



**Adan & 2 others (Suing on their Own Behalf and on Behalf of 76 other aggrieved Employees of the Respondent) v Wajir Wasco Limited alias Wajir Water & Sewerage Company Limited & another (Petition E076 of 2023) [2023] KEELRC 3226 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3226 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**PETITION E076 OF 2023**  
**B ONGAYA, J**  
**DECEMBER 7, 2023**  
**IN THE MATTER OF THE CONTRAVENTION OF**  
**FUNDAMENTAL RIGHTS AND FREEDOMS**  
**IN THE MATTER OF ARTICLES 1, 2, 10, 19, 20, 21, 22, 23 (3)**  
**27, 28, 28, 29, 30, 41, 47 & 258 OF THE CONSTITUTION OF**  
**KENYA**  
**AND**  
**IN THE MATTER OF SECTION 4 OF THE FAIR**  
**ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**  
**AND**  
**IN THE IN THE MATTER OF SECTION 5 & 17 OF THE**  
**EMPLOYMENT ACT**  
**AND**  
**IN THE MATTER OF UNCONSTITUTIONALITY AND**  
**UNLAWFUL WITHHOLDING AND/OR STOPPAGE OF**  
**SALARY & BENEFITS OF THE EMPLOYEES OF THE**  
**WAJIR WASCO LIMITED**

**BETWEEN**

**SAFI ABDULLAHI ADAN ..... 1<sup>ST</sup> PETITIONER**  
**ABDI JIKRE MOHAMED ..... 2<sup>ND</sup> PETITIONER**  
**MARYAN FARAH SALAH ..... 3<sup>RD</sup> PETITIONER**



**SUING ON THEIR OWN BEHALF AND ON BEHALF OF 76 OTHER  
AGGRIEVED EMPLOYEES OF THE RESPONDENT**

**AND**

**WAJIR WASCO LIMITED ALIAS WAJIR WATER & SEWERAGE COMPANY  
LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF WAJIR ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This Honourable Court in its ruling delivered on 25.05.2023 gave the following orders:
  - a. The preliminary objection is dismissed with costs in the cause.
  - b. That pending the hearing and determination of the petition, a conservatory order is hereby issued directing the 1<sup>st</sup> respondent and its agents to pay the petitioners together with other aggrieved employees all withheld salaries from the month of October, 2022 to date and further directing the 1<sup>st</sup> respondent to continue paying the petitioners and the aggrieved employees their salaries as and when the fall due without any further delay for as long as the respective contracts of service are in place.
  - c. Parties to set down the petition for mention for directions for the expeditious hearing and determination.
  - d. The costs of the application in the cause.
2. Subsequently, the petitioners through the firm of Kusow & Company Advocates filed a notice of motion application dated 12.06.2023. The application was under sections 12 & 13 of the [Employment and Labour Relations Court Act](#); section 5 of the [Judicature Act](#) and all enabling provisions of the law. The application was based on the supporting affidavit of Safi Abdullahi Adan, the 1<sup>st</sup> petitioner herein. The application was for prayers:
  - a. This application be certified urgent and heard ex-parte in the first instance for purpose of prayer No. 2 (Spent)
  - b. This Honourable Court do issue summons to the Managing Director of the 1<sup>st</sup> Respondent herein one Roble Ahmend Subow to attend before the Court and show cause why he should not be cited and held in contempt for the willful and continued disobedience of the orders issued on 25<sup>th</sup> May, 2023 and committed to civil jail until the 1<sup>st</sup> Respondent has purged the contempt.
  - c. This Honourable Court be pleased to find the 1<sup>st</sup> Respondent and its Managing Director in willful and continued contempt of the Court order issued on 25<sup>th</sup> May, 2023 and they are liable for punishment for contempt of court.
  - d. Upon citation for contempt, the Managing Director of the 1<sup>st</sup> Respondent one Roble Ahmed Subow be committed to civil jail for a period of six months or to be punished in any other way the Court deems fit including payment of fine, suspension and/or removal from office for the willful disobedience of this Honourable Court's order issued on 25<sup>th</sup> May, 2023.



