



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 991 OF 2018

(Before Hon. Lady Justice Maureen Onyango)

JOYCE NASUMAYE.....CLAIMANT

VERSUS

DHL EXEL SUPPLY CHAIN (K) LIMITED.....RESPONDENT

RULING

Before the Court for determination are two notices of motion applications dated 22nd October 2020 and 28th October 2020 respectively filed by the Claimant.

Notice of Motion dated 22nd October 2020

The Claimant seeks for Orders:

- a) Spent
- b) That the Court be pleased to issue orders staying the implementation of the Respondent's letter dated the 28th day of September, 2020 in relation to the Claimant's change in job description pending hearing and determination of this Application.
- c) That the Court be pleased to cite Mr. Tito Okuku and Ms. Lilian Inziani; the Managing Director and the Human Resource Manager of Respondent respectively, for Contempt of a Court orders dated the 4th day of July, 2018.
- d) That an order of committal to prison be made against Mr. Tito Okuku and Ms. Lilian Inziani for such period as this Court may deem fit and just in that they have blatantly disobeyed the express Orders made herein by this Court.
- e) That this Court be pleased to grant leave to the Claimant to amend the claim to allow her include the developments herein.
- f) That the Court be pleased to issue orders staying the implementation of the Respondent's letter dated the 28th day of September, 2020 in relation to the Claimant's change in job description pending hearing and determination of the claim herein.
- g) Any other orders the Court may deem fit in the circumstances.
- h) An order that Costs of and occasioned by this Motion be paid by the Respondent herein.

The Application is based on the grounds that the Respondent has purported to change and/or interfere with Claimant's terms of employment during the pendency of express court orders barring such interference. That when the matter came up for hearing before Radido J., parties entered into a consent to the effect that:

- The Respondent be and is hereby restrained from declaring the applicant redundant or in any other way interfering with her employment.
- The Respondent be and is hereby directed not to victimize, threaten or in any way interfere with the Applicant's employment.

That when the parties appeared in Court on 6th March 2019, it was agreed that in order to fast track hearing of the main claim, the consent orders do subsist pending hearing and determination of the Claim. That however, the Claimant did not report to the Respondent because she went on maternity leave and when she returned to work as directed by the Court in a ruling issued on 19th December 2019, she resumed her duties as the Control Tower Planner, the role she occupied before the Respondent purported to declare her redundant. That the Claimant thereafter received a memo on 29th September 2020 from the Respondent communicating a change of title and reporting line from Control Tower Planner to Central Transport Office Co-ordinator but was surprisingly issued with a role profile for the position of Control Tower Expeditor. That it was then apparent that the actions of the Respondent were in contravention of the orders of 4th July, 2018 and thus the application dated 22nd October 2020 seeking that the Respondent be cited for contempt of Court.

The Application is supported by the Affidavit sworn by the Claimant who annexes in her affidavit, copies of the Consent Order, email correspondence on the staffing changes, the letter indicating a detailed role profile and the impugned role profile. She avers that she is aware that the herein abovementioned orders were all issued in the presence of Counsel for the Respondent and the same further extracted and duly served. That the conduct of the Respondent was in complete disregard of the orders of Court restraining it from interfering with her employment or victimizing her and that the change is meant to embarrass, frustrate, demoralize and demotivate her. That the said actions are further contrary to the clear expectation of fair labour practices by an employer and designed to set her up for failure since her title and deliverables as outlined in the role profile are different from the letter communicating the title change. She avers that unless this Court intervenes and cites the above named persons for contempt, the contemnors will continue with the contempt leading to the judgment being rendered irrelevant and the authority of the Court of Law placed at great risk. Further, that the Respondent will not suffer any prejudice if the orders sought are granted as prayed.

Notice of Motion dated 28th October 2020

The Claimant seeks for Orders:

a) Spent

b) Spent

c) Spent

d) That the Court be pleased to issue orders, restraining the Respondent from compelling or coercing the Claimant to sign any documents in relation to the intended challenged changes or in any other way interfering with her role and work pending hearing and determination of the claim herein.

e) That the Court be pleased to issue orders, restraining the Respondent from victimizing, threatening or frustrating the claimant pending hearing and determination of determination of the claim herein.

f) Any other orders the Court may deem fit in the circumstances.

g) An order that Costs of and occasioned by this Motion be paid by the Respondent herein.

