



**Republic v County Government of Laikipia & another; Kenya Medical Practitioners,
Pharmacists and Dentists Union & 61 others (Exparte); Public Service Commission
(Interested Party) (Environment and Land Court Judicial Review Application
9 of 2019) [2022] KEELRC 3900 (KLR) (16 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3900 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
ENVIRONMENT AND LAND COURT JUDICIAL REVIEW APPLICATION 9 OF 2019
DKN MARETE, J
SEPTEMBER 16, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

COUNTY GOVERNMENT OF LAIKIPIA 1ST RESPONDENT

LAIKIPIA COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

AND

**KENYA MEDICAL PRACTITIONERS, PHARMACISTS AND DENTISTS
UNION & 61 OTHERS EXPARTE**

AND

PUBLIC SERVICE COMMISSION INTERESTED PARTY

RULING

1. This is an application by way of notice of motion dated August 17, 2021 and seeks the following orders of court;
 1. This application be certified as urgent and heard ex-parte in the first instance.
 2. Summons be issued against the contemnors cited herein jointly and severally to appear before this court and show cause why they should not be committed to civil jail for such term as the court may deem just for blatant disobedience of this honourable court’s order dated October 19, 2020 in Nyeri ELRC JR Misc 9 of 2019.



3. The contemnors cited herein jointly and severally be and are hereby denied further audience by this Honourable court save for showing cause why they should not be committed to civil jail for such term as the court may deem just for the blatant disobedience of this honourable court's order dated October 19, 2020 in Nyeri ELRC JR Misc 9 of 2019.
 4. Any other orders the court deems fit to grant.
 5. Costs of this application be provided for.
- 2 It is grounded on the following factual basis;
1. The interested party (Public Service Commission) on the August 12, 2020 issued its ruling to the ex-parte applicants appeal directing that:
 - I. The decision of the respondents to summarily dismiss the doctors listed in the appeal dated October 25, 2019, from the Laikipia County Service, is hereby set aside.
 - II. The doctors listed in the appeal dated October 25, 2019 are hereby reinstated to the positions that they held in the Laikipia County Public service prior to the decision of the respondents to summarily dismiss them on June 21, 2019.
 - III. The doctors listed in the appeal dated October 25, 2019 are not entitled to any remuneration and benefits between the period 3rd June and June 20, 2019 when they participated in a strike that was declared by court to be unlawful and unprotected.
 - IV. The doctors listed in the appeal dated October 25, 2019 are entitled to all their remuneration and benefits, save as otherwise stated in this decision, in the same manner as other members of the appellant who were not terminated.
 - V. The respondents do pay the doctors listed in the appeal dated October 25, 2019 all and any withheld remuneration and benefits, save as ordered in this decision, up to and including the date that the respondents shall reinstate them back to the county public service.
 - VI. Upon reinstatement, the respondents do continue to pay the doctors listed in the appeal dated October 25, 2019 in accordance with their terms and conditions of service.
 2. The ex-parte applicants on receiving the interested party's ruling immediately returned to their various work stations but were not absorbed/assigned duties by officers of the 1st and 2nd respondent and have not been paid dues accruing to them by reason of the PSC decision.
 3. On October 9, 2020, this honourable court in Nyeri ELRC JR Misc 9 of 2019 proceeded to adopt ruling of the interested party as an order of the court by directing and compelling the respondents herein by way of mandamus to commence implementation of the ruling of PSC.
 4. The ex-parte applicants are apprehensive that unless the honourable court urgently intervenes, they will have been denied the benefits of the court orders of October 19, 2020 in Nyeri ELRC JR Misc 9 of 2019.
 5. The ex-parte applicants are apprehensive that unless the honourable court urgently intervenes as sought, processes and the authority of the honourable court to do justice will be gravely eroded by the respondents' blatant contempt of the court orders of October 19, 2020 in Nyeri ELRC JR Misc 9 of 2019.
 6. It is just, equitable and in the interest of justice that this honourable court acts swiftly and decisively in face of such willful and blatant disregard of tis authority and dignity; and to



uphold the court's integrity and sanctity of court processes and secure that the court decision/orders of October 19, 2020 in Nyeri ELRC JR Misc 9 of 2019 are not rendered in vain.

