



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.E002 OF 2020

(Before D.K.N.Marete)

TABITHA MUTHONI MWANGIPETITIONER

VERSUS

THE COUNTY GOVERNMENT OF LAIKIPIA.....1ST RESPONDENT

THE GOVERNOR, COUNTY GOVERNMENT OF LAIKIPIA.....2ND RESPONDENT

THE COUNTY ASSEMBLY OF LAIKIPIA.....3RD RESPONDENT

RULING

This is an application dated 23rd November, 2020 seeking the following orders of court;

1. *THAT this application be certified urgent and the same be heard Ex parte in the first instance and service be dispensed with.*
2. *THAT this application be given priority and the same be heard before the Notice of Motions 16th November 2020 for purposes of protecting the authority and the integrity of the Honourable Court, the Rule of Law and Constitution of Kenya.*
3. *THAT H.E Governor Nderitu Muriithi, of the County Government of Laikipia and the 2nd Respondent herein, be cited for contempt of court order issued on 13th November 2020 and served upon the said 2nd Respondent on the same date and that the said H.E. Governor Nderitu Muriithi be compelled to appear before the Honourable Court personally, to show cause why he should not be punished upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.*
4. *THAT cost of this Application be provided for.*

It is grounded as follows;

1. *That the Honourable court issued the order dated 13th November 2020 and the same was served upon the 1st, 2nd and 3rd Respondents on 13th November 2020.*
2. *That on 16th November 2020, the Petitioner reported to her office and found the door locked, the locks changed to unlawfully keep her out of the office contrary to the court orders issued on 13th November 2020.*
3. *That the 2nd Respondent instructed his servants, agents and proxies to remove the Petitioner from the payroll, the official staff email, and instructed the guards not allow the petitioner into her office contrary to the court order.*
4. *That the court orders issued on 13th November 2020 have not been set aside, varied, vacated, appealed against and the same should be strictly be adhered to the Constitution of Kenya 2010 and Constitutionalism, which are the bedrock of our democracy and justice system in Kenya.*
5. *That willful and unlawful disobedience of a court orders or directions of the court is contemptuous and should be punished in*

public interest and to uphold the Rule of Law and constitutionalism.

6. That the 2nd Respondent was aware of the existence of the court order issued on 13th November 2020 and served on the same date upon the 1st, 2nd and 3rd Respondents and the Respondents were under duty to obey the said orders.

7. That the 1st and 2nd Respondents having disobeyed the court order issued on the 13th November 2020 and served upon them on the same date, purport to apply through Notice of Motion dated 16th November 2020, to vacate, set aside and vary the same orders they have disobeyed, and without shame, they make their application to the same court that issued the orders they have disobeyed.

8. That the 1st and 2nd Respondents should not have audience unless and until they purge their contempt unconditionally.

The Petitioner's case is that the Respondents were all served with the impugned court orders instantly on 13th November, 2020. She even demonstrates this through an affidavit of service and other documents annexed in support of her application.

It is her further evidence that the 3rd Respondent complied with the court orders by stopping the vetting process slated for 17th November, 2020. However, the 1st and 2nd Respondents deliberately and with impunity failed to comply and disobeyed the court orders thereby occasioning this case for contempt of court.

The Petitioner/Applicant in her application and written submissions in such support comes out as follows;

- The Respondents were served with the court orders in issue on 13th November, 2020.
- That the 1st and 2nd Respondents disobeyed the court orders by, *inter alia*, locking the Petitioner out of her office and removing her from the payroll well knowing of the existence of the orders of court.
- The Respondents, and particularly the 1st and 2nd respondents were always aware of the court orders and duty bound to obey the same.
- Knowledge of the court orders is demonstrated by their appointment of advocate to appear for them, filings and, particularly, that of the application dated 16th November, 2020 in opposition to the interim orders.

The Respondent in a Replying Affidavit sworn on 1st December, 2020 spats the application for being frivolous, vexatious and an abuse of the court process. She prays that the same be dismissed with costs.

The 2nd Respondent, in a Replying Affidavit sworn on 1st December, 2020 avers that on being served with the application on 24th November 2020, without service of the court orders, he appeared before court on the following day to respond to the issues raised but the accuser was not willing to cross-examine him on the spot. Later, he established that the court had indeed, issued directions on the matter. He blames this indignity on non-service.

The 2nd Respondent's further case is that her appearance in court is a confirmation of good faith and willingness to abide by the orders and directions of court. Non service of these orders by the Petitioner renders her conduct an abuse of the process of court rendering the current proceeding a further abuse of such process of court aimed at delaying government services and arm-twisting the said government for her selfish interests.

The 2nd Respondent in her various averments raises a myriad of issues which do not seem to directly relate to the issues raised in this application. This comprises the multifarious references to contempt of court and deriding of court orders, *et al*.