The Application is based on the grounds that when the Respondent was served with the application dated 22nd October 2020 as directed by Court, the Respondent's Human Resource Manager, Ms. Lilian Inziani reacted by intimidating the Claimant and applying a lot of undue pressure upon her to sign the role profile for the new job description which is at the center of the said application dated 22nd October 2020. That the said actions are geared to ensure that the application dated 22nd October 2020 is rendered moot as it will have been overtaken by events if the Claimant was to comply with the demands of the Respondent. That it is therefore in the interest of justice that this Court grants stay in terms of any changes to the Claimant's job description failure to which the same will be rendered nugatory and be manifestly prejudicial to the Claimant.

The Application is supported by the Affidavit sworn by the Claimant who annexes to her affidavit copies of the extracted trail of emails sent to her separately by the Human Resource Manager and Mr. Jeremy Nzomo on 22nd October 2020, 26th October 2020 and 27th October 2020 demanding that she immediately signs the role profile. She avers that the Respondent is bent on frustrating and usurping the powers of this Court which underscores their attitude and contempt towards the Court and due process. She is afraid that she may bow in to the demands which will forcefully render her application nugatory and thus seeks protection of this Court.

The Respondent filed a Replying Affidavit dated 3rd November 2020 sworn by its Human Resource Manager, Lilian Nzomo who avers that the Respondent paid the Claimant for over 1 year and 6 months pursuant to the Orders of the Court of 4th July 2018 despite the Claimant not being at work. She avers that neither the Respondent nor its staff violated the terms of the Orders as the Claimant was reinstated to her former position according to her terms of employment. That the Respondent acted in exercise of its discretion and managerial prerogative in issuing staffing changes which effectively changed the Claimant's role. That as is clear from the Notice, the Claimant was not the only employee affected by the change. That her terms of employment and benefits remain unchanged. That the said change did not in any way therefore interfere with her employment, victimize or threaten the Claimant as alleged.

She further avers that the Claimant was in fact moved from her KBL Planning role because she was underperforming and frustrating her line manager by sharing client reports in an inconsistent manner, leading to several client complaints. That despite the line manager's complaints, the Claimant neither responded nor remedied the shortcomings as demonstrated in the email correspondence marked **LI 5**. That the Respondent's decision to move the Claimant to a different role was therefore legally proper and factually necessary. That the Claimant has declined to report to her new role despite the express orders of the Court that she report to work. She asserts that the intention of the Orders

was to temporarily reinstate the Claimant but without curtailing the Respondent's management prerogative. That the pendency of the Orders is causing extreme prejudice to the Respondent. She avers that the application is an abuse of the Court process. That it is clear the Applicant is intent on misusing the Orders and the Court's enforcement mechanism while her substantive claim is yet to be determined. She prays that the Court exercises its discretion judicially and decline the orders sought by the Applicant.

In response to the Respondent's Replying Affidavit, the Claimant Applicant filed a Supplementary Affidavit dated 10th November 2020 denying that she did not work for 1 year 6 months and avers that at the onset of the dispute herein she was heavily pregnant and almost proceeding on maternity leave. That she was away for four months by virtue of her maternity and annual leave days and even engaged the Respondent in alternative dispute resolution of the matter. That the Respondent's assertions that she was inexplicably out of work for almost 18 months are thus baseless, untrue, malicious and in bad faith.

The Claimant further avers that such re-assignment of roles by an employer must be done within the four corners of the law and should not be skewed, discriminatory or designed to victimize any employee. She denies that she has flouted her responsibilities and avers that poor performance in the department if any is fueled by the poor coordination and ineptitude by the management and specifically, her line manager Ms. Esther Ndung'u. That secondly, the Respondent has also failed to demonstrate how it arrived at the conclusion that she did not meet her key deliverables since she does not have a role profile which would ostensibly dictate her Key Performance Indicators. She avers that instead of the Respondent correcting the inconsistencies with the role profile and the letter of transfer, it started coercing her to sign the impugned role profile and to take up the new role even after the Court had issued further orders on 29th October 2020, which orders were duly served upon the Respondent. That the Respondent's actions constitute additional acts of contempt and that the Court ought to act accordingly.

The applications were canvassed by way of written submissions.

Claimant's Submissions

The Claimant submits that the orders issued on 4th July, 2018 were issued by consent and by extension, in the presence of both parties who were also present on 6th March 2019 when directions were given that the consent orders do subsist pending hearing and determination of the claim. She cites the case of **Teachers Service Commission v Kenya National Union of Teachers & 2 Others, Petition No. 23 of 2013** where the Court held that a court order is not a mere suggestion or an opinion on a point of view but is a directive that is issued after much thought and with circumspection and must therefore be complied with. She further submits that the Respondent's defence that it had the prerogative to re-assign her duties was in complete disregard of the Court Orders.

