



**Kenya Union of Water & Sewerage Employees v Migori Water & Sanitation Co. Ltd  
& another (Cause 5 of 2021) [2022] KEELRC 1355 (KLR) (14 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1355 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 5 OF 2021  
CN BAARI, J  
JULY 14, 2022**

**BETWEEN**  
**KENYA UNION OF WATER & SEWERAGE EMPLOYEES ..... CLAIMANT**  
**AND**  
**MIGORI WATER & SANITATION CO. LTD ..... 1<sup>ST</sup> RESPONDENT**  
**BOARD OF DIRECTORS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The ruling herein relates to a notice of motion application dated June 30, 2021, brought pursuant sections 17, 18 (2), 19, and 25 of the [Employment Act](#), sections 12, 16 and 20 of the [Employment and Labour Relations Court](#) and section 78 of the [Labour Relations Act](#). The applicant seeks orders that:
  - i. Spent
  - ii. Spent
  - iii. That the honourable court be pleased to issue an interlocutory order staying and/or suspending any decision, proceedings and or resolutions made during, after and/or as a result of the letters dated April 30, 2021, and June 15, 2021, respectively pending hearing and determination of the suit herein.
  - iv. That the 1<sup>st</sup> respondent's Ag Managing Director Madam Juliet Adhiambo, Commercial Manager Mr. Lamek Okeyo and the Board Chairman Mr Samuel Odhiambo Nyateng' respectively be summoned to appear in court in person to show cause why they cannot be committed to civil jail for having disobeyed this court's orders issued on February 8, 2021.
  - v. That the honourable court do cite the above mentioned persons/officers of the respondents for contempt of court for failing to comply with court orders issued on February 8, 2021 and if the cited officers are found culpable of being in disobedient of the said court orders, the



honourable court be pleased to commit them to civil jail for a period of six months or any other period the honourable court deems fit and/or until they purge the contempt and or such further orders made as may be just.

- vi. That contemnors do purge the contempt by reinstating Mr. Wilberforce Owaga and Mr Collins Otieno Ochieng to their respective jobs and or position they held prior to the said regret letters dated April 30, 2021, and June 15, 2021, issued by the contemnor number 1 and the status quo prior to the said actions and or inactions be maintained.
  - vii. That the costs of this application be borne by the respondents.
2. The application is supported by the grounds on the face of it, and the affidavit sworn by one Elijah Otieno Awach, the National General Secretary of the claimant.
  3. The application is premised on a consent judgment entered into on the 29<sup>th</sup> of January, 2021, and adopted as an order of the court on 4<sup>th</sup> February, 2021, wherein, the Parties herein by consent agreed as follows:
    - i. “That The suspension of Collins Ochieng Otieno continue being in force until the disciplinary procedure are complete and the case determined administratively and the claimants half salaries for the months of November, December, 2020, and January 2021 be paid at ago as the process of disciplinary continues.
    - ii. That Mr. Wilberforce Owaga and Mr David Okello be and are hereby reinstated unconditionally to their jobs which they held prior to their terminations without loss of their salaries and allowances and any other benefits entitled to them and not limited to any salary that may be pending before, during and after the said terminations.
    - iii. That the two employees namely Wilberforce Owaga and David Okello to report to the Managing Director’s Office for allocation of duties on or before February 9, 2021 but not later than February 10, 2021. This consent supersedes the previous proceedings leading to the suit herein.
    - iv. That the union cheques held by the 1<sup>st</sup> respondent covering the months of October, November and December, 2020 be released forthwith to the claimant on or before February 5, 2021, and the 1<sup>st</sup> Respondent to continue deducting and remitting to the union dues so deducted when it is due on monthly basis.
    - v. That in default, Execution to issue.
    - vi. That each party to bear its own cost.”
  4. The claimant avers that the respondents partially complied with the consent order issued by reinstating the two employees namely Wilberforce Owaga and David Okello as directed by the court, and commenced disciplinary proceedings against Mr. Collins Ochieng Otieno
  5. The claimant further states that Mr. Collins Ochieng was reinstated when the respondents realized that they had violated their own human resource policy manual for having suspended him for a period longer than 90 days provided under the manual. The Claimant further avers that upon reinstatement, Mr. Ochieng was swiftly issued with notice to hand over on the basis that their contracts had lapsed.
  6. The Claimant Avers That The Respondents paid Wilberforce Owaga and David Okello three months salaries for the period they were on suspension and Mr Collins Ochieng was paid his half salary for



- the months he was on suspension. The claimant further states that Mr Ochieng's half salary has been withheld even after he had been reinstated and that their three members have suffered substantial loss
7. The claimant states that the terms of the consent order have been breached through non-payment of the grievants salary arears and the union dues.
  8. The respondents opposed the application through a replying affidavit sworn by Mr. Jacob Getende, the Managing Director of the 1<sup>st</sup> respondent. the respondents aver that they have since complied with most of the consent order, save for the issue of the claimant's members salary arears. it is the respondents' assertion that in a meeting held on February 1, 2022, with the claimant's members, who are the grievants herein, a payment plan could not be reached in respect of the payment of the arears due to the grievants insistence that the plan could only be agreed upon in the presence of their union representatives, and who were not present on the date of the meeting.
  9. Therespondents aver that they are willing and ready to settle the grievants' salary arears. The respondents aver that the delay in settling the arears arose from disbursement challenges they experienced from the County Government that paralyzed their operations.
  10. Parties canvassed the application by way of written submissions. Submissions were filed for both parties, and which have been duly considered.