From the onset, this is an application for contempt of court against the Respondents for disobedience of court orders issued on 13th November, 2020, the same having been served on them on the same date.

During the initial proceedings in court, the 3rd Respondent appears and demonstrates a case of obedience of the court orders and prays that she be removed and excused as a respondent in the suit. This was granted by the court thereby, in the meantime, releasing her from these proceedings.

The 1st and 2nd Respondent in their written submissions dated 11th December, 2020 *in toto* deny a case of contempt of court.

The issues for determination therefore are;

1. Whether the 1st and 2nd Respondents had knowledge or were aware of the court orders of 13th November, 2020.
2. Whether or not the 1st and 2nd Respondents have unreasonably failed to comply with the court orders issued on 13th November 2020 and if so, what the punishment is?
3. Who bears the costs of the application?

The 1st issue of determination is whether the 1st and 2nd Respondents had knowledge or were aware of the court orders of 13th November,

2020.

The Respondents deny awareness of the court orders of 13th November, 2020 for lack of personal service. Despite this, they admit service as follows;

“My lord, despite the lack of personal service, it is not contested that the 1st and 2nd Respondent had knowledge of the court order issued on 13th November 2020. The Respondents Attorney was served with the orders and notified the 2nd Respondent and officials of the 1st Respondent of the orders of the court.”

The Respondents further submits a defence of lack of clarity, unambiguity and binding nature of orders of court citing the ignominy of the name of the Petitioner/Applicant being Tabitha Muthoni Mwangi whereas the official CEC member for Education, Youth, Gender and Sports was Tabitha Muthoni Mbiriri.

The other line of defence by the Respondents is that it was impossible and they were incapable of complying with the court orders as served because these were made after the effect. The orders were a consequence of non disclosure by the Applicant of the following material facts;

a) The Petitioner was lawfully terminated on 2nd November 2020 by a termination letter of the same date which was given to her by hand by the 2nd Respondent.

b) The Petitioner acknowledged the termination as she consistently confirms that she is in the process of handing over in her communication with the County Secretary of the 1st Respondent.

c) By 13th November 2020, when the court order had been issued and served on the Respondent, the Treasury had signed off payment of the Petitioner’s salary in lieu of notice and had removed her from the payroll as staff. Unfortunately, the process of payment was irreversible.

d) The Petitioner has continued to be in possession of the salary in lieu of notice while enjoying court orders that restrict her replacement.

The Petitioner/Applicant has demonstrated a case of contempt of court which counters the defence by the Respondent. It is her case that at all times, the Respondents were aware of the court orders, the same having been served on the date of issue. Non-compliance with the court orders is therefore inexcusable and contemptuous.

Again, the allegation of ambiguity and clarity of the court order is unfounded in that the Respondents clearly knew the subject of these proceedings. This line of defence therefore comes out as simplistic, evasive *and* contemptuous even to these proceedings. It is a joke carried all too far.

The Petitioner/Applicant further counters and demonstrates a case against the defence of impossibility and impracticability of compliance of court orders by tendering evidence that the issues raised by the Respondents are not true and that all material times during the continuity of the application and service of the court orders, the Petitioner was in office and an employee of the Respondents. She even involved in the activities of her office.

In a situation like this one, the Petitioner having demonstrated a case of contempt of court above the degree of balance of probability, the burden shifts to the Respondents to rebut the same. This is not done in the least.

The Replying Affidavit and written submissions by the Respondents come out as convoluted, petty and evasive, to say the least. Instead of adducing evidence in rebuttal of the application, they dwell on a bulky but not substantial defence. This does not do their case any favour.

The 2nd issue is whether or not the 1st and 2nd Respondents have unreasonably failed to comply with the court orders issued on 13th November, 2020 and if so, what their punishment is .The case of the Petitioner/ Applicant clearly demonstrates failure by the Respondent to comply with the court orders. Their defence is merely evasive, circumlocutous and in effective. This renders them in contempt of court and available to punishment for such contempt.

I am therefore inclined to allow the application and order relief as follows;

1. That a case of contempt of court ensues in the circumstances.

1. That H.E Governor Nderitu Muriithi, of the County Government of Laikipia and the 2nd Respondent herein, be cited for contempt of the court order issued on 13th November, 2020 and served upon the said 2nd Respondent on the same date.

2. That the said H.E.Governor Nderitu Muriithi be compelled to appear before the Honourable court personally, to show cause why he should not be punished upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both.

3. Mention on 12th July, 2021 with the appearance of the Governor and the 2nd Respondent.

4. That the costs of this application shall be borne by the 1st and the 2nd Respondents respectively.

Dated and delivered at Nyeri this 16th day of June, 2021.

D.K.Njagi Marete

JUDGE

Appearances

- 1. Mr.Abwour instructed by Abwuor & Company Advocates for the Petitioner/Applicants.**
- 2. Mr.Mutungu Kithinji & Company Advocates for the Respondents**