



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

**CAUSE NO. E693 OF 2020**

*(Before Hon. Lady Justice Maureen Onyango)*

**BANKING, INSURANCE AND FINANCE UNION.....APPLICANT/CLAIMANT**

**VERSUS**

**COUNTY SACCO SOCIETY LIMITED.....RESPONDENT**

**RULING**

1. Vide an application dated 16<sup>th</sup> August 2021, the Claimant/Applicant seeks the following orders –

i) *Spent.*

ii) *THAT (i) JOE VICTOR IRERI (CEO), (ii) HENRY NJUE MBOGO (CHAIRMAN), (iii) BONIFACE MWANIKI NJIRU (TREASURER), SETH MBOGO ELIAS (VICE-CHAIRMAN) and (IV) JOHN NJERU MBOGO (HONORARY SECRETARY) be committed to civil jail for a term of six (6) months for contempt of court for having deliberately and wilfully disobeyed orders of this court issued on 29<sup>th</sup> October 2020 and consent orders signed by both parties on 18<sup>th</sup> March 2021 and registered in court on 19/5/2021.*

iii) *THAT the court do order for immediate re-instatement of Jane Njoki Nyaga in her former position.*

iv) *THAT the court do order for payment of contributions to RBA of stopped Provident fund of Mathews Muriithi, Patrick Munene, Lenny Gichovi and Michael Murangiri.*

v) *THAT the court do order for payment of withdrawn Responsibility allowance to Anthony Murithi Njue, Robert Nyaga Joshua, Jane Njoki Nyaga and Margaret Muthoni Njagi.*

vi) *THAT the court do issue an order stopping all forms of harassments, victimizations, threats and intimidations towards unionisable employees by issuing disciplinary letters to investigate how they were employed and asking them to withdraw from the union in order to be employed afresh and to get promotions.*

vii) *THAT the court do issue an order stopping any intended action arising out of the illegal/irregular disciplinary hearings until the hearing and determination of this matter.*

viii) *THAT this Honourable Court be pleased to issue any other or further orders geared towards protecting the dignity and authority of the court.*

ix) *THAT costs of this Application be provided for.*

2. The Respondent opposes the application through the replying affidavit of HENRY NJUGE MBOGO.

3. The Respondent states that the application is made in bad faith as the consent order adopted by the Court has not been disobeyed by the Respondent.

4. The Respondent denies issuing memos to its staff members increasing loan interest from 12% to 16% as alleged by the Claimant. It states that the document relied upon by the Claimant is a resolution of the Credit Committee of the Respondent which has never been approved by

the Board and therefore has never been implemented.

5. The Respondent avers that the employees alleged to have resigned due to harassment, threats, intimidation and victimisation by the Respondent, that is, Manasses Muthomi, Margaret Muthoni, Lucy Wawira and Purity Wawira all resigned voluntarily to pursue other interests or for greener pastures.

6. The Respondent denies that Jackline Mumbi Njeru was asked to resign from the Union to keep her job. That on the contrary, she was summoned by the Staff Advisory Committee of the Respondent over disciplinary issues. An extract of the minutes have been appended to the replying affidavit as Annexure HNM"2".

7. The Respondent denies summoning Michael Muraguri Mwaniki and asking him to resign as alleged in the Claimant's application.

8. The Respondent denies averments made by the Claimant in respect of Mathews Muriithi, Jane Njoki and Robert Nyaga. It has been explained at length in the affidavit what transpired in respect of the three employees.

9. The Respondent denies the allegations in respect of Pauline Kirimi Iireri. The Respondent avers that she admitted the allegations against her of absenteeism, shortages and complaints made against her by the respondent.

10. It is further the Respondent's averment that Daniel Muchangi Njoki, Monica Wanjiru and Hellen Wangai Njiru, had all falsified their qualifications as a result of which they were employed in positions that they did not qualify for.

11. The Respondent denies committing any acts or omissions intended to defeat the CBA or harassing any unionisable employees. The Respondent avers that it entered into the consent that was adopted by the Court freely and are committed to abide by the same. It denies that Joe Victor Ileri, Henry Njue Mbogo, Boniface Mwaniki Njiru, Seth Mbogo Elias and John Njeru Mbogo are in contempt of any Court orders.

12. The application was disposed of by way of written submissions.

13. Having considered the grounds and affidavit in support of the application, the replying affidavit and the submissions by both parties, the issues for determination are whether the Applicant has established that the alleged contemnors wilfully disobeyed the consent by the parties as adopted by the Court on 19<sup>th</sup> May 2021.

