



REPUBLIC OF KENYA



KENYA LAW

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Nyandarua County Assembly Service Board & another v Nyandarua County Assembly & 7 others; Muchiri & another (Interested Party); Njogu & 2 others (Contemnor) (Cause E007, E010 & E011 of 2021 (Consolidated)) [2022] KEELRC 1402 (KLR) (30 June 2022) (Ruling)

Neutral citation: [2022] KEELRC 1402 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE E007, E010 & E011 OF 2021 (CONSOLIDATED)

HS WASILWA, J

JUNE 30, 2022

BETWEEN

NYANDARUA COUNTY ASSEMBLY SERVICE BOARD 1ST CLAIMANT

MUKIRI MUCHIRI 2ND CLAIMANT

AND

NYANDARUA COUNTY ASSEMBLY 1ST RESPONDENT

ZACHARIA MWANGI NJERU 2ND RESPONDENT

SAMUEL RIMUI KAIYANI 3RD RESPONDENT

REUBEN GITAU KARANJA 4TH RESPONDENT

ELIZABETH WANJIKU MUTHUI 5TH RESPONDENT

THE GOVERNMENT PRINTER 6TH RESPONDENT

THE INSPECTOR GENERAL OF POLICE 7TH RESPONDENT

THE HON. ATTORNEY GENERAL 8TH RESPONDENT

AND

KARIUKI MUCHIRI INTERESTED PARTY

JOHN KIERU WAMBUI INTERESTED PARTY

AND

SIMON MWAURA NJOGU CONTEMNOR

ESTHER GATHONI KIARIE CONTEMNOR

CHARLES WAHINYA WAMBUI CONTEMNOR



RULING

1. Before me for determination is the Claimants/Applicants Application, Notice of Motion dated 14th July, 2021 brought pursuant to Section 1A, 1B, A, 3B, and 63(e) of the Civil Procedure Act, Order 9 Rule 9 & 10, Order 50 Rule 17 4 of the Civil Procedure Rules and all other enabling provisions of law seeking for Orders that; -
 1. Spent.
 2. Spent.
 3. THAT pending the full hearing and final determination of the consolidated claims herein, this Honourable Court be pleased to issue an order directed at the 5th, 6th and 7th Contemnors herein being the Director, Human Resource and Administrative Services, Nyandarua County Assembly; Principal, Human Resource and Administrative Services, Nyandarua County Assembly; and the Director of Finance Budget and Accounting, Nyandarua County Assembly respectively directing them jointly and severally to forthwith unconditionally reinstate the salaries and all the employment benefits of all the employees, staff members, Board Members and other officers of the County Assembly of Nyandarua that were illegally stopped by the unlawful acts of the 1st, 2nd, 3rd and 4th Contemnors in terms of the letter by the Acting Clerk, Gideon Mukiri Muchiri dated 16/6/2021 attached hereto and marked "A".
 4. THAT this Honourable Court be pleased to issue summons to Zachary Mwangi Njeru, Samuel Rimui Kaiyani, Reuben Gitau Karanja, Elizabeth Wanjiku Muthui, Simon Mwaura Njogu, Esther Gathoni Kiarie And Charles Wahinya Wambui directing them to appear in Court in person and show cause why they should not be held in contempt for failure to comply with the orders of this Court issued on the 3rd of June, 2021.
 5. That Zachary Mwangi Njeru, Samuel Rimui Kaiyani, Reuben Gitau Karanja, Elizabeth Wanjiku Muthui, Simon Mwaura Njogu, Esther Gathoni Kiarie and Charles Wahinya Wambui be cited by this Honourable Court for being in contempt of the Orders of this Honourable Court issued on 3rd June, 2021 and they be punished by imprisonment for six (6) months and/or any such period that the Court may deem fit.
 6. The costs of this Application.
2. The Application is based on the following grounds; -
 - a. That the this Honourable Court issued Orders on 3rd June, 2021 exparte and confirmed the said Orders vide it ruling delivered on the 20th May, 2021 and subsequent Orders Issued on 27th May, 2021 restraining the contemnor from carrying out any activities on behalf of the county assembly of Nyandarua while the substantive speaker is in office, and that any such acts were null and void ab initio.
 - b. The said Orders were served upon the Contemnors in person and through their office by a licensed process server as such they were duly notified of the said Court Orders.
 - c. Despite being served with the Ruling of 20th May, 2021 and the Orders issue on 3rd June, 2021, the 1st Contemnor has continued to chair meeting of Nyandarua County Service Board, while the 2nd and 3rd Contemnor continue to sit in the board as members of the Board and make decision on behalf of the county service board when they are illegally in office. Among



