



**Republic v County Executive Committee, Finance Migori County Government & 2 others; Kenya County Government Workers Union (Exparte) (Miscellaneous Civil Application 6 of 2018) [2022] KEELRC 13526 (KLR) (14 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13526 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**  
**MISCELLANEOUS CIVIL APPLICATION 6 OF 2018**

**S RADIDO, J**

**DECEMBER 14, 2022**

**IN THE MATTER OF AN APPLICATION FOR**  
**LEAVE TO APPLY FOR AN**  
**ORDER OF MANDAMUS**

**AND**

**IN THE MATTER OF THE COUNTY**  
**GOVERNMENTS ACT, NO.**

**17 OF 2012**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY EXECUTIVE COMMITTEE, FINANCE MIGORI COUNTY**  
**GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF FINANCE OFFICER, MIGORI COUNTY GOVERNMENT .... 2<sup>ND</sup>**  
**RESPONDENT**

**THE GOVERNOR, MIGORI COUNTY GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**KENYA COUNTY GOVERNMENT WORKERS UNION ..... EXPARTE**



## RULING

1. On 16 March 2022, the court found merit in a notice to show cause why the Chief Officer, Finance, County of Migori should not be arrested and committed to civil jail for failure to comply with an order of the court issued on 11 March 2021.
2. The court directed the Chief Officer to appear in court on 23 March 2022 for mitigation and sentencing.
3. However, on 22 March 2022, the Chief Officer, Finance filed a Motion under a certificate of urgency seeking orders:
  - (1) ...
  - (2) That an order do issue suspending, lifting and or staying execution of the warrant of arrest issued against the 2<sup>nd</sup> respondent/applicant on March 16, 2022 pending the hearing and determination of the application.
  - (3) That an order do issue suspending, lifting and or staying execution of the warrant of arrest issued against the 2<sup>nd</sup> respondent/applicant on March 16, 2022.
  - (4) That costs of the application be provided for.
4. The court directed that the Motion be served ahead of the giving of directions on 23 March 2022.
5. When the parties appeared in court, the respondents' advocate informed the court that the person who had been occupying the office of Chief Officer, Finance, had been redeployed and a new officer appointed.
6. Counsel also indicated that the respondents were intent on complying with the orders of 11 March 2021.
7. The court directed the parties to attempt a compromise to the application, and the file was placed aside.
8. Later in the morning, the advocates informed the Court that they had agreed that Kshs 35,000,000/- be paid within a defined timeframe.
9. The court heard brief oral addresses from the parties and directed that the first instalment of Kshs 35,000,000/- be paid on or before 12 May 2022. The court stayed the warrants of arrest.
10. When the Motion was placed before the court on 12 May 2022, it turned out that the respondents had not complied. The Respondents offered the Chief Officer, Finance, for examination under oath on why there had been no compliance.
11. The parties questioned the Chief Officer, and she explained that the respondents had not complied because the County Assembly had rejected the 2 supplementary budgets which had been placed before it for approval.
12. The Chief Officer further explained that the monies would be budgeted for in the 2022/2023 financial year.
13. Tactfully, none of the advocates sought clarification from the Chief Officer when the supplementary budgets had been placed before the County Assembly and when the same had been rejected.



14. Prodded by the Court, the Chief Officer disclosed that the County Assembly had rejected the first supplementary budget on 2 November 2021 on technical grounds and that the second supplementary budget was placed before the Assembly on 28 February 2022 and was rejected on 9 March 2022.
15. What emerges from these facts is that when the respondents made a commitment on 23 March 2022 that the first payment of Kshs 35,000,000/- would be paid by the agreed timeline, they knew very well that no funds had been appropriated to make that payment.
16. The court makes that conclusion because the respondents knew that the County Assembly had already declined to approve the supplementary budget upon which they were making a commitment to the court 2 weeks earlier.
17. The court stayed the warrants of arrest issued on 16 March 2022 on condition that the respondents make certain payments. In seeking to stay the warrants, the respondents misrepresented the actual facts to the court.
18. In the circumstances, the court vacates the order staying the arrest of the Chief Officer, Finance, Migori.
19. Unless the Chief Officer, Finance, presents herself in court for mitigation and sentencing, the County Police Commander, Migori, is ordered to arrest her and bring her before the Court as soon as is practicable.
20. Costs in the cause.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 14<sup>TH</sup> DAY OF DECEMBER 2022.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

**Appearances**

For applicant Otieno, Yogo, Ojuro & Co. Advocates

For Respondents Ngeri, Omiti & Bush Advocates, LLP

Court Assistant Chrispo Aura

