



REPUBLIC OF KENYA



KENYA LAW
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**Obiero v Lake Basin Development Authority (Petition
4 of 2020) [2022] KEELRC 1443 (KLR) (22 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1443 (KLR)

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

PETITION 4 OF 2020

S RADIDO, J

JUNE 22, 2022

IN THE MATTER OF THE CONSTITUTION OF

KENYA, 2010, ARTICLES 230,

20, 22(3), 41(A)(B), 27, 28, 29,

47(2), 50 AND

CONTRAVENTION OF THE

RIGHT TO REASONABLE

WORKING CONDITIONS, FAIR

REMUNERATION, EQUALITY,

FREEDOM FROM

DISCRIMINATION AND FAIR

ADMINISTRATIVE ACTION,

FREEDOM FROM TORTURE,

DEGRADING TREATMENT AND

FAIR TRIAL

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE

ACTION ACT NO. 4 OF 2015

LAWS OF KENYA

AND

IN THE MATTER OF THE EMPLOYMENT ACT,

2007 LAWS OF KENYA

SECTIONS 5, 26, 45, 47 AND



**OTHER ENABLING PROVISIONS
AND
IN THE MATTER OF SALARIES AND
REMUNERATIONS ACT NO. 10
OF 2011, SECTIONS 11, 12 AND
13
AND IN THE MATTER OF SALARIES AND
REMUNERATION COMMISSION
ACT (REMUNERATION AND
BENEFITS OF STATE AND
PUBLIC OFFICERS)
REGULATIONS, 2013**

BETWEEN

CLIFORD OTIENO OBIERO PETITIONER

AND

LAKE BASIN DEVELOPMENT AUTHORITY RESPONDENT

RULING

1. In a judgment delivered on 1 February 2021, the Court ordered the Respondent to compute and pay the Petitioner accrued leave and issue him a Certificate of Service.
2. On 7 March 2022, the Petitioner filed a Motion seeking orders:
 - (1) ...
 - (2) That Raymond Omollo, Lake Basin Development Authority, being the Respondents/contemnors be held to be in contempt of court orders/decrees made on 17th November 2021 and 2nd February respectively and that they be ordered to serve such period of time in prison custody as the Court may determine or until such time that they will have purged the contempt.
 - (3) That Raymond Omollo, Lake Basin Development Authority, being the Respondents/contemnors, be held in contempt of orders and decrees dated 17th November 2021 and 2nd February 2021, respectively and they be ordered to pay such amounts individually as a fine as the Court may in its discretion order as punishment for such contempt and in default, their property be sequestered and ordered attached and sold to recover the fine so ordered paid.
 - (4) Costs of this application is provided for.
3. The primary ground advanced in support of the application was that despite service of the decrees/orders of the Court, the Respondent had declined to comply with the decrees.



4. A Legal Manager with the Respondent filed a replying affidavit in opposition to the Motion on 16 March 2022.
5. The Manager deposed in the affidavit that the Petitioner had declined to collect his Certificate of Service despite being informed that it was ready for collection.
6. On the accrued leave, the Manager averred that the Petitioner had 75 accrued leave days amounting to Kshs 181,312/50, but that the amount had been withheld because the Petitioner owed the Respondent Kshs 162,617/- being taxed costs in Kisumu High Court Petition No. 26 of 2019, Clifford Otieno Obiero v Lake Basin Development Authority.
7. The Petitioner filed a further affidavit on 17 March 2022, asserting that he had not been alerted that the Certificate of Service was ready.
8. The Petitioner also denied the depositions in the Respondent's replying affidavit (the Court was informed on 24 March 2022 that the Certificate of Service had been handed over to the Petitioner).
9. The Petitioner filed his submissions on 10 May 2022, and the Respondent's submissions were not on record by the agreed timeline of 31 May 2022.
10. The Court has considered the Motion, affidavits, and submissions.
11. The law on contempt requires the party asserting contempt to prove the existence of a court order, the service of the order upon the party sought to be cited or his knowledge of the order and lastly, willful disobedience of the order.
12. The Petitioner already picked up his Certificate of Service, and nothing turns on that aspect of the case.
13. It is not in dispute that there is in place a Court decree ordering the Respondent to compute and pay the Petitioner's accrued leave. It is also not in dispute that the decree was served upon the Respondent.
14. The Respondent computed the accrued leave days as 75 days and commuted the same to Kshs 181,312/50.
15. The Respondent has, however, declined to pay out the Kshs 181,312/50 on the ground that it had retained the same as a set-off in respect of costs it had been awarded against the Petitioner by the High Court.
16. The attempt by the Respondent to unilaterally recover the amounts awarded to the Petitioner in this Court against costs awarded by the High Court is without any legal foundation. It cannot be a basis for explaining the failure to comply with the decree of this Court.

Conclusion and Orders

17. The Court finds that the Respondent has been in wilful disobedience of its orders.
18. The Court orders:
 - i. The Respondent to pay the Petitioner the sum of Kshs 181,312/50 within 21 days from today.
 - ii. In default, warrants of arrest to issue against Mr Raymond Omollo, the Managing Director of the Respondent, without any further reference to the Court and he be presented in Court for mitigation and sentencing as soon as he is arrested.
19. Costs in the cause.



**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS
22ND DAY OF JUNE 2022.**

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

Petitioner in person

For Respondent Mr. Yogo instructed by Otieno, Yogo, Ojuro & Co. Advocates

Court Assistant Chrispo Aura

