the case of *Greenwood Printers & Stationeries Ltd v Independent Electoral and Boundaries Commissions* [2022] eklr.
16. The affiant reiterated that the Respondents should be compelled to pay the taxed costs, failure to which their officers be committed to Civil jail for contempt of Court Orders.
17. The Application was canvassed by written submissions, with the Applicant filing on the June 26, 2023 and the Respondent on the July 5, 2023.

Applicant's Submissions.

18. The Applicants submitted that the Respondents were served with Court Certificate of costs, which required them to pay the Applicants costs but despite service and subsequent Orders issued by this Court, they have refused to obey Court Orders, therefore necessitating the Application herein. To support this Application, the Applicant relied on the case of *Refrigerator and Kitchen Utensils Limited v G.P Shab and Others*, where the Court of Appeal, while committing contemnors to Civil Jail for 14 days stated that;-

“...it is essential for the maintenance of the rule of law and good order that the authority of and dignity of the Court be upheld at all times and that the Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors.”

19. They also relied on the case of *Mwaninki Silas Ngari V John S Akama & Another* [2015] eklr where the Court held that;-

“The Respondents having been served with the order of the Court should have allowed him access to his office and allow him some duties. In *Spoke v Banbury Board of health, Wood V.C* said:“The simple and only view is that an order must be obeyed”. That those who wish to get rid of that order must do so by the proper course, an appeal. So long as it exists the order must be obeyed, and obeyed to the letter”.

This same view is shared by J. M. Paterson in his book the 6th Edition of *Kerr on Injunction* in which he had this to say at page 668:-“An order for an Injunction must be implicitly observed and every diligence must be exercised to obey it to the letter. However, erroneously or irregularly obtained, the order must be implicitly observed so long as it exists. A party effected by court cannot disregard it or treat it as a nullity but have it discharged on a proper application.”

In *Stancmb v Trowbrudge UDC*, Warrington J stated:“If a person or corporation is restrained by Injunction from doing a particular act, that person or corporation commits a breach of the Injunction, and is liable for a process for contempt, if he or it in infact does the act, and if it is no answer to say that the act was not contumacious in the sense that, in doing it, there was no direct intention to disobey the order”.

20. Accordingly, that having been served with the Orders of the Court and being aware of such orders, the Respondent disobeyed this Court's Orders and therefore they should be compelled to show cause why



contempt proceedings should not be issued against them failure to which Mr. Muigai Wainanina and Dr. James Mwangi Kungu be committed to civil Jail for a period of 6 months.

Respondent's Submissions.

21. The Respondent submitted on whether the Notice to show cause, for contempt of Court proceedings to be commenced against the Respondents should be issued. It was argued that the Respondent have not refused to pay the Applicant advocates taxed costs of Kshs 337,800 but that they were served with the said Orders when the budgeting of the County has been completed and since they are bound by the provisions of Chapter 12 of *the Constitution* as read with the *Public Finance Management Act* on allocation and budgeting of funds by the County Government, they had to await further budgeting which was done in the current financial year 2023/ 2024.
22. It was submitted that the county funds being public funds cannot be disbursed without budgeting and following set down legal procedures, which procedures are applicable in all county Governments. That in this case, the Orders were granted on May 2, 2023, which require the County government of Nyandarua to budget for the said costs, which can only be done in the subsequent financial year being 2023/2024. He added that supplementary budget did not factor in any legal fees which remain pending for various services rendered by various law firms but that they shall be settled in the current financial year once they receive funds from the National treasury.
23. The Respondents maintained that they are willing to pay the said costs but will do so in the next financial year and on that basis urged this Court to disallow the Application herein for notice to show cause, because the cited Respondent's officers are not in a positions to obtain funds to pay the said money until the said money is released by the exchequer which is done in the month of August or thereabouts.
24. The Respondent listed the conditions that has to be met before an individual is held in contempt of Court by relying of the case of *Samuel M. N Mweru & Others v National Land Commission and 2 others* [2020] eKLR where the Court held that:-

“ Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book Contempt in Modern New Zealand who succinctly stated:-“There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

 - (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant.
 - (b) the defendant had knowledge of or proper notice of the terms of the order;
 - (c) the defendant has acted in breach of the terms of the order; and
 - (d) the defendant's conduct was deliberate.”
25. Accordingly, that the Respondent conduct in this matter was not deliberate to warrant its office being committed to civil jail as sought in the Application. He urged this Court to disallow the application herein and grant respondent time to follow the law in paying the Applicants Advocates' costs.
26. I have examined the averments and submissions of the parties herein.
27. The main contention herein is payment of costs to the applicants by the respondent following a ruling in JR Misc App No E007/2022.



28. The respondents have not denied that they owe the applicants the money in issue but indicate that the same was not budgeted for in the current budget circle.
29. That being the position the only order that this court can issue is to summon the respondents to show cause why action should not be taken against them for failure to pay with an indication on when they are going to pay.
30. Those are the orders of this court.
31. Costs to the applicant.

RULING DELIVERED VIRTUALLY THIS 28TH DAY OF SEPTEMBER, 2023.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Muthoni for Respondent – present

Maina for Applicant – present

Court Assistant – Fred

