



**Nandwa v Insteel Limited (Cause 140 of 2013)  
[2022] KEELRC 14681 (KLR) (8 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14681 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 140 OF 2013**

**S RADIDO, J**

**JUNE 8, 2022**

**BETWEEN**

**ERIC KAYESI NANDWA ..... CLAIMANT**

**AND**

**INSTEEL LIMITED ..... RESPONDENT**

**RULING**

1. In a judgment delivered on November 21, 2014, the Court found and ordered:
  1. Reinstatement of Claimant to his position in the alternative re-engagement within 30 days from today without interference of any accrued salary rise and/or promotion.
  2. Payment of salary due and pending since the illegal redundancy on March 28, 2013 to date being Kshs 33,000 x 20 = 660,000/- less statutory deductions.
  3. Respondent to pay costs of this suit.
2. The parties did not appear to agree on the interpretation of the judgment, and on February 5, 2021, they filed a consent requesting the Court to interpret the judgment.
3. The Court determined the application on October 8, 2021.
4. On December 17, 2021, the Claimant filed a Motion (contempt application) seeking orders:
  - 1 ...
  - 2 Insteel Limited, the Respondent herein be held to be in contempt of the judgment and orders of the court made on November 21, 2014, and it be ordered to pay such an amount of money as this court may in its discretion order as punishment for such contempt, and in default its property be sequestrated and ordered attached and sold.



- 3 The Managing Director or Chief Executive Officer, the Human Resource Manager, Governance, Risk & Compliance Manager and the Legal Officer of Insteel Limited, the Respondent or the persons holding the offices or performing the functions of those officers herein be held to be in and cited for contempt of the judgment and orders of this Court made on November 21, 2014 and on such citation, the said officers be sentenced 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.
- 4 Further and without prejudice to prayer 2 foregoing, the personal properties of the Managing Director or Chief Executive Officer, the Human Resource Manager, Governance, Risk & Compliance Manager and the Legal Officer of Insteel Limited, the Respondent or the persons holding the offices or performing the functions of those offices be sequestrated and sold for their refusal and deliberate contravention of the judgment and orders of the court dated November 21, 2014 unless and until they purge the contempt.
- 5 Costs of this application be provided for.
5. The grounds advanced in support of the contempt application were that the judgment/decree was served upon the Respondent on 13 January 2015; that the Claimant reported for reinstatement on March 12, 2015; that an appeal by the Respondent was determined/struck out on April 30, 2019, and that the Respondent had failed to comply with the terms of the judgment/decree.
6. The Legal Officer of the Respondent filed a 15-page argumentative replying affidavit in opposition to the Motion on March 4, 2022, in which it was asserted that the persons sought to be cited for contempt were not parties to the litigation; that there was no evidence that the said persons had been personally served with the judgment/decree; that there had been no wilful neglect to comply with the judgment/decree; that any failure to comply was due to protracted out-of-court negotiations and a supervening appeal before the Court of Appeal; that a stay of execution pending appeal had been consented to on February 11, 2015; that the Claimant had shown disinterest in reinstatement by seeking elective office in 2017; that it was not possible to reinstate the Claimant because the branch office he was serving in was closed in 2015; that the reinstatement order had been frustrated upon the expiry of 30-days decreed by the Court because the Claimant did not report within the 30-days or at any other time; that a compromise was reached on or around September 14, 2015 and that the Claimant had not explained the steps he took from October 2015 to December 2021, when he filed the contempt application and thus had slept on his rights.
7. The Respondent also contended that the Claimant had approached the Court with ‘unclean hands’.
8. Despite the Court directing the parties on February 10, 2022 to file and exchange submissions, the submissions were not on record by the agreed timelines.
9. The Court has considered the record, Motion, and affidavits.
10. The principle behind the concept of contempt of court is the demand for the maintenance of the rule of Law and order and the requirement that the courts’ authority and dignity are always upheld.
11. Therefore, the Courts will not condone deliberate disobedience of its orders and will not shy away from their responsibility to deal firmly with proven contemnors.
12. In this regard, Court orders must be obeyed unless and until that order is discharged. The obligation extends even to cases where the person affected by an order believes it to be irregular or void.



13. It cannot be disputed that the Court delivered a judgment on November 21, 2014. The said judgment/decree was served upon the Respondent's Legal Officer on January 13, 2015. The Legal Officer acknowledged the service by signing and stamping a copy of the order.
14. On December 8, 2014, the Respondent filed a Notice of Appeal. The contention by the Respondent that a copy of the judgment/decree was not served or that they were not aware of the decree is, therefore, not true.
15. The Respondent is and was a juristic person. A juristic person acts through its authorised officers. It was not suggested that the Legal Officer was not an authorised officer.
16. Therefore, the assertion that the persons sought to be cited for contempt were not a party to the litigation has no merit.
17. The Respondent asserted that there was no wilful disobedience of the decree because the Claimant never presented himself within 30-days or at all to be reinstated and that the branch office where the Claimant previously worked had been closed.
18. The Claimant named the person he reported to on 12 March 2015 for deployment. The person did not file any affidavit to rebut the deposition, nor was the failure to file an affidavit explained.
19. The Court, therefore, discounts the defence that the Claimant never reported back for deployment within 30-days or at all.
20. The record shows that the Respondent had a head office in Nairobi. The argument that the closure of the Kisumu branch office frustrated compliance with the decree of the Court cannot hold.
21. The Respondent also contended that the Claimant had gone to sleep on his rights. It is not in dispute that the out-of-court attempts to compromise the dispute aborted in 2015, and that the Claimant only moved to the Court in December 2021, after a span of nearly 6-years.
22. The Claimant may have slept on his rights, but one of the primary purposes of the law of contempt is the need to preserve and maintain the court's dignity and maintenance of the rule of law.
23. The fact that the Claimant attempted elective politics in 2015 would not warrant the Respondent failing to comply with the decree of the Court. The Respondent ought to have used that fact to compromise the decree's execution.
24. From a totality of the above, the Court reaches the conclusion that the application dated 17 December 2021 is merited.

### **Conclusion and orders**

25. The Court finds the Respondent's Managing Director/Chief Executive Officer, Human Resources Manager, Governance, Risk & Compliance Manager and the Legal Officer in contempt of court.
26. The said persons are directed to appear in Court on a date to be set hereinafter for mitigation and sentencing.
27. The Claimant to have costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 8<sup>TH</sup> DAY OF JUNE 2022.**

**RADIDO STEPHEN, MCIARB**



**JUDGE**

**Appearances**

**For Claimant Owiti, Otieno, Ragot & Co. Advocates**

**For Respondent Ochieng Ogola & Co. Advocates**

**Court Assistant Chrispo Aura**

