



**We v Technomed Limited (Employment and Labour Relations Petition
E176 of 2023) [2023] KEELRC 3402 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3402 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E176 OF 2023
AN MWAURE, J
DECEMBER 20, 2023**

BETWEEN

ANDRE VAN DER MER WE PETITIONER

AND

TECHNOMED LIMITED RESPONDENT

RULING

1. The petitioner/ applicant filed a notice of motion dated October 30, 2023 seeking orders that:
 1. The respondent be held in contempt of court orders issued by the hon. Lady Justice Anna Ngibuini Mwaure on October 4, 2023.
 2. The costs of this application be provided for.

Petitioner/Applicant Case

2. The petitioner/ applicant avers that he filed an application under certificate of urgency dated September 18, 2023, seeking an injunction be issued restraining the respondent from interfering with the petitioner's salary, car benefits and all other benefits pending hearing and determination of the application.
3. The petitioner/ applicant avers that the court did issue the said order on October 4, 2023 that he should continue to receive his salary and dues unless lawfully terminated.
4. The petitioner/ applicant avers that he served the orders and penal notice to the respondent on the same date, however, the respondent has never honoured the orders but proceeded to hold an unfair disciplinary hearing on October 25, 2023.
5. The petitioner/ applicant avers that the outcome of the hearing though faulted by abnormalities for not being fair, was issuance of a termination letter dated October 26, 2023 to the Petitioner.



6. The petitioner/ applicant avers that the letter insinuated he was terminated due to gross misconduct and as such the respondent was not to pay him any severance pay due to him.
7. The petitioner/ applicant avers that even though his contract has been terminated, the Respondent still owes him salary till the date of termination as was the particulars of the order issued.

Respondent's Case

8. In opposition to the application, the respondent filed his replying affidavit dated December 4, 2023.
9. The respondent avers that contempt of court orders being quasi criminal in nature, should be specific and directed at specific persons whom the consequence of contempt of court can be enforced; and even though the respondent is a legal person recognised in law, the consequence of the said contempt cannot be enforced specifically against it as a juristic person.
10. The respondent avers that the application did not specify the specific individual in the respondent's company to be subjected to the consequences of the said contempt of court.
11. The respondent avers that being a juristic person, it is incapable of being subjected to the consequences of the contempt without lifting its corporate veil.
12. The Respondent avers that in due compliance with this honourable court order of October 4, 2023, the respondent continued to pay the applicant his salary and afforded him all accruing privileges until his termination on October 26, 2023.
13. The respondent avers that the court order of October 4, 2023 was specific and only required the respondent pay the applicant's salaries unless otherwise lawfully terminated.
14. The respondent avers that on October 25, 2023, the petitioner attended a disciplinary hearing where he was found guilty of gross misconduct, breach of fiduciary duty and violation of employment laws and was summarily dismissed by the Respondent.
15. The respondent avers that it did not dispose the applicant the company car as well as company assets and even after his lawful termination, the applicant has continued to be in possession of the car despite repeated requests to return office assets, the applicant has made no effort to return the same to the respondent.
16. The respondent avers that the application is defeated by reason of the respondent's compliance with the court order of October 4, 2023 and his lawful termination of employment.

Analysis and Determination

17. In *Matilda Tenge Mwachia v Kenya Industrial Estate Limited & another* [2021] eKLR the court observed that:

“A contempt of court application is not an ordinary day application. It should be based on precise and cogent reasons necessitating the court to stop all else and address the erosion of the rule of law. An applicant in a contempt application has the onus to prove the existence of contempt and, in discharging this onus, the applicant must show the existence of contempt of court beyond reasonable doubt. The conduct of a respondent must be so gross that on the face of the given facts it is apparent there is contempt and the court has no option but to punish.



Indeed in contempt of court proceedings, the court must be satisfied beyond reasonable doubt that:

- (1) There was a refusal to comply with the subject order(s);
- (2) This refusal was wilful (deliberate); and
- (3) The deliberate refusal to comply must be mala fide, in other words there must be a complete absence of any kind of bona fide justification for the refusal to comply (even if this justification relied on is ultimately found to be objectively unreasonable or unsustainable).

.....

In this regard, there must be intentional, reckless, careless and total disregard of the order issued. The act of defiance even where a party is aware of the existence of the court order but opts to engage in flagrant disobedience.”

18. The court is satisfied the respondent has satisfied this court that it complied with the court order of October 4, 2023 by continuing to pay the applicant salary and benefits until his termination vide a letter dated October 26, 2023.
19. The court order to that effect was complied with.
20. The issue raised by the petitioner/ applicant that the termination of the petitioner was marred with abnormalities and therefore unfair and the respondent’s denial to pay his severance pay can only be determined in the hearing of the main petition.
21. The court therefore finds its order of November 23, 2023 are overtaken by events as the petitioner is already terminated from his employment. The issue on whether he is fairly terminated as already observed can only be determined at the full hearing.
22. As for this particular application to hold the respondent in contempt is not proved for reason given and is dismissed accordingly and in any event the respondent is not a person but a company. Contempt proceedings are against specific person not a company.
23. Due to the complexity of this suit the court will order respective parties to meet their costs of his application.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 20TH DAY OF DECEMBER, 2023.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice,



the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