- e. This Honourable Court do issue any other or further orders necessary to safeguard its authority, enforce its jurisdiction and advance the interest of justice.
  - f. Costs of this application be provided for.
3. The application was based upon the following grounds:
- a. On 25<sup>th</sup> May, 2023, this Honourable Court determined the petitioners/applicants' application dated 17<sup>th</sup> April, 2023 and ordered inter alia that;
    - “pending the hearing and determination of the petition, a conservatory order is hereby issued directing the 1<sup>st</sup> respondent and its agents to pay the petitioners together with other aggrieved employees all withheld salaries from the month of October 2022 to date and further directing the 1<sup>st</sup> respondent to continue paying the petitioners and the aggrieved employees their salaries as and when the fall due without any further delay for as long as the respective contracts of service are in place.”
  - b. When the ruling was delivered and the order issued, the advocates on record for the respondents were present in court and thus had knowledge of the order and by extension the 1<sup>st</sup> respondent.
  - c. The order was duly extracted and again served on the respondent's advocates on 26<sup>th</sup> May, 2023.
  - d. The order was again served on the 1<sup>st</sup> respondent's Managing Director both through WhatsApp and by affixing the order on the door of his office which was closed on 29<sup>th</sup> May, 2023.
  - e. The Managing Director of the 1<sup>st</sup> respondent herein, one Roble Subow who is in charge of the management of human, financial and capital resources and operations of the 1<sup>st</sup> respondent and has contemptuously ignored compliance with the order by failing to pay all withheld salaries from October, 2022 to date as they fell due despite being served with the court order and further in spite of the fact that the petitioners and aggrieved employees attending to lawful duties.
  - f. The terms of the Court order were clear and unambiguous and the 1<sup>st</sup> respondent and its agents had proper notice of the same and there is no justification for their disobedience of the order. If indeed the 1<sup>st</sup> respondent and its agents had a genuine difficulty in implementing the court order, noting precluded them from coming back to the court to seek a variation as would have been necessary and appropriate.
  - g. The 1<sup>st</sup> respondent has paid salaries for May, 2023 to all other employees of the 1<sup>st</sup> respondent while contemptuously leaving out the petitioners and the aggrieved employees in violation of the court order.
  - h. The court order is valid and still in force as it was neither stayed nor set aside and/or discharged.
  - i. The 1<sup>st</sup> respondent's conduct is contemptuous, deliberate and calculated to bring the court into disrepute and interfere with the rule of law and due administration of justice. The conduct undermines the authority and dignity of this Honourable Court and must be dealt with firmly.
  - j. The 1<sup>st</sup> respondent's disobedience of the court order continues to prejudice and devastate the petitioners and the aggrieved employees as the salaries are the sole source of their livelihood and they are unable to feed their families even as they report to work every day.



- k. Unless this Honourable Court takes a decisive step to stamp its authority, the Honourable Court will lose its credibility and the petitioners will suffer a great injustice and prejudice.
- l. It is in the interest of justice and the rule of law that this application be allowed.
4. In response to the application the 1<sup>st</sup> respondent filed a replying affidavit sworn by Roble Ahmed, its Managing Director on 24.07.2023, in which he avers that the 1<sup>st</sup> respondent, being aggrieved lodged an appeal to the Court's ruling delivered on 25.05.2023 in the Court of Appeal being Civil Appeal No. E396 of 2023.
  5. That the appeal was filed alongside an application for stay of execution of the Honourable Court's ruling, which application is pending final determination as parties have filed their respective submissions to the application.
  6. The 1<sup>st</sup> respondent denies willful disobedience to the court order and attributes failure of compliance on the lack of funds. The affiant maintains that it is funded directly by the 2<sup>nd</sup> respondent and is dependent on monies allocated to it.
  7. In their brief rejoinder, the petitioner filed a supplementary affidavit sworn by Safi Abdullahi Adan, the 1<sup>st</sup> petitioner herein, on 1.11.2023. It was stated that the Court order was duly served and has not been complied with by the respondents as the petitioners and aggrieved employee's salaries remain unpaid for more than one year since October 2022.
  8. That the appeal lodged in the Court of Appeal does not justify the respondents' disobedience as the appeal does not operate as an automatic stay and further that the application of stay of execution and proceedings was scheduled for highlighting of submissions on 18.10.2023 and the respondents were denied interim stay.
  9. The petitioners state that in absence of any stay orders the Court's Orders issued on 25.05.2023 stand, are in force and the continued failure to compliance is contemptuous and ought to be punished.
  10. The petitioners further state that the appeal is not arguable and terms it as a delaying tactic curved to denying the applicants from enjoying the orders in place.
  11. The Court has considered the parties' respective submissions and material on record and determines the matters in dispute as follows.
  12. To answer the 1<sup>st</sup> issue, the Court returns that the 1<sup>st</sup> respondent's cited CEO does not deny knowledge of the Court orders. He has in fact confirmed that they have appealed against the ruling and orders said to have been disobeyed.
  13. To answer the 2<sup>nd</sup> issue, while there is an application for stay of execution said to be pending before the Court of Appeal, there is no order of stay of execution pending appeal or stay of the proceedings herein.
  14. To answer the 3<sup>rd</sup> issue, the reason advanced is that the respondents have not obeyed the Court orders is that they alleged they do not have the resources to pay. In the circumstances, while a finding for contempt might appear apparent, the 1<sup>st</sup> respondent is given an opportunity to file an affidavit showing the financial status and the steps taken to obtain the 2<sup>nd</sup> respondent's approval and further, the steps taken to identify the ghost workers of the petitioners and other workers represented by the petitioners.
  15. The Court further considers that the orders were directed at the 1<sup>st</sup> respondent and not its Managing Director. It should be possible to enforce the orders against the 1<sup>st</sup> respondent and the managing director to be cited only if shown he has by himself impeded the compliance with the orders. An order



such as sequestration of the 1<sup>st</sup> respondent's property or garnishee proceedings would be available. While service upon the CEO is sufficient evidence the 1<sup>st</sup> respondent company is aware of the orders, it should be possible to initiate direct execution against the company. No reason has been shown why the execution should not be directly against the 1<sup>st</sup> respondent.

In conclusion, the application is hereby dismissed with costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7<sup>TH</sup> DECEMBER, 2023.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