the decisions made by the contemnors was withholding salaries of employees without cause, carry out disciplinary proceedings for employees, demote other employees and promote others, restructure and reorganize the department of the County Service Board. They did all these while aware of the Orders of the Court stopping them from acting on behalf of Nyandarua Service Board.

- d. It is averred that the 5th, 6th and 7th contemnors, being the Director Human Resource, Principal Human Resource, and Director of Finance and Accounting respectively for Nyandarua County Assembly, have blatantly disregarded the Orders issued by this Court as such have all fallen in contempt.
 - e. The Applicant states that the Orders are necessary to bring sanity to the County Assembly of Nyandarua and to uphold the rule of law.
3. This Application is supported by the Affidavit of John Kieru Wambui, one of the Appointed board member of the 1st Applicant and the vice chairman of the 1st Applicant, deposed upon on the 14th July, 2021. the Supporting affidavit reiterates the grounds of the Application herein.
 4. In response to the Application by the Claimants/Applicant the 2nd Respondent /the 1st contemnor filed a replying affidavit deposed upon on the 14th March, 2022 by Zachary Mwangi Njeru, the 1st Contemnor in the Application herein.
 5. The 2nd Respondent's affiant avers that the application by the Claimant has been overtaken by event for the reasons that Elizabeth Wanjiku Muthui, is no longer in the employment of Nyandarua County Government and therefore not an acting clerk and has even sued the County assembly though ELRC Petition number 028 OF 2021; Elizabeth Wanjiku Muthui & 9 other v The Speaker County assembly of Nyandarua and 2 others for alleged unfair termination.
 6. It was stated that Mukiri Muchiri has been reinstated as the acting Clerk and accounting officer of County assembly of Nyandarua by virtue of Orders of this Court in Nakuru Petition number E026 of 2021; Nyandarua County Assembly and another v The central Bank of Kenya and 4 other(Formerly Nairobi Constitutional Petition no. E383 of 2021)
 7. That Zachary Mwangi Njeru is no longer the Acting speaker of Nyandarua County Assembly by virtue of Order of Court in Nakuru Constitutional Petition number E002 of 2021 as Consolidated with Nakuru Petition E001 of 2021 Hon Ndegwa Wahome V Zachary Mwangi Njeru & others, where justice Chemitei was ceased of the matter. He added that Justice Chemitei in his Orders of 4th October, 2021 found the affiant herein together with Elizabeth Wanjiku Muthui in contempt of Court Orders and ordered them to pay a fine of Kshs 200,000 each and were subsequently sentenced to 60 days in prison on the 6th December, 2021.
 8. The Affiant and Ms. Elizabeth Wanjiku Muthui paid the fine and the Court (Justice Chemitei) suspended their sentencing on the 15th December, 2021 for complying with the directions of Court.
 9. In conclusion it was stated that the Orders cannot issue for the reason that the Contemnors have already purged the contempt and complied with the Orders of the Court and are no longer holding their position, subject of the contempt proceedings.
 10. The application herein was disposed off by way of written submission.



Applicants' Submissions

11. The Applicants submitted from the onset that this Honourable Court has powers to punish for contempt of Court as empowered under section 5(1) of the Judicature Act by didn't of being a Court of equal status with the High Court.
12. The Applicant defined what contempt entails by citing the case of *Katsuri Limited v Kapurchand Depar shah* [2016] eKLR where where the Court held that;

“There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

- (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.

