



Chirchir & 32 others v Jonathan Siwanyang, County Secretary West Pokot County Government & 2 others (Cause E001 of 2023) [2023] KEELRC 3346 (KLR) (11 December 2023) (Ruling)

Neutral citation: [2023] KEELRC 3346 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
CAUSE E001 OF 2023
MA ONYANGO, J
DECEMBER 11, 2023**

BETWEEN

DOREEN JEMOSOP CHIRCHIR & 32 OTHERS APPLICANT

AND

JONATHAN SIWANYANG, COUNTY SECRETARY WEST POKOT COUNTY GOVERNMENT 1ST CONTEMNOR

ROBERT KATINA, COUNTY ATTORNEY WEST POKOT COUNTY GOVERNMENT 2ND CONTEMNOR

FELIX MADAK, HUMAN RESOURCE DEPARTMENT OF WATER AND ENVIRONMENT WEST POKOT COUNTY 3RD CONTEMNOR

RULING

1. Vide a notice of motion dated March 17, 2023 and filed on March 22, 2023, the applicants seek the following orders.
 - a. That service of this application be dispensed with in the first instance and this committal application be certified as urgent to be heard on priority basis.
 - b. That the Contemnors namely Jonathan Siwanyang, County Secretary West Pokot County Government, Robert Katina County Attorney West Pokot County, Felix Madaka Human Resource Department of Water and Environment West Pokot County, Leonard Kamsit Chief Officer Department of Water and Environment and Naomi Lemreng Chief Officer Agriculture be committed to civil jail for a period not exceeding six (6) months for contempt of the orders of the Court orders issued on February 15, 2023.
 - c. That the contemnors be restrained by an order of injunction from harassing, causing the harassing and/or ejection of the claimants from their workstations.



- d. That the claimants/ applicants be reinstated back to office pending the hearing and determination of the claim.
 - e. That the contemnors be punished in any such manner as the court deems fit in the circumstances for contempt of court.
 - f. That the contemnors to bear the costs of this contempt proceedings
2. The application is anchored on the grounds on the face thereof and the supporting affidavit of Doreen Jemosop Chirchir the 1st applicant.
 3. The applicants aver that the alleged contemnors have willfully disobeyed the orders of this court of February 15, 2023.
 4. The said orders are reproduced below:
 - a. That the application is certified as urgent and be heard exparte in the first instance and service be dispensed with forthwith.
 - b. That the application dated February 7, 2023 be served on the Respondents.
 - c. That the applicants to file a response within 14 days of service.
 - d. That pending the hearing and determination of this Application interpartes, a Temporary order of Injunction be and is hereby issued staying the coming into effect of the one month termination notices dated 3rd January, 2023 issued to the claimants as from January 16, 2023.
 - e. That matter be mentioned on 20/03/2023 for directions on hearing and disposal.
 5. In the affidavit the affiant states that the respondents were duly served with court orders on February 16, 2023.
 6. That when the applicants presented themselves to their work stations from February 17, 2023 to February 22, 2023 they were informed by the contemnors that they are not allowed to access their work stations and told to leave the premises with immediate effect failing which security would be called to eject them forcefully.
 7. The affiant deposes that the applicants are desirous of being reinstated and that the actions of the contemnors amount to defiance of the court orders of February 15, 2023 which actions undermine the authority and dignity of this court.
 8. In response if the application, the alleged contemnors filed a replying affidavit of Jonathan Siwanyang, the County Secretary of West Pokot County Government who states that he is authorized to swear the affidavit on behalf of all the alleged contemnors.
 9. He deposes that he was aware that the applicants were issued with one-month termination notices dated January 3, 2020, that the applicants filed one, month termination notices dated January 3, 2023, that the applicants filed an application before this court some time in February 2023 and obtained orders staying the coming into effect of the termination notices.
 10. Mr. Siwanyang further deposes that the orders were brought to the attention of the respondents for compliance and as a law abiding citizen the applicants advised the County Public Service Board to suspend the coming into effect of the termination notices pending further directions from the advocates representing the county government in the matter.



11. The affiant depones that he is aware that the applicants accessed their respective work stations and undertook their official duties as expected.
12. That none of the applicants were locked out or denied access to their respective work stations. That no evidence has been adduced to prove the same.
13. The affiant depones that he was advised by the 3rd alleged contemnor, Mr Felix Madak of the Human Resources Department who is supervisor of the applicants that the applicants stopped going to work abruptly and absconded duty without any cause.
14. Mr Siwanyang denies that the alleged contemnors are in contempt of court orders as alleged by the applicants. He prayed that the application be dismissed.
15. The application was disposed of by way of written submissions and fixed for highlighting of submissions on July 24, 2023. Both parties filed submissions which were highlighted in Court by the advocates for the Respondents.

