



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

ELRC PETITION NO.E006 OF 2020

(Before D.K.N.Marete)

KENYA COUNTY GOVERNMENT WORKERS UNION.....PETITIONER

-VERSUS-

THE COUNTY GOVERNMENT OF EMBU..... RESPONDENT

R U L I N G

This is an application dated 25th January, 2021 and comes out as follows;

1. *THAT this motion Application be certified urgent and be heard on priority and ex parte in the first instance.*
2. *THAT the County Secretary, Chief Finance, the County Executive Member in charge of Finance and Governor of Embu County of the Respondent be summoned before this Honourable Court to show cause why they should not be committed to civil jail for blatantly failing to comply with the orders of this court dated 1st December, 2020.*
3. *THAT on failing to show necessary cause, the County Secretary, Chief Officer Finance, the County Executive Member in charge of Finance and Governor of Embu County be committed to prison for a maximum period of six (6) months for contempt of this Honourable Court's orders issued on 1st December, 2020.*
4. *THAT Officer Commanding Nyeri police station do execute the Order 3 herein.*
5. *THAT the Respondent be barred from addressing this Honourable court in this matter unless and until it have purged itself of the contempt.*
6. *THAT the costs of the Application be borne by the Respondent.*

It is grounded as follows;

1. *This honourable court issued orders on 1st December, 2020 directing the Respondent to remit union dues pending the hearing and determination of the case.*
2. *The Respondent was served with both the order and pleadings on 2nd December, 2020.*
3. *To date, the Respondent has never complied with the Court order.*
4. *Despite being served on 2nd December, 2020, the Respondent wilfully refused to deduct for the month of December 2020 and January 2021.*
5. *The Respondent counsel admitted service and undertook to urge his client to comply with the court orders.*
6. *The conduct of the Respondent is calculated to bring the authority of this Honourable court into disrepute.*
7. *The Respondent by failing to comply with the terms of the Order of this Honourable Court, with no reasonable justification, are challenging the supremacy of the law and the ultimate administration of justice.*

8. It is the plain and unqualified obligation of every person against or in respect of whom an Order is made by a court of competent jurisdiction to obey it unless and it is discharged.

9. Due to the Respondent's impunity in disobeying the orders of the court this Honourable court should intervene to guard the authority of the court which is a key tenet of rule of law.

10. The obedience of a Court Order injures administration of justice which has the effect of leading to anarchy if not arrested.

11. A court order once issued binds all and sundry, the mighty and the lowly equally without exception.

12. Therefore, the relevant officer of the Respondent should be summoned before this Honourable Court to show cause within 14 days of being issued with the requisite notice as to why they should not be committed to civil jail for blatantly failing to comply with the orders of this Honourable Court.

13. The Petitioner's Embu branch solely depends on the remission from the County to cannot cater for the basic operational needs such as office rent, meetings facilitation, electricity, water bills, salary of the employees and its currently in the verge of closing down.

14. Unless this court intervenes urgently the Petitioner's branch will be closed down. This will hamper the Petitioner's members right to participate in activities of a union and associate.

The Respondent in a Replying Affidavit sworn on 19th February, 2021 denies and opposes the application. It is her case that;

- The County Government of Embu has not ignored, refused or neglected to make deductions as ordered by the court on 1st December, 2020.
- That at the time the court order was served upon us, the Administration and Public Service Department of the County Government had closed the November, 2020 payroll and as such the order for remission of union dues could not be effected.
- That there has been delay by the National Treasury in remitting funds to the devolved units and therefore no salaries for December and January 2020/ (2021) therefore no deduction.
- That further on 21st December, 2020 the Council of Governors resolved that the 1st Respondent will no longer continue playing the role of remitting union dues to the unions in the health sector. A letter dated 22nd December, 2020 is annexed herein and marked as "JNN-2"

The issue in dispute, the deduction of union dues as raised in this application has been long and protracted. It is an ugly display of back and forth between the union and the employer, to say the least, over non issues.

A look at the circumstances and evidence drawn in favour of the respective cases of the parties leads to a case of the Respondent's reluctance to meet a legal obligation of deducting, collecting and remitting union dues to the Applicant. And this is despite orders of this court made on 1st December, 2020.

The Applicant's case overwhelms that of the Respondent. She ably demonstrates the ugly case of impunity on the part of the Respondent. Reluctance to comply with that which is lawful and imperative. A case of contempt of court is not only clear but obvious, even to the naked eye.

I am therefore inclined to allow the application on the following orders of court;

- i) That a case of contempt of court ensues in the circumstances and I so find.
- ii) That the County Secretary, Chief Officer, Finance, the County Executive Member in charge of Finance and Governor of Embu County, the Respondent be and are hereby summoned before this Court on 15th March, 2022 for sentencing.
- iii) That the proceedings of court on 15th March, 2022 shall be in open court at the Nyeri Law Courts.
- iv) That the costs of this application shall be borne by the Respondent.

Dated and delivered at Nyeri this 9th day of March, 2022.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr.Odero instructed by Benard Odero & Company Advocates for the Petitioner/Applicant.

2. Mr.Mwalimu instructed by MCM & Associates for the Respondent