13. The Applicant went further to demonstrate how the said elements have been met and submitted that this Court delivered its ruling on 20th May, 2021 and issue the Orders on the 27th May, 2021 which Orders were clear and unambiguous. The said Orders were then served upon the contemnors even though they had an advocate on record who was present in Court during the delivery of the Court Ruling. It was argued that since their advocate was present in Court, that alone can suffice as being aware of the Orders of Court. To support this argument the Applicant relied on the case of *Shimmers Plaza limited v National Bank of Kenya Limited* [2015] eKLR where the Court held that;-

We now revisit the issue of service. Was there service of the order said to have been disobeyed on the Respondent? There is no dispute that no formal order was extracted and personally served on the Respondent and an affidavit of service filed to that effect. In that respect, this case can be distinguished from *Justus Kariuki Mate & Another vs Hon. Martin Wambora* (Wambora case) supra cited by learned counsel for the applicant. On the other hand however, this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra). Kenya's growing jurisprudence right from the High Court has reiterated that knowledge of a Court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of *Basil Criticos Attorney General and 8 Others* [2012] eKLR pronounced himself as follows:- “...the law has changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”

14. The Court in the above case further held that;

“Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and



the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in Court on instructions of a party, then it behoves him/her to report back to the client all that transpired in Court that has a bearing on the client's case... Unfortunately the answer to this question is in the affirmative. The order was made in presence of counsel for the Respondent who as stated earlier must be presumed to have informed the Respondent of the same. He went ahead and transferred the property before the due date of the judgment seemingly impatient to have this matter concluded once and for all. He acted in clear contempt of this Court. Government institutions, State officers, banks, and all and sundry are enjoined by law to comply with Court orders. We must deprecate in the strongest terms possible the worrying trend in this country where Court orders are treated with tremendous contempt by persons and institutions which think wrongly of course, that they are above the law.”

15. It was submitted that the Contemnors after being served with the said Court Orders blatantly ignored them and acted contrary to the same as such are in contempt of Court. to support this, the applicant cited the case of Simon Kibowen (Suing on behalf of 47 residents of Kibingor sub-location) V Nancy Jepkemoi Kolum & 2 others [2020] eKLR where the Court cited the case of Stewart Robertson v Her Majesty's Advocate, 2007 HCAC 63, where Lord Justice Clerk stated that:

“Contempt of Court is constituted by conduct that denotes willful defiance of or disrespect towards the Court or that willfully challenges or affronts the authority of the Court or the supremacy of the law, whether in civil or criminal proceedings” The jurisdiction of the High Court (or any other Court for that matter) to punish for the violation of its orders cannot be in question. Apart from section 5 (1) of the *Judicature Act* that vests in the High Court the power, like those of the High Court of Justice in England, to punish any party who violates its orders, the Court, by virtue only of being a Court has inherent powers to make sure its process is not abused and its authority and dignity is upheld at all times. In the decided case of *Refrigeration and Kitchen Utensils Ltd v Gulabchand Popatlal Shah & Another, Civil Application No. 39 of 1990*, it was observed. “A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it.... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid-whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question.... He should apply to the Court that it might be discharged. As long as it exists it must not be disobeyed.”

16. The Applicants submitted that the Contemnors continue to do those acts which this Court had ordered them to refrain from doing therefore necessitating the contempt proceedings herein. They therefore urged this Court to hold the contemnors in contempt and punish them by imprisonment for a period of 6 months or such period that this Court may deem fit to order.

1st Respondent's Submissions

17. The 1st Respondent filed its submission on the 20th April, 2022 in support of the Applicants application for contempt and for the contemnors to be held in contempt of Court.
18. On whether the Application has been overtaken by events, it was submitted that even though the contemnors are no longer holding office at Nyandarua County assembly, they did the said act in their personal capacity and contempt of Court being a quasi-criminal proceeding does not have an expiry time as such the Application has not been overtaken by events.



