



Kenya Aviation Workers Union v Kenya Airports Authority (Employment and Labour Relations Cause E913 of 2022) [2023] KEELRC 3290 (KLR) (14 December 2023) (Ruling)

Neutral citation: [2023] KEELRC 3290 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E913 OF 2022**

**BOM MANANI, J
DECEMBER 14, 2023**

**BETWEEN
THE KENYA AVIATION WORKERS UNION CLAIMANT
AND
THE KENYA AIRPORTS AUTHORITY RESPONDENT**

RULING

1. On 16th March 2023, the court entered judgment for the Claimant in which it ordered the Respondent to deduct and remit to the Claimant union dues and agency fees for the period from September 2022 onwards for the individuals whose particulars the Claimant had furnished the Respondent. The record shows that the order was thereafter extracted on 23rd March 2023.
2. On 5th May 2023, the Claimant filed an application for contempt of court. According to the Claimant, the Respondent has defied the aforesaid court orders by failing to deduct and remit the union dues as directed.
3. The Respondent has not filed a response to the application. There is neither a replying affidavit nor grounds of opposition filed to the motion. Rule 17(9) of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 requires a party who wishes to oppose an application that is before court to file a replying affidavit or grounds of opposition.
4. Without filing a response to the application, the Respondent went ahead to file submissions on the application. In the submissions, the Respondent contends that one of the officers who has been cited for contempt is no longer in service. The Respondent also contends that the other officer, Antony Njagi, cannot be condemned to shoulder personal responsibility for disobedience of the court order.
5. The Respondent has also gone into issues regarding the regularity of the decision that is said to have been disobeyed. It is the Respondent's position that it was not served with summons to enter appearance. Therefore the case proceeded irregularly.



6. The court notes that the Respondent has an application for setting aside of the court's judgment. However, the same is yet to be prosecuted. Therefore, the question whether summons to enter appearance were not served cannot be considered in the application for contempt. It has to await the hearing of the application for setting aside judgment.
7. Importantly, the Respondent cannot oppose the application for contempt by filing submission without first filing either grounds of opposition or a replying affidavit to the application. Therefore and as matters stand, the Claimant's application dated 5th May 2023 remains unopposed.
8. Noteworthy, the Respondent has not denied knowledge of the court's judgment. Indeed, the fact that it (the Respondent) has applied to set aside the judgment is evidence of the fact that it (the Respondent) is aware of the decision.
9. The application to reopen the case was filed on 18th May 2023. In effect, the Respondent has been aware of this decision since May 2023. Yet, it has steadfastly avoided to give meaning to it. This is in obvious contempt of the court's order.
10. I am alive to the fact that the Respondent has a right to be heard. For that reason, it (the Respondent) has every right to seek to re-open the proceedings.
11. However, this cannot be a license to disregard an existing court order. Whether irregularly or regularly obtained, a court order remains valid until it is set aside. As long as it remains, parties have the singular duty to obey it.
12. This point is made in *Republic v County Government of Kitui Ex Parte Fairplan Systems Limited* [2022] eKLR when the court quoting with approval other decisions expressed itself on the matter as follows:-

“It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it until that order was discharged, and disobedience of such an order would, as a general rule, result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt. A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it.....”
13. The Respondent acts through its Managing Director and Board of Directors. The Managing Director implements the resolutions of the Board of Directors in addition to overseeing the day to day activities of the Respondent. These two are responsible for the Respondent's actions and or inactions.
14. Being aware of the existence of the court order and having failed to implement it, the Respondent's management, in particular, its Managing Director and Board of Directors, are in contempt of the order. However, since the application has cited only the Managing Director for contempt, the court orders will be directed against this officer.
15. Consequently, I find that the Respondent's Managing Director (whether acting or substantive) is in contempt of the court's decision that was delivered on 16th May 2023. It is so declared.
16. However, in order not to prejudice the application for re-opening of the cause, I will give the Respondent the opportunity to purge the contempt to enable the hearing of the pending application. In the event of refusal to purge the contempt as directed hereunder, this matter shall be set down for sentencing of the Respondent's aforesaid officer.



Determination

17. I therefore find and order as follows:-

- a. The Respondent is in contempt of this court's decision that was delivered on 16th May 2023.
- b. The Respondent is ordered to purge the contempt by depositing with the Claimant the Trade Union dues and agency fees in question within 10 days of this order.
- c. Alternately, if the Respondent for any reasons believes that the amounts are not due to the Claimant, it must deposit the dues in question into an escrow account to be set up in the joint names of the parties within 21 days of this order pending further directions by the court.
- d. For purposes of this order and in view of the forthcoming Christmas break, computation of time for purposes of compliance with the orders in b) and c) above shall exclude the period that falls between 21st of December 2023 and 13th of January 2024.
- e. Should the Respondent defy the above order, its Managing Director (whether acting or substantive) will be sentenced for contempt of court.
- f. For the avoidance of doubt, the Respondent shall have no right of audience before court until the aforesaid contempt is purged.

DATED, SIGNED AND DELIVERED ON THE 14TH DAY OF DECEMBER, 2023

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M. MANANI

JUDGE