Analysis and Determination

16. Having considered the application, the grounds and affidavit in support thereof as well as the affidavit in opposition thereof and having further considered the rival submissions filed by the parties, the issues for determination are whether the applicants have proved that the respondents disobeyed this court's orders of February 15, 2023 and if they are entitled to the orders sought.
17. The reasons why courts punish for contempt were well articulated by Ndolo J. in her decision in *Teachers Service Commission v Kenya National Union of Teachers & 2 others* [2003] eKLR where the Judge stated:

“The reason why Courts will punish for contempt of Court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the Court or even the personal ego of the presiding Judge. Neither is it about placating the Applicant who moves the Court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the Court, the avenues for challenging it are also set out in the law. Defiance is not an option”

18. The same sentiments were expressed by Lenaola J (as he then was) in *Kenya Tea Growers Association v Francis Atwoli & 5 others* [2012] where he cited with approval the case of *Clarke & others v Chadburn & others* [1985] 1 ALL ER(PC) 211 wherein the Court observed:

“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... even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it”



19. The two authorities cited above demonstrate the reasons why contempt is treated as a criminal offence for which offenders are liable to either imprisonment or a fine or both. Every person who is aware of a court order is expected to comply whether they agree with it or not. If they are unhappy with the orders the law gives them options to apply to the same court to set aside or vary the orders, or to appeal against the orders. There is no other option. The court must however be moved for it to punish the persons who have disobeyed the court's orders by way of a contempt application, as has been done by the applicants herein.
20. For an applicant to prove contempt, the following elements must be established:
 - 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. (see *Kimanya Kamau (suing as the personal representative of the Estate of Gideon Gitundu Kimere (deceased) v Francis Mwangi Mwaura & another* [2008] eKLR; *Cicil Mutler v Jackson Njeru & another* [2017] eKLR)
21. In the instant application the Respondents have admitted that they had knowledge of this court's orders. They have not indicated that the orders were ambiguous. In the replying affidavit of Jonathan Siwanyang at Paragraphs 5, 6, and 7 he states thus:
 5. I am aware that on February 14, 2023 this honourable court issued directions on the application and further issued an order of injunction staying the coming into effect of the one month termination notices dated January 3, 2023.
 6. I am aware that the said orders were brought to our attention for compliance.
 7. As a law-abiding institution and in compliance with the aforementioned orders, I advised the County Public Service Board to suspend the coming into effect those notices pending further directions from the advocates representing the County Government in the matter.
22. The applicants having confirmed knowledge of the orders and their understanding of the same, the only elements of contempt that the court has to determine are whether the applicant's disobeyed the orders and if their conduct was deliberate.
23. The respondents have strenuously contested the main evidence in support of the application being the electronic evidence produced by the applicants which they aver were obtained illegally and are not admissible. They have further stated that the electronic evidence has not been certified in the manner provided in the *Evidence Act*.
24. Although electronic evidence in the form of CDS are on the file, it is not clear how the same were filed as the affidavit on record filed with the application does not make any reference to the same.
25. The applicants sought and were granted leave to file a further affidavit which further affidavit is not on the court record. It is the presumption of the court that the CDS were to be produced in the further affidavit. It is thus not clear how the respondents obtained copies of the same as they have made extensive and elaborate submissions on the admissibility of the electronic evidence.
26. The standard of proof required in cases of contempt is higher than in civil cases although not at the same level of beyond reasonable doubt as in criminal cases.



27. As was stated *Gatharia K Mutikika v Baharini Farai Ltd* [1985] KLR 227, In *Gatharia K Mutikika v Baharini Farm Ltd* [1985] KLR 227:

“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.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be heard to process contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject..... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and on an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

28. In the instant case I am convinced from the evidence on record that the applicants were prevented from accessing their work places as directed in the order. What they have not proved is by whom.
29. The applicants did not state what part each or any of the alleged contemnors played in the disobedience of the court orders. At paragraphs 4 and 5 of the affidavit in support of the application Ms. Chirchir states:

That although the claimants have been fulfilling their obligations as per their mandate, the respondents have unlawfully failed to pay them fair remuneration as per the letters of offer, illegally recalled funds already credited in the bank accounts of the claimants being salary owed and surcharging them on already paid out salaries without any lawful justification and in blatant breach of the law.

That the claimants have severally sought an explanation from the respondents for the reversing of salaries already credited, surcharging and the failure to remit salary at the end of every month worked pursuant to their contractual agreements but the respondents have in a show of impunity ignored the claimants' concerns and even issued one-month termination notices

30. Without identifying the part played by each of the alleged contemptuous, the court cannot condemn them only by virtue of the office that they hold or by virtue of the fact that it was their responsibility to enforce the court order.
31. Contempt being an offence for which an individual may be denied their liberty and/or condemned to pay a fine, must be specifically proved against each of the cited persons.
32. For the foregoing reasons I find that the applicants have not proved that any of the alleged contemnors cited in the application is guilty of disobedience of this court's orders of February 15, 2023. The application is accordingly dismissed with no orders as to costs.



33. The County Secretary is however directed to personally ensure that the orders of this court issued on February 15, 2023 are obeyed by the respondents failing which the court will not shy away from holding him in contempt should there be another application similar to the present one.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 11TH DAY OF DECEMBER, 2023.

M. ONYANGO

JUDGE