19. It was also submitted that even though the contemnors are arguing that they have already been punished for contempt of Court by Justice Chemitei, it was argued that the acts complained against in the matter before Justice Chemitei are different from the issues at hand as such the contemnors should still be punished under this suit. It was further argued that the contemnors were acting in willful and deliberate disobedience of this Court Orders an act calculated to undermine the authority of this Court. The Applicant relied on the case of *Trusted Society of Human Right Alliance v Cabinet Secretary for Devolution and Planning & 3 others* [2017] eKLR where the Court held that

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of Courts is upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. 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 until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void. It must be remembered that Court orders must be obeyed at all times in order to maintain the rule of law and good order. This of course means that the authority and dignity of our Courts must be upheld at all times and this differentiates civilized societies from those applying the law of the jungle. It is the duty of the Court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with contemnors. The Court does not, and ought not to be seen to make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”

20. It was argued that the Applicant have proved their case on contempt and the 1st Respondent urged this Court to allow the Applicants Application as prayed and hold the contemnors in contempt.

2nd to 5th Respondent’s Submissions

21. The Respondent herein, submitted that, the 2nd to 5th Respondents should not be cited for Contempt of Court Orders on grounds that: The 2nd and 5th Respondents are no longer employees of the Nyandarua County Assembly. As a result, they cannot transact any business on behalf of the assembly and the fact that the County Assembly of Nyandarua precincts is open and accessible to all members of staff, all members of the County Assembly and all members of the County Assembly Service Board.
22. It was also submitted that, in *Nakuru Constitutional Petition No. E002 of 2021: Hon. James Wahome Ndegwa v Zachary Mwangi Njeru & 5 thers*, the 2nd to 5th Respondents were cited for contempt and punished for the same on grounds similar to the Order issued herein on 3rd June 2021 and 4th June 2021. Therefore, it would be unfair to cite them for contempt again having being condemned to punishment in the aforementioned matter.
23. Furthermore, he argued that, the 2nd and 5th Respondents have since complied with the Orders issued on 3rd June 2021 and 4th June 2021 by allowing access into the County Assembly of Nyandarua and the 2nd Respondent and 5th Respondents are no longer serving as Acting speaker and Acting clerk of the County Assembly of Nyandarua. Therefore, the 2nd to 5th Respondents should not be cited



for contempt. To support their case the Respondent herein cited the case of Katsuri Limited Versus Kapurchand Depar Shah (2016)eKLR where the Court held that

“the Jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with great reluctance and the greatest anxiety on the part of the judges to see whether there is no other mode which is not open to the object of arbitrariness, and which can be brought to bear upon the subject.”

Further the Court held that;

“Contempt proceedings can only be successful against the Respondents if it is proven that they failed to comply with the terms of the Order.”

24. They concluded that, the 2nd to 5th Respondents have already complied with the terms of the Order, Therefore, it would be an arbitrary move to cite them for contempt.
25. I have examined the averments and submissions of the parties herein.
26. The application before me is one for contempt and Court is against the Respondents herein for disobeying Court orders and in particular orders to reinstate sacked employees to the payroll.
27. The orders are being sought against the 5th, 6th & 7th contemnors herein who are the Director HR and Administration, Principal HR Administrator and Director of Finance.
28. The prayers sought also extend to Zachary Mwangi, Samuel Rimui, Reuben Karanja, Elizabeth Muthui, Simon Mwaura, Esther Gathoni and Charles Wahinya who the applicant aver disobeyed orders of this Court issued on 3rd June, 2021.
29. On 3/6/2021, this Court granted orders as follows;
 1. “In absence of Counsels for Respondents who have been served and are absent and have not filed any response to the application dated 5/3/21, the same is allowed as prayed.
 2. The application dated 18/3/21 also having not been responded to, is allowed as prayed.
 3. The application dated 12/4/21 is also allowed as prayed”.
30. Indeed from the evidence submitted before Court, the Respondents contention is that the Contemnors blatant disregard of these Court orders acted with impunity by interfering with the employment of certain employees.
31. That not-withstanding, I note that the contemnors have already been punished elsewhere for contempt on the same issues and the contempt has been purged and it is therefore my position that the issues herein have been overtaken by events and I therefore dismiss this application with no order of costs.

RULING DELIVERED VIRTUALLY THIS 30TH DAY OF JUNE, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Munyao holding brief for Peter Wanyama for 2nd to 5th Respondents

Mr. Mwaniki for 1st Respondent present

Nyambura for AG



Langat for claimant – present

Court Assistant - Fred