14. The consent dated 18<sup>th</sup> March 2021 adopted by the Court was in the following terms –

#### **“CONSENT ORDER**

*By consent, it is hereby agreed between the Claimant and the Respondent as follows;*

*1. That the Respondent shall not interfere and/or change the terms of employment of the employees from permanent and pensionable to temporary terms.*

*2. That the Respondent to adhere to the collective bargaining agreement in terms of transfer, promotions, acting and/or responsibility capacity*

*3. The minimum period an employee can be in one branch before being transferred to another branch shall be agreed upon during the next review of collective bargaining.*

*4. The Respondent to pay transfer allowances of 5% of the annual basic salary to a minimum of Kes.10.000/= not paid to date to all affected employees and the same to be implemented as per the collective bargaining agreement going forward.*

*5. The Respondent to pay acting and responsibility allowances of between 10% - 15% of the basic salary from the date they were stopped to date to all affected employees and the same to be fully paid and implemented as per the collective bargaining agreement going forward.*

*6. The employees reverted back to their substantive positions to be paid as per their deployment letters.*

*7. The Respondent to continue remitting union dues for all unionisable employees as per the collective bargaining agreement.*

*8. That each party will bear its own costs.”*

15. Contempt is defined in **Blacklaw's Dictionary, 10<sup>th</sup> Edition** as;

*"Contempt is a disregard of, or disobedience to, the rules or orders or a legislative or judicial body, or an interruption of its proceedings by disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body."*

16. For a party to succeed in an application for contempt, it must prove the following –

- 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.*

17. What the Applicant complains of is that;

i) *"The Respondent immediately after signing the consent embarked on harassment, intimidation and victimization of the applicant's members as averred in the supporting affidavit. Some opted to resign from employment after their positions were being advertised while still in office and others purportedly resigned from union. Those who refused to resign from the union were extremely targeted for alleged misconduct which allegedly happened over 7 years ago and they are NOT provided with any documents.*

ii) *The Respondent have stopped provident fund deductions, engaging in changing terms from permanent and pensionable to temporary contracts, not paying transfer allowances, not paying acting and responsibility allowance, not remitting union dues as agreed in the consent, disregard of the CBA terms by refusing to pay annual increments and intimidation, harassment, witch-hunting and victimization of employees because of union membership."*

18. The consent order herein is in respect of several issues, none of which have a specific timeline for compliance. It is framed in very general terms.

19. In the application, it is averred that the alleged contemnors *"deliberately and wilfully disobeyed orders of this Court issued on 29<sup>th</sup> October 2020 and consent orders signed by both parties on 18<sup>th</sup> March 2021 and registered in Court on 19<sup>th</sup> May 2021."*

20. The orders issued on 29<sup>th</sup> October 2020 are that –

(1) *"The application dated 28<sup>th</sup> October 2020 is certified urgent.*

(2) *The Respondent is hereby restrained from interfering/converting appointment terms of employees from permanent and pensionable to temporary terms and further from victimising, intimidating, discriminating and or harassing or terminating the services of employees who have joined the union pending inter partes hearing of this application.*

(3) *The application is fixed for inter partes hearing on 16<sup>th</sup> November 2020.*

21. The Claimant/Applicant has listed the averments alleged to constitute disobedience of Court orders at paragraphs (o) to (ww) of the grounds in support of the application, a total of 35 paragraphs. The grounds are mostly allegations of actions the Respondent is alleged to have taken against the Claimant/Applicants members who are employees of the Respondent, and which allegations are denied by the Respondent.

22. Contempt being a *quasi-criminal* charge, the person alleging contempt must precisely set out the acts of disobedience and the manner in which the contemnors are alleged to have disobeyed the orders.

23. What the Applicant has listed in the application is a litany of complaints and grievances against the Respondent that would require to be subjected to a hearing to prove whether or not the allegations are true. As is evident from the replying affidavit, some of the allegations are based on either misunderstandings or incorrect information.

24. The Applicant has not set out the specific orders of the Court and the manner in which each or any of the orders have been disobeyed and by whom.

25. Further, the prayers at paragraphs 3 to 7 of the application are matters which should be subjected to investigation in the manner provided in the parties' recognition agreement and the dispute resolution machinery under the Labour Relations Act. They are not matters that were covered in the orders of the Court alleged to have been disobeyed.

26. It is therefore my finding that the Applicant has not proved that any of the alleged contemnors has committed any acts in disobedience of the Court orders of 29<sup>th</sup> October 2020 or 19<sup>th</sup> May 2021. The result is that the application is dismissed. In view of the nature of the complaints against the Respondent, there shall be no orders for costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 11<sup>TH</sup> DAY OF FEBRUARY 2022**

**MAUREEN ONYANGO**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 Civil 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.

**MAUREEN ONYANGO**

**JUDGE**