



**Gichangi v Kenya Cultural Centre (Cause 998 of 2018)
[2022] KEELRC 13184 (KLR) (10 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13184 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 998 OF 2018
L NDOLO, J
NOVEMBER 10, 2022**

BETWEEN

EDWIN GICHANGI CLAIMANT

AND

KENYA CULTURAL CENTRE RESPONDENT

RULING

1. This case is replete with interlocutory applications. My brother Radido J who was previously seized of the matter, delivered four (4) rulings. Of note is that in all these applications, the Respondent's attempt to avoid court orders was evident.
2. What is before me now is a Notice of Motion dated August 30, 2022 by which the Respondent seeks leave to file a special audit report on the Kenya Cultural Centre, prepared by the Inspectorate of State Corporations, as part of its evidence.
3. The Respondent further asks the Court to issue summons to the Inspector General (Corporations) or any other officer of the Inspectorate of State Corporations to adduce evidence and produce documents in the matter.
4. The Motion is supported by an affidavit sworn by the Respondent's Chief Executive Officer, Michael Pundo and is based on the following grounds:
 - a. On July 1, 2022, the Inspectorate of State Corporations issued a special audit report on the Respondent with the finding that the Claimant was responsible for the loss of Kshs. 10,090,945.40;
 - b. The said report was premised on the Respondent's request made by letter dated February 7, 2020 wherein various financial improprieties were highlighted;
 - c. The allegations against the Claimant resulted in the claim and counterclaim being filed;



- d. The audit made an in-depth review of the allegations against the Claimant and confirmed the veracity of the allegations and found that the Claimant had engaged in various personal and disallowable activities, occasioning a loss of Kshs. 10,090,459.40 to the Respondent;
 - e. The report was only made available after the Court had certified the matter ready for hearing. However, the Respondent believes that the report ought to be brought to the attention of the Court to assist in resolution of the present suit;
 - f. The Respondent's case will be gravely prejudiced if the said report is not allowed as part of its evidence as the Claimant refuted the improprieties on the basis that there was no report by a competent authority before the Court;
 - g. It is in the interest of justice that the orders sought herein are granted.
5. The Claimant opposes the Respondent's application by his replying affidavit sworn on September 9, 2022.
 6. The Claimant accuses the Respondent of refusing to honour the decision of the Court directing payment of his dues and instead embarking on an exercise to frustrate the payments, by writing to the Inspectorate of State Corporations to investigate an already concluded issue, in order to unfairly implicate the Claimant.
 7. The Claimant asserts that he had been vindicated by other government entities including the Auditor General and Director of Criminal Investigations, as well as by court judgments and rulings.
 8. The Claimant takes the view that it would be unfair, unjust and improper for the report, which he terms as skewed and impartial, to be admitted into evidence.
 9. Michael Pundo swore a supplementary affidavit on September 19, 2022, stating that the Court had only faulted the disciplinary process against the Claimant and ordered his reinstatement to complete his term but had not pronounced itself on financial indiscretions by the Claimant.
 10. Pundo depones that on December 6, 2019, the Court only directed the Respondent to pay salary arrears for the period between July 2018 and August 2019. He adds that the Court did not pronounce itself on the question of un-surrendered imprest and therefore did not conclusively determine the matter at hand.
 11. According to Pundo, the Court did not prescribe a timeline for payment of the salary arrears or any applicable interest.
 12. The Respondent claims that as an employer, it is allowed under Section 19 of the [Employment Act](#), to offset the Claimant's salary arrears against loss incurred through his negligence or dishonesty.
 13. It is deponed that upon the Claimant's failure to remit un-surrendered funds, the Respondent engaged the Inspectorate of State Corporations to investigate the Claimant's financial impropriety.
 14. I have already flagged the Respondent's past attempts to avoid court orders issued by my brother Judge. Quite unfortunately, the present Motion is yet another attempt by the Respondent to avoid the court order issued on December 6, 2019, directing it to pay the Claimant's accrued dues.
 15. In his affidavit in support of the Motion, the Respondent's Chief Executive Officer, Michael Pundo concedes that the Claimant's dues had not been paid, ostensibly because the Claimant had been fingered by the Inspectorate of State Corporations for the loss of Kshs. 10,090,459.40.



16. By its application, the Respondent effectively invites the Court to have a second look at issues that were conclusively determined by Radido J. Even worse, the Respondent stealthily seeks to introduce the report by the Inspectorate of State Corporations to sanitise its violation of the order issued on December 6, 2019.
17. This Court is allergic to such manoeuvres and declines to participate. The current Motion is a clear abuse of the court process and the only thing to do is to strike it out, which I hereby do.
18. The Respondent will pay the costs of the Motion.
19. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 10TH DAY OF NOVEMBER, 2022.

LINNET NDOLO

JUDGE

Appearance:

Mr. Majimbo for the Claimant

Miss Adunga for the Respondent

