



Kenya County Government Workers Union v Nairobi City Water and Sewerage Company; National Union of Water and Sewerage Employees (Objector) (CBA 34 of 2020) [2023] KEELRC 2152 (KLR) (21 September 2023) (Ruling)

Neutral citation: [2023] KEELRC 2152 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CBA 34 OF 2020
MA ONYANGO, J
SEPTEMBER 21, 2023**

BETWEEN

KENYA COUNTY GOVERNMENT WORKERS UNION UNION

AND

NAIROBI CITY WATER AND SEWERAGE COMPANY EMPLOYER

AND

NATIONAL UNION OF WATER AND SEWERAGE EMPLOYEES OBJECTOR

RULING

1. This is a ruling in respect an application dated April 21, 2021 by the Objector seeking the following orders;
 - i. That this application be certified as urgent and service be dispensed with and the application be heard *Ex parte* in the first instance
 - ii. That the Honourable court to issue summons against Hon Roba S Duba the General Secretary of the Kenya County Government Workers Union, Eng Nahashon Muguna, the Managing Director Nairobi City Water and Sewerage Company Limited, Mr Paul Omondi, Finance Director Nairobi City water and Sewerage Company Limited, Madam Monica Tuli, Human Resource Director, Nairobi City Water and Sewerage Company Limited and Mr Titus Tuitowek Human Resource Manager- Nairobi City Water and Sewerage Company Limited all do appear in court in person/s to show cause why the said court orders have not been complied with.



- iii. That the Honourable Court be pleased to grant leave for the union Kenya County Government Workers Union Secretary General Hon Roba S Duba to be served by substituted services of their last known address or through its email address
 - iv. That costs of this application be provided for
2. The application is supported by the affidavit of Elijah Otieno Awach, the National General Secretary of the Kenya Union of Water and Sewerage Employees, the Objector/Applicant in this suit. He states that the court delivered a ruling on January 15, 2021 confirming the orders of the Court of Appeal in Civil Appeal No 18 of 2013 barring the union from operating in the water sector and conducting any business with water companies more so representation and or recruitment; that the said orders were extracted and served on the Respondent on January 20, 2021 and the Respondent in return replied *vide* its letter dated February 9, 2021 confirming being aware of the ruling which ruling was being challenged by way of appeal and it wanted the court to give proper guidance; that the objector/applicant had recruited over 400 members into its union after the employees realised the directions of the court and the ruling, that there was mass exit from the union of Kenya County Government Workers Union and the said members opted to join KUWASE who served the Employer with the check off forms to enable the Employer commence deductions and remittances but in vain.
 3. It is deposed that this prompted the Applicant to again serve the said orders on both the Union and the Employer on 2nd and 3rd March 2021 respectively for purposes of commencing execution hence the instant application; that the union being aggrieved with the ruling of the court immediately applied for leave to appeal after the delivery of the ruling; that the court told the union that it had a right to appeal; that the union filed an application for stay on January 21, 2021 and Notice of Appeal on January 27, 2021.
 4. It is contended that the Union despite being served refused, ignored and or still disobeyed the said court order by remaining in the sector and continued to conduct elections of its branches and registering CBAs from water companies across the country with the last one which was stopped by the court when the Union attempted to register CBA No E022 of 2020 and election dispute No E095 of 2021 as consolidated with E083 of 2021 which is pending ruling on notice by Justice Nderi.
 5. The Applicant avers that it is in the interest of justice and equity that this court do issue summons on the aforementioned persons to show cause why they should not be committed to civil jail for disobeying the court orders issued on January 19, 2021.
 6. The application is opposed.
 7. Titus Tuitoek, the Human Resource Manager of the Employer/Respondent filed a Replying Affidavit and averred that he has not personally failed to comply with any directions issued by this court; that the Applicant herein is seeking to misdirect this court that orders were issued against the Respondent / Employer by the court in its ruling dated January 15, 2021 directing the Employer/Respondent to remit all employees dues to the Applicant herein; that the court in its ruling found that the employer did not have the capacity to enter into the recognition agreement dated February 18, 2013 during the pendency of a recognition agreement with the objector. That further, the CBA negotiated was in violation of previous and unchallenged decisions of this court in Cause No 439 of 2010 and CA No 213 of 2010 as confirmed by the Court of Appeal in Civil Appeal No 18 of 2013
 8. That the order dated January 19, 2021 served upon the Respondent/Employer herein stated that the court declined to register the CBA between Kenya County Government Workers Union and the Respondent/Employer herein as the parties lacked capacity to negotiate and execute a CBA.