That the **Black's Law dictionary 9th edition** defines 'interference' as "*an obstruction, hindrance or tamper with*". That with the role profile for the new position, the Respondent was effectively demoting her and which fits within the description of interference, in complete violation of the orders which restrained the Respondent from interfering with the Claimant's employment or victimizing her.

She further submits that service and/ or knowledge of the said Orders is not denied and that it is settled law that Court orders must be complied with regardless of the discomfort they occasion the affected parties. In support of this submission, she relies on the case of **Wendano Matuu Co Limited & 2 others v Joshua Kimeu Kioko & 6 others; Philip Muli Munyaka (Interested Party) [2019] eKLR** and the Court of Appeal case of **A.B. & Another v R.B. [2016] eKLR** which cited with approval the Constitutional Court of South Africa's decision in **Burchell v Burchell, Case No. 364 of 2005**.

The Claimant submits that it is paramount to note that the orders were issued by the Court in line with **Rule 17 of the Employment and Labour Relations Court Practice Rules 2016** and were meant to protect the substratum of the Claim from being rendered moot and nugatory. That the Respondent's actions therefore constitute the grossest, most contemptuous and most callous disobedience of a valid Court order whose terms were plain, obvious, unambiguous and unequivocal. That it behoves this Court to assert its authority by citing the Defendants for contempt and penalizing them accordingly.

Respondent's Submissions

The Respondent submits that this is the second time the Claimant is seeking to have its officers held guilty for contempt of this Court's orders issued on 4th July 2018. It asserts that the question before Court is whether its officers may be cited for contempt for the exercise of its managerial prerogative and considering the evidence before Court. It further notes that the authorities cited by the Claimant are distinguishable since none of them has the exercise of the managerial prerogative at issue.

It is the Respondent's submission that an employer has the prerogative to categorize its employees and transfer them to different roles in support of productivity within its business. That the same was confirmed in the case of **James Sande Amuyeka & 6 others v Super Foam Limited [2015] eKLR**. That this Court has also severally held that an employer's exercise of its prerogative does not amount to contempt of Court such as in the contempt applications in **Kenya Building, Construction, Timber and Furniture Industries Employees Union v Timsales Limited [2019] eKLR** and in **Tailors and Textiles Workers Union v Hela Intimates (EPZ) Limited and Alltex (EPZ) Ltd [2019] eKLR**, and which applications were consequently dismissed.

The Respondent submits that the Orders of the Court did not interdict the exercise of the discretion given to the Respondent under **Clause 2.2** and **Clause 24.3 of the Claimant's contract of employment** to vary the Claimant's duties within her capabilities and by way of notice. That it is not in dispute that the notice was issued in compliance with its obligations in transferring the Claimant to a different role. Further, that the same did not amount to victimization as the evidence before Court shows that the staffing changes affected 9 other employees. It submits that the Claimant is in effect inviting the Court to take over the employer's managerial discretion. It urges the Court to decline this invitation.

The Respondent submits that the power to commit for contempt is one to be exercised with great care and that a party alleging that another has committed contempt must prove it on a standard beyond a balance of probabilities. That the Claimant has not discharged the burden of proof regarding the alleged contempt in the instant case as there is no evidence whatsoever that the Respondent deliberately disobeyed the

court orders. Further, that this Court should dismiss the Claimant's assertions of breach of the orders issued on 29th October 2020 which she raises for the first time in her Submissions as she has not filed an application for contempt for breach of the said orders. It is the Respondent's submission that no orders can be made on a non-existent application. That a charge of contempt of court is an offence of a criminal character and a party may lose his liberty. Further, that the evidence before Court shows that it has always complied with the Orders of the Court. That the Court in **Katsuri Limited v Kapurchand Depar Shah [2016] eKLR** held that an order committing a person to prison for contempt is to be adopted only as a last resort.

In relation to Prayer (e) in the Notice of Motion Application dated 22nd October 2020, the Respondent submits that no draft Memorandum of Claim is annexed to enable the Court determine the nature of the amendments sought but that in the interest of expediting the matter, it does not oppose the grant of the prayer to amend the claim as long as it has corresponding leave to amend its pleadings. That as for prayer (f) seeks a stay of the change in the Applicant's role is inviting the Court to interfere with the employer's managerial prerogative which this Court will not do and that the same should be dismissed.

