



**Ouma v Migori County Assembly Service Board & 2 others (Petition E032 of 2022) [2023] KEELRC 3427 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3427 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
PETITION E032 OF 2022  
CN BAARI, J  
DECEMBER 19, 2023**

**BETWEEN**

**EVANS OGUTU OUMA ..... PETITIONER**

**AND**

**MIGORI COUNTY ASSEMBLY SERVICE BOARD ..... 1<sup>ST</sup> RESPONDENT**

**MIGORI COUNTY ASSEMBLY ..... 2<sup>ND</sup> RESPONDENT**

**VINCENTIA AWINO KIONGE ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before court is the petitioner's application dated October 19, 2023, brought under Certificate of Urgency seeking the following reliefs: -
  - i. Spent.
  - ii. Spent
  - iii. That pending hearing and determination of the petition herein dated July 4, 2022, this honourable court be pleased to issue an order suspending the operations and/or effects of the respondents' show cause letter dated October 6, 2023.
  - iv. The honourable court be pleased to cite and punish by issuance of committal to civil jail against the Contemnors for disobeying court orders issued by this honourable court on July 5, 2022, directly that status quo be maintained pending hearing of the application.
  - v. That the honourable court be pleased to direct the respondents to purge the contempt of orders of July 5, 2022 by withdrawing the show cause letter dated October 6, 2023.
  - vi. That the costs of this application be borne by the respondents/contemnors.



2. The prayers sought are anchored on the grounds set out in the face of the application, the crux being that this court issued a status quo order on July 5, 2022, which order, the respondents had knowledge of, but proceeded to issue the petitioner with a show cause letter dated October 6, 2023, in flagrant disobedience of that order.
3. The petitioner further avers that the actions of the respondents have compromised the status quo order and which has brought the dignity of the court under attack, and continues to be prejudiced by the respondents' action.
4. The applicant/petitioner avers that he continues to face a vicious cycle of endless, vengeful and unlawful disciplinary process, and hence facing real risk of unlawful loss of livelihood. It is his assertion that if the disobedience is not punished, he stands to suffer substantial loss.
5. The respondents opposed the application vide a replying affidavit sworn on 25<sup>th</sup> October, 2023, by one Vincentia Awino Kionge. It is the respondents' case that there are no active orders dated July 5, 2022, and further that the application giving rise to the status quo orders was heard, determined and the application dismissed.
6. It is the respondents' assertion that this court does not have jurisdiction to entertain the instant application and that it has since filed a notice of preliminary objection against the application and petition.
7. The respondents further aver that the orders of July 5, 2022, did not grant the applicant disciplinary immunity over his employer and having been invited to show cause, the most honourable thing to do is for him to appear and defend himself.
7. Parties urged the application orally on November 14, 2023, wherein, they reiterated their pleadings.

### **Analysis and Determination**

8. I have considered the petitioner's application, his grounds, affidavit and further affidavit in support, together with the respondents' replying affidavit in opposition and the oral submissions. The issues for determination are: -
  - i. Whether to stay the effect of the show cause letter issued to the petitioner/Application dated October 6, 2023;
  - ii. Whether the respondents are guilty of contempt of court.

### **Whether to stay the effect of the show cause letter issued to the petitioner/application dated October 6, 2023.**

9. On whether to stay the effect of the show cause letter issued to the applicant/petitioner, the general rule is that discipline of employees at the work place is the employer's prerogative and which should be exercised without interference by third parties.
10. It is however within the jurisdiction of this court as conferred under section 12 of the [Employment and Labour Relations Court Act](#), to grant interim orders including injunctions in cases of urgency. The duty of the court in this respect, is to stop a process started with ulterior motive or one based on outright illegality.
11. The show cause letter issued to the petitioner/applicant lists charges levelled against him and for which he is required to respond. Nothing shows that there is an ulterior motive in the disciplinary process as to warrant stay of the same.



12. I further note that the petitioner was granted similar orders over a year ago, after which, he did not deem it necessary to prosecute his petition and which remains unprosecuted to date.
13. In the premise, I find the petitioner's prayer for stay of the disciplinary process devoid of merit and is hereby denied.

**Whether the respondents are guilty of contempt of court.**

14. 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.”
15. 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; were binding on the defendant; the defendant had knowledge of or proper notice of the terms of the order, and the defendant has acted in breach of the terms of the order and the defendant's conduct was deliberate.
16. 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 E.R. (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....”
17. The petitioner/applicant seeks to enforce status quo orders issued by this court on July 5, 2022. The order reads as follows: -

“That the status quo as at June 8, 2022 be maintained pending the hearing of this application inter parties.”
18. From the record, the application that gave rise to the status quo order, was heard and determined vide a ruling rendered on October 6, 2022. This in itself, is confirmation that the status quo orders sought to be enforced through the instant application are not live.
19. Further, in determining the application of July 7, 2022, vide the ruling aforesaid, the court issued orders against the respondents letter of July 4, 2022, until the petition herein is heard and determined.
20. The instant motion concerns yet another letter dated October 6, 2023, which I must state is not subject of the orders of October 6, 2022.
21. In the circumstances, I return that the orders of July 5, 2022 are not live, and hence one cannot be accused of disobeying inexistent orders. The prayer to cite the respondents with contempt of court fails.
22. In whole, the petitioner/applicant's motion dated October 19, 2023, fails and is dismissed with costs to the respondents.
23. Orders accordingly.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 19<sup>TH</sup>  
DAY OF DECEMBER, 2023.**

**CHRISTINE N. BAARI**

**JUDGE**

Appearance:

N/A for the petitioner/applicant.

Mr. Otieno Obiero Present for the respondents

Ms. Laura – C/A