7. The upshot of the non-compliance of the orders of October 19, 2020 in Nyeri ELRC JR Misc 9 of 2019 is that the respondents ought to be denied audience until they demonstrate full compliance with the orders of October 19, 2020 in Nyeri ELRC JR Misc 9 of 2019.
8. Unless this matter is heard on a priority basis, the ex-parte applicants application will be obfuscated, convoluted, overtaken by events and rendered nugatory by the blatant contemptuous actions of the 2nd respondent and its members.
3. The alleged contemnor, the 1st respondent answers to application vide a replying affidavit sworn on December 15, 2021.
4. It is her case that this application is a non-starter and the orders sought cannot be granted.
5. Their further case is that from the onset, this suit has flawed in that it was under the wrong forum and pushing it to be Public Service Commission served as a regularizing tool to cure the defect. Therefore, a source of any further orders of court under this defective forum is stale and unsustainable.
6. The contemnor in defence also raise various defects in the hearing and determination of this matter by the interested party (Public Service Commission) which are summed up as follows;
 - a. The respondents were not being accorded a fair hearing.
 - b. The interested party was deliberately intent on proceeding with the appeal before it without involving or requiring participation of the 1st Respondent despite being aware that its decision was likely to affect the 1st respondent mostly.
 - c. The interested party with the ex parte applicants attended meeting where key decisions were made without involving the 1st respondent.
 - d. The interested party demonstrated a pre-determined mind to rule in the ex parte applicants' favour at very early stages of the matter vide their letter dated March 30, 2020 wherein the Interested party expressly indicated that the process would only culminate to a return-to-work formula, where it was the known position of the respondents that they were opposed to the ex parte applicant's return to work.
 - e. The interested party failed to demonstrate impartiality throughout the proceedings and blatantly favored the ex parte applicants.
 - f. The interested party was keen on denying the 1st respondent its rights to be represented by advocates.
 - g. The interested party was not responding to specific issues raised by the 1st respondent.
 - h. The interested party allowed itself to delve into matters regarding legality of the strike that resulted in summary dismissal of the ex parte applicants whereas that is a matter that had been determined by the superior court (this court) and the strike had been declared illegal. it follows that the ex-parte applicants who were terminated were properly dismissed.
7. It is the contemnor/respondent's case that they filed an appeal against the decision of the interested party in Civil Appeal No 081 of 2021 at the Court of Appeal. It is therefore inopportune for the applicants to seek enforcement of this decision while an appeal against it is lying.



8. The applicants in buttressing their case sought to rely on the authority of *Sbimmers Plaza Limited v National Bank of Kenya Limited (2015) eKLR* the court held thus;

' The notice of the order is satisfied if the person or his agent can be said to either have been present when the judgment or order was given or made; or was notified of its terms by telephone, email or otherwise. In our view, 'otherwise' would mean any other action that can be proved to have facilitated the person having come into knowledge of the terms of the judgment and/or order. This would definitely include a situation where a person is represented in court by counsel. Once the applicant has proved notice, the respondent bears an evidential burden in relation to willfulness and mala fides disobedience. This court in the Wambora case (*supra*) affirmed the application on these requirements.'

9. Again, in the case of *Hadkinson v Hadkinson, (1952) ALL ER 567*, the court observed as follows;

' 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 even void. Lord Cottenham, LC, said in *Chuck vs Cremer (1) (1 Coop temp Cott 342)*:

'A party, who knows of an order, whether null or void, 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 void- whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.'

10. It is their case and submission that at all times, the contemnors/respondents were aware of the decision of the interested party and their place in its enforcement. They only chose to ignore and disobey this determination and order.
11. It is the applicants further case that the decision of the Public Service Commission has not been varied, reviewed or set aside. Its effect and potency stands and is therefore material for execution and implementation by the respondent/contemnors. Their blatant refusal to comply with this on the guise of jurisdiction and an appeal on the matter is therefore wishful thinking and unacceptable.
12. The answer to this application by the alleged contemnors is interesting to note and watch. It is framed in the form of a protest and an appeal. They fail to appreciate that the issue in this application is one of contempt of court but not an appeal or otherwise against the orders of the interested party – the Public Service Commission of Kenya. Why they choose to address the application in this manner is a matter we cannot comprehend.
13. I find in favour of the application. A clear and open case of contempt of court ensues in the circumstances.
14. I am therefore inclined to allow the application with orders as follows;
- i. That summons be and are hereby issued against the contemnors jointly and severally to appear before this court and show cause as to why they should not be committed to civil jail for such term as the court may deem just for blatant disobedience of this court's order dated October 19, 2020 in Nyeri ELRC JR Misc 9 of 2019.



ii. That the contemnors, jointly and severally be and are hereby denied any further audience before this court save as for showing cause as to why they should not be committed to civil jail for such term as the court may deem just for blatant disobedience of this court's order dated October 19, 2020 in Nyeri ELRC JR Misc 9 of 2019.

iii. That this matter be heard on October 13, 2022 whereby the contemnors are summoned to attend and be present.

iv. That this court's proceedings on October 13, 2022 shall be in open court in the presence of the contemnors.

DATED AND DELIVERED AT NYERI THIS 16TH DAY OF SEPTEMBER 2022.

DK Njagi Marete

JUDGE

Appearances

- 1. Mr Washika instructed by Wafula Washika & Associates Advocates for the Applicants.**
- 2. Mr Muriithi holding brief for Mr.Majimbo instructed by Majimbo & Co Advocates for the 1st Respondent.**
- 3. Mr Odira instructed by Awour Ramogi & CO.Advocates for the 2nd Respondent.**
- 4. No appearance for the Interested Party.**