Analysis and Determination

Contempt of Court is the wilful disobedience of court orders. Mativo J. in **Mengich t/a Mengich & Co Advocates & Another v Joseph Mabwai & 10 Others [2018] eKLR** states the elements of a Civil Contempt as espoused in a book titled "**Contempt in Modern New Zealand**" as follows:

- a) *The terms of the order were clear and unambiguous and were binding on the defendant.*
- b) *The defendant had knowledge of or proper notice of the terms of the order.*
- c) *The defendant has acted in breach of the terms of the order and*
- d) *The defendant conduct was deliberate.*

The Judge further stated –

“It follows that there was no order to disobey in the first place. The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed 'deliberately and mala fide.' A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even refusal to comply-that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith.) It is trite that all that the applicant bears onus to prove is that –

- (a) the court order was granted;*
- (b) the respondent has knowledge thereof; and*
- (c) the respondent has failed to comply with the court order.”*

The Orders of 4th July 2018 which the Claimant avers to have been breached by the Respondent were made in the following terms:

- 1. That an order be and is hereby issued compelling (sic) the Respondent from declaring the applicant redundant or in any other way interfering with her employment pending hearing and determination of this application.*
- 2. That an order be and is hereby issued directing the Respondent not to victimize, threaten or in any way interfere with the Applicant's employment pending hearing and determination of this application.*
- 3. That an order be and is hereby issued restraining the respondent from suspending or in any other way interfering with the applicant's health insurance pending the hearing and determination of this application.*

The courts have severally addressed the issue of the standard of proof in respect to contempt of court proceedings, to be beyond reasonable doubt such as in the case of **Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR** where it was held that the court has to be satisfied beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it.

In the case of **Mutika v Baharim Farm Ltd (1985) eKLR**, the Court of Appeal stated that the standard of proof in contempt is “*higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt.*”

What the Claimant avers to constitute contempt is the letter dated 28th September 2020. The letter is reproduced below –

“28th September, 2020

Joyce Nasumaye

C/O DHL Supply Chain

P.O Box 59736 – 00200

Nairobi

KENYA

STRICTLY PRIVATE & CONFIDENTIAL

Dear Joyce,

RE: CHANGE OF ROLE AND REPORTING LINE

As part of the on – going changes within the Kenya business operations, we would like to inform you that you have been transferred from your current role to the role of Central Transport Office Coordinator. The changes are effective from 1st October, 2020. In this new role you will report to the Central Transport Office. A detailed role profile outlining your key deliverables will be shared with you in due course by your Line Manager and you will be required to acknowledge the same.

Where applicable you will be required to support the transition period by ensuring that a proper and documented hand over is done within timelines that will be communicated to you by your line manager. It will also be necessary that you make every effort to ensure that you as quickly as possible settle into your new role to enable execution of your key deliverables.

During the transition you will receive all the necessary support to enable you to settle into your new role as quickly as possible. Should you have any questions/concerns do feel free to reach out to your Line Manager for guidance.

All your Terms & Conditions of employment remain unchanged.

We thank you and wish you all the best in your new role and trust that you will continue to contribute with focus to the growth and success of the business going forward.

Yours sincerely,

FOR: DHL SUPPLY CHAIN KENYA LTD

SIGNED SIGNED

Tito Okuku Lilian Inziani

MANAGING DIRECTOR: HUMAN RESOURCE MANAGER:

EAST AFRICA EAST AFRICA”

The act that the Claimant avers to constitute contempt is the issuance of the letter dated 28th September 2020. According to the Claimant, the letter of change of Role and Reporting Line stated that she would take up the role of Central Transport Office Coordinator but the role profile she received was for the position of Control Tower Expeditor, a role that had been in existence for some time.

According to the Claimant, a change in an employee’s position can only be either lateral or a promotion. That the position of Control Tower Expeditor was a demotion as it was in a lower job group and was intended to embarrass, frustrate, demoralise and demotivate her, and was therefore interference with her employment in complete disregard of the court orders.

The prayers in the application dated 19th June 2018 arising from which the impugned orders were made sought protection of the Claimant from being declared redundant or in any other way interfering with her employment pending the hearing and determination of the claim, or from suspension, victimization or threats.

For the Claimant to prove contempt, she ought to demonstrate that the Respondent violated the orders stopping it from declaring her redundant, suspending her or interfering with her employment. She is not complaining of violation of the orders by declaring her redundant.