### **Analysis Determination**

11. I have considered the application, the grounds and affidavit in support, the respondents' affidavit in opposition and the rival submissions. The issue that arise for determination are:
  - a) Whether the respondents' decision declining to renew the grievants contracts should be suspended
  - b) Whether therespondents should be committed to civil jail for contempt of court.

### **Whether the Respondents' decision declining to renew the grievants contracts should be suspended**

12. The respondents' letters of April 30, 2021, and June 15, 2021, and which the claimant seeks that the court suspends, concern the grievants' requests for renewal of their contracts which had lapsed on April 30, 2021.
13. The respondents vide the letters referred to herein, informed the claimants members' and the grievants herein that they were not in a position to renew their expired contracts for reason of financial challenges.
14. The consent order subject of this application only addressed issue regarding to the grievants reinstatement, discipline and payment of salary arears. The extension of contracts did not form part of the consent orders. Further, the communication in respect of contract renewal, was made over a year ago and no evidence has been led to show that the grievants are still in the service of the Respondents.
15. To suspend the letters referred to herein, will amount to reinstating the grievants at an interlocutory stage. The application for an interlocutory order staying the respondents' letters of June 15, 2021 and April 30, 2021, fails on this ground, and is hereby declined.

### **Whether the Respondents should be committed to civil jail for contempt of court.**

16. The claimant under her prayers numbers 4 and 5, has sought that the ag managing director of the 1<sup>st</sup> Respondent Ms Juliet Adhiambo, the Commercial Manager Mr Lamek Okeyo and the Chairman of



- the 2<sup>nd</sup> respondent, one Mr Samuel Odhiambo Nyateng, be summoned to show cause why they should not be committed to civil jail for contempt of court.
17. The basis of the prayers is the consent order of February 4, 2021. The respondents have admitted that they have not fully complied with the consent order, owing to financial challenges resulting from disbursement issues they have had with the County Government.
18. The *Black's Law Dictionary (Ninth Edition)* defines contempt of court as:  
“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
19. The purpose of contempt proceedings is to safeguard the rule of law and not to install the dignity of the court. In *Johnson vs Grant*, 1923 SC 789 at 790 Lord President Clyde stated:  
“...The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged.”
20. In *Kenya Tea Growers Association Vs Francis Atwoli and 5 Others* [2012] eKLR Lenaola J cited with approval the case of *Clarke and Others Vs Chadburn & Others* [1985] 1All E.R. (PC), 211 where the court stated:  
“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal....”
21. In *Samuel M. N Mweru and other V National Land Commission & 2 others* [2020] eKLR, it was held that for a party to succeed in an application for contempt the party must satisfy the court on following four elements:
- i. That the terms of the order were clear, unambiguous and were binding on the defendant.
  - ii. The defendants had knowledge of or proper notice of the terms of order
  - iii. The defendant has acted in breach of the terms of the orders, and
  - iv. The defendants conduct was deliberate
22. The parties herein have confirmed to this court that indeed the consent order has to a large extent been complied with, save for the pending salary arrears and the union dues. The Respondents have further submitted that they have held a meeting, the minutes of which are before court, with the grievants to try and agree on a payment plan due to the financial challenges they have been experiencing.
23. To this end, and considering that the parties herein are in agreement that the consent orders have largely been complied with, I reach a finding that the respondents have not deliberately disobeyed the orders of the court to warrant committal for contempt of court.
24. The claimant has in the body of her application, sought garnishee orders against the respondents. The 1<sup>st</sup> respondent is a public/Government entity, and the *Civil Procedure Act* & rules 2010 that prescribe the execution process, exempts the Government from the execution process.



25. It then follows that although execution is a right enforced by a decree holder against a judgment debtor, Garnishee proceedings sought herein against the Respondents are improper in law.
26. In the upshot the application lacks merit, and is hereby dismissed in its entirety with no orders as to costs.
27. Orders of the court.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 14<sup>TH</sup> DAY OF JULY, 2022.**

**CHRISTINE N. BAARI**

**JUDGE**

Appearance:

N/A for the Claimant

Mr. Odero present for the Respondents

Ms. Christine Omollo - Court Assistant

