



**Kudheiha Workers' Union v Board of Management Nairobi School (Cause E6472 of 2020) [2022] KEELRC 13403 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13403 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E6472 OF 2020**

**MN NDUMA, J  
MAY 19, 2022**

**BETWEEN**

**KUDHEIHA WORKERS' UNION ..... CLAIMANT**

**AND**

**BOARD OF MANAGEMENT NAIROBI SCHOOL ..... RESPONDENT**

**RULING**

1. Application dated July 21, 2021 by the union against the Board of Management of Nairobi School, is brought in terms of 'the [contempt of Court Act](#), 2016, and Section 3, 3A and 63(c) of the [Civil Procedure Act](#) Cap. 21 Laws of Kenya.
2. The notice of motion seeks orders couched in the following manner:-
  1. spent
  2. That the Honourable Court be pleased to commence contempt of Court proceedings against the Respondents.
  3. That this Honourable Court be pleased to cite the following persons being members of the Board of Management severally and individually and/or their agent for contempt of Court and be committed to civil jail for 6 months for contempt of Court by disobeying Court judgment issued by a Court of competent jurisdiction:-
    1. Mr. Caspal Maina - Secretary/Principal
    2. Mrs Rebecca Muriguh - Chairperson
    3. Mr. Graham Waliula Soita Vice –Chairperson.
3. The application is grounded on facts set out on the notice of motion to wit that at the exparte hearing, the claimant obtained judgment to protect members from the respondent and the respondent



was ordered to immediately sign the Recognition Agreement between it and the claimant union and commence collective bargaining in terms of the Agreement with the claimant union. Further, the respondent was directed to immediately commence deduction of union dues in respect of the 55 employees who are members of the claimant union and remit the same to the designated union account.

5. That the judgment /orders were duly dated and delivered on May 20, 2021.
6. That the respondent has deliberately ignored demand letters from the claimant dated May 25, 2021, June 23, 2021 and June 30, 2021 seeking compliance with the Court judgment.
7. That the respondent be found guilty of contempt of Court and be punished accordingly.
8. The application is supported by an affidavit of Albert Njeru, the Secretary General of the applicant who restates the aforesaid facts.
9. The judgment of the Court dated May 20, 2021 which the respondent is said to have defied was delivered *ex parte*, the respondent having failed to participate in the hearing of the suit on the merits.
10. There are no extracted orders attached to the application nor is any affidavit of service attached to the application and or filed on record.
11. The respondent filed a replying affidavit to the application sworn to by Caspal Maina, the Secretary of the Nairobi School Board.
12. The deponent states that the application is frivolous, vexatious and an abuse of the Court process and should be dismissed in limine.
13. That the application relies on repealed law being the *contempt of Court, Act 2016* and that an application for contempt ought to be brought in terms of the *Judicature Act* and the English Law applicable in England at the time the alleged contempt is committed as stated by the Court of Appeal in Criminal Appeal No 30 1993 - *Njeru v Republic* [1993] eKLR per Gicheru, Cockar and Muli JJA.
14. That an application for leave must be made *ex parte*, to a judge in chambers and supported by a statement of facts setting out the particulars of the application as well as those of the person sought to be committed and the grounds on which his committal is sought, and verifying affidavit attached thereto.
15. That a substantive application by motion is then to be filed upon leave being granted within 14 days upon grant of leave if not, leave shall lapse.
16. That the motion together with the statement and affidavit must be served personally on the person sought to be committed, unless the Court directs otherwise.
17. That the applicant did not seek any such leave by way of chamber summons, there is no statement of fact in support of such application and the Notice of Motion herein was filed without such leave and is therefore fatally defective.
18. Furthermore, there is no evidence adduced that the application and the impugned orders were personally served on Mr. Caspal Maina; Mrs Rebecca Muriguh and Mr. Graham Waliaula Soita, cited as contemnors in the Notice of motion.
19. That proper procedure is mandatory in contempt proceedings due to the gravity of the orders sought and the consequences to the cited persons. That the standard of proof is high, and the application lacks basic facts to support such a standard of proof.



20. That the application be dismissed with costs.
21. The applicant did not join issues with the respondent by way of a further affidavit.
22. The Court has considered the submissions filed by the parties and the dispositions referred to herein and is of the finding that the application is defective and an abuse of Court process in that:-
  - (a) It is brought under the *contempt of Court Act*, 2016 which is no longer operational.
  - (b) No leave was sought *ex parte* prior to the filing of the notice of motion.
  - (c) The orders of the Court arising from the judgment of the Court delivered on February 20, 2021, have not been extracted and attached to the application.
  - (d) There is no evidence adduced to show that the said orders were extracted at all and served on the alleged contemnors.
  - (e) There is no affidavit of service filed indicating the manner, place and to whom the orders of the Court was served.
23. The application is entirely defective and lacking in procedural and substantive respects and the same lacks merit and is dismissed with costs.

**DATED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF MAY, 2022**

**MATHEWS N. NDUMA**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court of 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, this ruling has been delivered to the parties online with their consent. 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 18 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.

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances:-**

Mt. Gitonga for Claimant/Applicant

Mr. Munyua for Respondent

Ekale – Court Assistant