What the Claimant is complaining about is interference with her employment. She has also alleged victimisation.

Black’s Law Dictionary, 10th Edition defines interference as “the act of meddling in another’s affairs” or “an obstruction or hindrance.”

My understanding of the word “interference” in the context of the orders alleged to have been disobeyed by the Respondent is that it was stopped from terminating the Claimant’s employment by way of redundancy or by another mode or from suspending her from work.

I do not think the orders required that the Respondent cannot re-designate the Claimant or transfer her to any other department or Section. I

do not think the Claimant's movement from the position of Control Tower Planner to Control Tower Expeditor constituted interference.

As has been stated by the Respondent in the replying affidavit of Lillian Inziani, the reason for moving the Claimant from the KBL Planning role was because she was underperforming and frustrating her Line Manager. That as part of her role, the Claimant was required to be sharing KD status reports on a daily basis, three times per day. The Claimant did not adhere to this and would instead share the reports in an inconsistent manner, leading to several client complaints. Despite the Line Manager's complaints, the Claimant neither responded nor remedied the shortcomings. The Respondent has given specific instances as per excerpts below:

IndexDate Excerpt

1 13/07/ Email from the Applicant's line manager asking her for an update on the whereabouts of
. 20 various trucks, after client complaints.

2 13/07/ Email from the Applicant's line manager asking her why updates have not been relating to
. 20 shipment updates since the previous week.

3 14/07/ Email from the Applicant's line manager, as follows:

. 20 "Dear Joyce

There was no proper handover. Whom did you assign to? Reason there was no continuity in providing timely shipment updates which resulted in client escalation. Refer to attached

Note this is a contractual deliverable KPI which we are not meeting.

Kindly ensure this does not happen going forward and require documented handover with all on copy for accountability. Hope this is clear. "

4 24/07/ Email from the Applicant's line manager noting that they had again not received any
. 20 shipment update. She again states:

. 20 "Note: client expects 3 updates in the course of the day i.e. 9 am, 12 noon and 3 pm. Kindly adhere to the timelines as stipulated in the contract."

Email from the Applicant's line manager noting that the Applicant's reporting was still undone.

5 31/08/ "We have not received any KD status report since the 24th August.

. 20

It is our obligation to share this report on a daily basis (ref attached).

Kindly but urgently share any challenges you may have in providing updates."

Email to the Applicant from her line manager:

"I have noted with great concern that despite several reminders on the subject matter, you are still not sharing the daily reports as required both by the business and client.

6 11/09/

. 20 *In my previous email (attached) I asked for you to share any challenges that might be hindering you from executing this.*

Waiting for your response so as to chat the way forward and ensure we meet our obligations to the client."

The Respondent demonstrated by citing specific incidents from 13th July to 11th September 2020 when the Claimant failed to remedy shortfalls in her performance. These incidents are admitted by the Claimant in her affidavit sworn on 22nd October 2020 at paragraph 8 where she states –

8. That despite a few hiccups (which parties have been trying to iron out), I remained under the employ of the Respondent as a Control Tower Planner until the 29th day of September, 2020 when quite shockingly, the Lilian Inziani vide email communicated staffing changes indicating that there will be a new office known as Central Transport Office (CTO) where I would move to as the Central Transport Office Coordinator.”

Her movement from that Department cannot therefor be termed as disobedience of the Court Order, which did not stop the Respondent from transferring her from one Department or Section to another, or from re-designating her. The order did not stop the Respondent from managing its internal affairs.

Further, from the circular dated 28th September 2020, it is clear that the Respondent made staff changes in several positions, including the Claimant’s. The circular although it is long, is reproduced below to demonstrate the extent of the changes made by the Respondent –

September 28, 2020|Staffing Changes in the Kenya Business

Dear Colleagues,

In our continued effort to effectively resource our business and enhance service delivery to our Clients, we have taken the steps herein to realign our business with our current client base. Effective from 1st October, 2020. The following staffing changes will focus largely on Transport Operations Transformation and Operations Excellence and Key Account Management.