9. That there were no directions and/or orders issued to the Respondent/Employer that justifies this contempt application and that the Union being aggrieved by the Court's ruling moved the court via a Notice of Motion application dated January 21, 2021 and filed on January 22, 2021 seeking for orders of stay of execution of the ruling and all consequential orders delivered on January 15, 2021 pending appeal.
10. That the application for stay was disposed of by way of written submissions and the court delivered its ruling on August 13, 2021; that the court in the said ruling stated that the court's ruling dated January 15, 2021 essentially declined to register the CBA as it did not order any party to do anything or abstain from doing anything.
11. That despite the lack of orders or directions from the court in respect to the rulings delivered, the Respondent/employer has been deducting and remitting dues for the confirmed members of the objector/applicant.
12. He stated that the Respondent/employer has been receiving applications from their employees wishing to join KUWASE and after conducting its confirmation process from the said employees, many are not aware of making these applications which raises the question whether KUWASE are making fraudulent application, so as to increase membership numbers and fraudulently collect union dues.
13. The Union opposed the application vide a Replying Affidavit dated 1st July 2021 and a further affidavit sworn on December 22, 2021 by Hon Roba Duba the General Secretary of the Union. It is deposed that the Union filed a Notice of Motion application dated January 21, 2021 seeking stay of execution of the Ruling delivered by this court on January 15, 2021 and the court in its ruling delivered on August 13, 2021 dismissed the application dated January 21, 2021; that in the said ruling, the court held that the grounds raised in the application dated January 21, 2021 for stay of execution do not warrant any stay orders and the court in no way ordered any of the parties to do anything or to abstain from doing anything or to pay any sum of money; that further, the court stated in paragraph 19 of its ruling delivered on January 15, 2021 that it essentially only declined to register the CBA and thus there is no risk of execution to warrant an order of stay.
14. It was the Union's position that there is no positive and enforceable order made by the court which can be the subject matter of the application for contempt. The court was thus urged to dismiss the application dated April 21, 2021 with costs.
15. The application was canvassed by way of written submissions. All the parties filed their submissions which I have considered.

Determination

16. The instant application is grounded on the ruling of this court delivered on January 15, 2021. In the ruling this Court declined to register the CBA between Kenya County Government Workers Union (KCGWU) and Nairobi City Water and Sewerage Company Limited on grounds that the CBA was negotiated without capacity and in violation of the unchallenged decisions of this court in Cause No 439 of 2010 and CA No 213 of 2010 as confirmed by the Court of Appeal in Civil Appeal No 18 of 2013.
17. The Applicant's grievance is that the employer continues to deduct union dues from its employees and remitting the same to the KCGWU after the court ruling on the registration of the CBA.
18. Contempt of court is in the nature of criminal proceedings and therefore a person seeking to cite another for contempt must prove that there were unequivocal orders of a court which have been



deliberately ignored by the alleged contemnor. In *Gatharia K Mutikika v Baharini 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, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.”

19. In the instant application what the applicant seeks to cite the alleged contemnors for is not the orders made by the court in this matter which was to decline to register the CBA but what would perhaps be a consequence of the court order.
20. The court order, as stated by the Employer, did not require the doing or restrain any person from doing anything. It was a negative order. It is incapable of being disobeyed.
21. I must also point out here that the result the Objector aims to achieve cannot be achieved through the instant proceedings which were about registration of a CBA. The Objector’s issue is non-remittance of union dues by the Employer which is a separate cause of action from the registration of the CBA which is the issue in dispute herein.
22. In the end, I find that the objector has not proved that there was a disobedience of this court’s orders by the alleged contemnors. The result is that the application fails and is accordingly dismissed. There shall be no orders for costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 21ST DAY OF SEPTEMBER, 2023

MAUREEN ONYANGO

JUDGE