In that regard, the changes will be as follows:

1. TRANSPORT OPERATIONS/TRANSPORT MANAGEMENT SYSTEMS TRANSFORMATION:

*There will be a new office known as the **Central Transport Office (CTO)** covering all our transport operations. This office will combine our current non dedicated transport projects under one unit and will also include current Control Tower Services and TMS Projects. It will also cover subcontract transport management and all other projects within our Transport Operations.*

To this end we are pleased to appoint Aron Tanui – currently GM Operations in Tanzania as the CTO Manager. This role will report to the MD East Africa. In the meantime, Aron will still support the Operations Management in Tanzania until December 2020. Reporting to the CTO Manager will be the following functions:

- o Control Tower*
- o TMS Projects*
- o Transactional Transport*
- o Cross Border Transport*
- o Other Transport Projects*

Other Staffing Changes affecting the CTO department are as follows:

New Entrants:

- o Joyce Nasumaye – Moves from the KBL Planning Department to CTO in the Control Tower Function. Marvin Sumba currently in Control Tower will replace Joyce in KBL Planning Department*
- o Patrick Gatumbi – Moves from Norda as Site Lead to the CTO Department in Transport Administration*

Existing Transport Staff remaining in the Department:

- o Selina Ivayo – CTO (Transactional Transport)*
- o Njeri Karicho – CTO (Cross border)*
- o Jeremy Nzomo – CTO (Control Tower)*
- o John Kiboro – CTO (TMS and IT Delivery)*

2. OPERATIONS EXCELLENCE AND KEY ACCOUNT MANAGEMENT

To align with the global business best practice, we shall establish a dedicated Operations Excellence function within our East Africa business. This will cover the standard efficiencies, quality, basics and process improvement among others. In addition, we are repositioning our Account Management closer to our customers to enhance our valued relationships.

To this end we are happy to announce the appointment of Robert Oyugi as the Operations Excellence and Key Account Manager for Kenya. In the Operations Excellence role, Robert will also provide support to Uganda and Tanzania. This role reports directly into MD East Africa and also dotted into East Africa Business Function. The following Key Accounts will report to this function:

- o Unilever
- o Upfield
- o Mobisol
- o OUP
- o Avanti
- o General Electric

Phyllis Wangari – She will continue to as the Operations and Site Lead for Unilever and Upfield and will be reporting to the Key Accounts Manager, Robert Oyugi.

Norda Campus Operations: To continue to consolidate and enhance synergies among the clients within the Norda site, Oliver Ochieng has been appointed the Site Operations Manager. He will report to Robert Oyugi in this role.

To further enhance account management focus, the BAT Account shall be split into two distinct Operations reporting into MD East Africa as follows:

- o **GLT and Leaf Operations:** This will form one stand-alone service and will all report into Paul Obonyo: Operations Manager GLT and Leaf Centers. Tony Muyale will henceforth be reporting to Paul Obonyo.
- o **Likoni Warehouse:** The Likoni Site Operations will be a standalone customer account and this will report to Mue Nzivo who becomes the Operations Manager BAT Warehousing Services.

We look forward to your support to the new changes to help us improve service delivery to our clients and foster better relationships with our clients.

Kind Regards

SIGNED SIGNED

Tito Okuku Lilian Inziani

Managing Director: East Africa HRM: East Africa

DHL Supply Chain DHL Supply Chain”

Victimisation means to single out a person for either unfair treatment or for treatment differently from others in a less favourable way. From the circumstances I have set out above, especially the fact that the Claimant was underperforming in her previous role and frustrating her Manager and clients, and the fact that the changes in role did not affect the Claimant alone, but 9 other officers further from the fact that the letter communicating the change specifically informed the Claimant that “All your Terms and Conditions of employment remain unchanged” I find no proof of victimisation.

I also find no proof of disobedience of the court orders dated 4th July 2018.

I am inclined to agree with the Respondent that the Claimant is misusing the court orders of 4th July 2018. When the parties recorded the consent orders of 4th July 2018, it was on the understanding that the suit would be fast tracked and expeditiously disposed of. Since then the Claimant has not shown any urgency in prosecuting this case.

Indeed, in this Court’s ruling of 19th December 2019, Ongaya J. directed –

- 1) **The parties to immediately fix a convenient hearing date on priority basis.**
- 2) **Costs of the application in the cause.**

Since then, the Claimant has filed the two applications before me for determination but not made any efforts to dispose of the main suit.

From the foregoing, I find no merit in both the applications filed by the Claimant dated 22nd October 2020 and 28th October 2020. The same

are dismissed with costs.

As was directed by the Court in the Ruling of 19th December 2019, this Court directs the Claimant to expeditiously fix this suit for hearing.

Should the same not be done within the next 90 days, the consent orders of 4th July 2020, which have been the subject of three subsequent contempt applications by the Claimant shall automatically be deemed to have lapsed.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 28TH DAY OF MAY 2021

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this+ court has been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE