



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
PETITION NO. 158 OF 2019

(Before Hon. Lady Justice Maureen Onyango)

IN THE MATTER OF: ARTICLES 10, 22, 36, 41, 47, 159, 232 AND 237 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA, 2020

AND

IN THE MATTER OF: LABOUR RELATIONS ACT, 2007

AND

IN THE MATTER OF: TEACHERS SERVICE COMMISSION ACT, 2012

AND

IN THE MATTER OF: THE COLLECTIVE AGREEMENT NO. 282 OF 2016

BETWEEN

KENYA NATIONAL UNION OF TEACHERS (KNUT)...PETITIONER/APPLICANT

VERSUS

TEACHERS SERVICE COMMISSION...RESPONDENT/1ST CONTEMNOR

THE SECRETARY/CHIEF EXECUTIVE OFFICER, TEACHERS SERVICE

COMMISSION: DR. NANCY MACHARIA..... 2ND CONTEMNOR

RULING

The Petitioner filed a Notice of Motion application dated and 15th January, 2020 (the **Application**) under Certificate of Urgency seeking the following orders: -

1. That this Court be pleased to cite and punish by issuance of order of committal to civil jail for a period of two (2) years the Chief Executive Officer/ Secretary of the Respondent Dr. Nancy Macharia for disobeying the orders of the Court on 16th August, 2019 directing, inter alia;

a. Temporary mandatory injunction issued to compel the Respondents, its servants, agents, an/or persons acting under authority of the Respondent to deduct and remit the Union from the member of the Petitioner for the month of August, 2019 pending interparties hearing.

b. The immediate suspension of the Respondent's circular reference No. TSC/IPPD/IN/20/VOL.111/47 dated 10th June, 2019 from validating membership by members of the Petitioners pending inter parties hearing of the application and until further orders of the Court.

2. That this Court be pleased to direct that the alleged contemnors do remit immediately to the applicant by way of recovery an amount of Kshs.599,082,312.00/= being union dues unlawfully not remitted by the contemnors for the months of July to December, 2019.

3. That this Court be pleased to direct the respondent/ alleged contemnor to submit the by-product of the membership of the Applicant for the months of August through December, 2019 and to deduct and continue to remit to the Applicant its Union dues as per the register of members as at June, 2019 in the subsequent months until the hearing and determination of this application and petition.

4. That the cost of this application be borne by the Contemnor.

The Application is supported by the grounds on the face of the Application and the supporting affidavit sworn by JOHN MATIANG'I, the National Treasurer of the Petitioner. Collectively, the Application is premised on the grounds that:-

- i. On 16th August, 2019 the Court issued orders (as cited under prayer 1 above) for immediate compliance by all the parties.
- ii. The first order on deduction and remittance of Union dues for the month of August, 2019 was not complied with by the Respondent alleging that it was already overtaken.
- iii. In the subsequent months of September, October and November, the alleged Contemnor partially deducted and remitted union dues to the Petitioner/Applicant but with an interfered register of members owing to the continued implementation of the validation circular which circular had been suspended by the order of 16th August, 2019.
- iv. The alleged contemnor, in utter continuous contempt of the orders of this Court has ignored and disobeyed the existing orders by continuing to effect illegal validation of the register of the Applicant through the suspended validation circular and failing, in the month of December to deduct and remit the union dues.
- v. This continued non-compliance with a Court Order suspending the register led to the interference of the register of members of the Applicant from 187,471 members in the month of June, 2019 when the circular was allegedly introduced and later suspended to approximately 105, 000 members as at November, 2019. The register of members of the Applicant should as at the date of the Court Order suspending the circular stand at 187, 471 members.
- vi. That in its replying affidavit dated 26th August, 2019 filed on 27th August, 2019 in particular at paragraph 60, the alleged contemnor admitted therein that the failure to deduct and remit the union dues was due to a technical hitch arising from reverting members of the Applicant/Petitioner to the payroll configured to operate as per the Scheme of service for teachers.
- vii. This admission depicted the technical hitch as the only reason for non-deduction and remittances of the union dues and nothing else.
- viii. The subsequent partial compliance of deduction and remittances affirmed the configuration of the system and cannot be the reason for any such subsequent failure to deduct and remit. That however, the Respondent did not remit the union dues for the month of December, 2019 for no reason at all and contrary to its obligation in law.
- ix. The partial remittances of the Union dues in the months of September, October and November were affected by continued interference with the Applicant's register of members despite the existing Court Order that suspended the circular allegedly seeking to validate the membership of the Applicant's union.
- x. It is trite law that Court Orders are not made in vain but meant to be obeyed and the contemnors have intentionally ignored to implement the Court Orders.

In opposition to the Application, the Respondent and the alleged Contemnor filed a Replying Affidavit sworn by **IBRAHIM GEDI MUMIN** the Acting Secretary/Chief Executive Officer of the Respondent sworn on 22nd January, 2020. The deponent deposed as follows in summary that:-

- i. The deponent is aware that the Commission was served with the ex parte order on 19th August, 2019.
- ii. Order number 2 directed the Respondent to deduct and remit Union dues from the members of the Petitioner for the month of August, 2019 pending the hearing and determination of the Application.
- iii. That by the time counsel for the Respondent informed the Respondent's Directorate of Human Resources of the issuance of the said Orders, the August, 2019 payroll for teachers had been processed and salaries paid to the teachers without deduction of the union dues for that particular month. The said payroll of teachers for August 2019 was fully processed and dispatched on 16th August, 2019 but due to a systems error, did not factor in union dues.
- iv. Prior to the service of the Court Orders by the Applicant on 19th August, 2019 the Respondent and the alleged Contemnor had no knowledge of the existence of the said orders as the same had not been brought to its/her attention directly or indirectly.

- v. Petitioner failed, ignored and intentionally refused to comply with the terms of Order 5 of the Court Order and therefore should not blame the Respondent nor its officers for non-compliance having served the orders 4 days after they were issued.
- vi. Failure to deduct union dues in the month of August, 2019 was not an intentional action of the Respondent or its officers but was occasioned by massive system error which was only detected after the payroll had been processed.
- vii. Upon detecting the error, the Respondent sought assistance from system developers to ensure that the September, 2019 payroll was not affected.
- viii. In December, 2019, the same system error occurred causing non-remission of union dues to the Applicant and other 3rd Party deductions and remissions. It was not isolated to the Applicant and similarly affected other unions in the past.
- ix. The Respondent fully complied with the Court Orders to the extent that it no longer requires teachers to re-confirm or validate their union membership.
- x. The Respondent issued the impugned Circular directing all employees to re-confirm their membership to the respective unions in the teaching service through an online payment system. This was informed by a series of complaints emanating from teachers of unauthorized deductions in their payslips in favour of third parties including unions.
- xi. The validation exercise was to enable the teachers to reconfirm membership to any unions by themselves and give personal and unequivocal authorization to the Respondent to make union deductions from their payslips in favour of a third party. However, following the issuance of the Orders, the Respondent stopped the validation exercise and pulled down the same from the system.
- xii. With respect to the deduction and remission of KES 599,082,312/=, the prayer is a substantive cause of action that cannot be litigated by way of an Application. This Court thus lacks jurisdiction to determine the issue of the said amount as it was not pleaded and does not arise in the Petition.
- xiii. The issues touching on the register of the Applicant's members is a substantive weighty issue that forms a fresh cause of action requiring detailed examination of document and adduction of evidence that cannot be determined by way of an Application.
- xiv. The Respondent deducted from the Applicant's members full union dues and remitted the same to the Petitioner in the months of September, October and November 2019. The Respondent admittedly was not able to deduct July, August and December 2019 for the reasons it advanced.
- xv. The prayer for payment of 599,082,312/= to the Petitioner as presently drafted is ambiguous, vague and uncertain as it is not disclosed who should be deducted the amount. That the Respondent has no legal power, duty or capacity to deduct union dues from non-members.
- xvi. The prayer to deduct union dues as per the members register for the month of June 2019 is untenable as this would compel the Respondent to violate the law and impose sanctions on employees who have resigned from the union contrary to Section 19 of the Employment Act.
- xvii. The Orders by way of a temporary mandatory injunction to deduct and remit to the Petitioner union dues from the members of the Petitioner was specifically for the month of August hence no contempt of Court can ensue on non-deduction of the December 2019 dues.
- xviii. There is no law or regulation compelling the Respondent to give the Applicant an extract of its payroll. Under the law, the Applicant and not the Respondent has a duty to maintain a Register of its members.
- xix. The payroll extract demanded by the Petitioner contain highly personal and confidential information of employees entrusted to the Respondent as an employer. The release would amount to breach of duty and trust by the Respondent.
- xx. The Petitioner has not disclosed to the Court the reasons it requires the payroll extract of the Respondent yet it has register of its members from which they are able to transact any business on behalf of their members.

Submissions

Pursuant to direction issued by this Court on 10th February, 2020, parties disposed of the Application by way of written submissions.

The Petitioner filed written submissions dated 4th May 2020. Therein it reiterated the averments in the Application and the depositions in the Supporting Affidavit. It identified the main issues for determination as:-

- i. Whether the Court Order issued on 16th August, 2019 was served upon the alleged Contemnors or whether the alleged Contemnors had knowledge of the orders issued.
- ii. Whether the alleged Contemnors are guilty of contempt of Court Orders issued on 16th August, 2019; and if so,

iii. Whether the Court should grant the prayers as sought in the Application.

On whether the Court Orders were served upon the alleged Contemnors and whether they had knowledge of the Court Orders, the Petitioner submitted that it is not disputed that the alleged Contemnors were served with this Order on 19th August, 2019. The Petitioner submitted that it would not be possible to discuss any content related to an order thereof without knowing the order itself. In support of this submission the Petitioner relied on the case of **Salome Nyambura T/A Shalom Enterprises & 13 Others v Nairobi City County & 8 Others [2016] eKLR**.

The Petitioner submitted that growing jurisprudence has reiterated that knowledge of a Court Order suffices to prove service and dispense with personal service for the purpose of contempt proceedings. They relied on the case of **Basil Criticos v Attorney General & 8 Others [2012] eKLR** wherein Lenaola J. held that where a party clearly acts and shows that he had knowledge of a Court Order, the strict requirement that personal service must be proved is rendered unnecessary.

The Petitioner submitted that the Courts have held that where a party has instructed and is lawfully represented by an Advocate they cannot allege ignorance of a Court Order. The Petitioner relied on the case of **Antony Siyuyu Kisiang'ani & Another v Nzoia Outgrowers Company Limited & 4 Others [2014] eKLR**. The Petitioner also relied on the Court of Appeal decision in **Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR** where the Court posed the question whether knowledge of a court order or judgment by an advocate of the alleged contemnor would be sufficient for purpose of contempt proceedings and it answered the question in the affirmatives stating:-

“We hold the view that it does. This is more so in a case as this one where the advocate was in court representing the alleged contemnor ... There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him to report back to the client all that transpired in court that has a bearing on the clients' case...”

The Petitioner further submitted that the 2nd alleged Contemnor being the CEO of the 1st Contemnor cannot claim that she was not aware of the Orders since she was never personally served.

On whether the alleged Contemnors are guilty of contempt of the Court Orders, the Petitioner submitted that the alleged Contemnors having stated that by the time the Orders were served, the payroll for the month of August had been processed, the alleged Contemnors have not explained why they did not deduct and remit the union dues for the month of December.

The Petitioner submitted that there was contempt of the Orders by partial deduction and remittances for the months of September, October and November, 2019 and blatant disregard of the Court Order in December, 2019. This is because despite the Court Orders directing that the Respondent's Circular seeking validation of membership of the Petitioners being suspended until further orders of the Court, the alleged Contemnors continued to implement it with complete disregard of the Court Order.

The Petitioner submitted that the contemptuous actions of the Respondents are illustrated at appendix JM3 that shows status of the membership to the Applicant's Union as at June 2019 stood at 187,471 members down to 105,000 members as at December, 2019.

The Petitioner submitted that the process of joining or exiting from a Union is provided for in law. Similarly, deductions of Union dues is provided and protected by law. It was the Petitioner's submission that Section 48 of the Labour Relations Act obligates the Respondent to deduct and remit and where there is resignation of a member from the Union, the Notice of resignation is provided for in the Act as Form S provided in the Third Schedule to the Act. So that where such is received by the Respondent, a copy is submitted to the Applicant. That there has been no resignation by any member of the Petitioner as required in law and no such notice has been received. The alleged implementation of the circular by the Respondent is not only in blatant breach of the Court Order but also against the law.

The Petitioner submitted that the alleged contemnors were fully aware of this order, the law as regards membership and termination of membership thereof. The requirement on their online system by the Respondents of members of the Applicant Union only excluding other Unions to validate despite the existence of the order was in bad faith. The attempt to misrepresent before this Court that the validation was stopped is a mockery to the court order and that **Annexure 1GM-3** in the replying affidavit exhibits the bad faith in that;

- i. it intentionally does not indicate the date when it was allegedly stopped (because it was never stopped). The Applicant still lost members despite the alleged stop,
- ii. it only required **Members of KNUT ONLY** to validate their membership despite there being other three (3) Unions recognized by the Respondents,
- iii. it contravenes Section 48 of the Act.

The Petitioner relied on the pronouncement of Lord Donaldson MR in the case of **Johnson v Walton (1990) 1 FLR350** rendered himself thus on that issue:

“It cannot be too clearly stated that, when an injunctive Order is made or when an undertaking is given, it operates until it is revoked on appeal or by the court itself, and it has to be obeyed whether or not it should have been granted in the first place.”

The Petitioner also relied on the Romer, L. J.'s holding in **Hadkinson v Hadkinson, (1952) ALL ER 567** as cited with approval in the case of **Salome Nyambura Kang'ethe T/A Shalom Enterprises & 13 others v Nairobi City County & 8 others [2016] eKLR** stated that:

“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.”

The Petitioner also relied on **Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] eKLR 828 and Salome Nyambura Kang’ethe (supra)** where it was held thus:

“Contempt of court is constituted by conduct that denotes wilful defiance of or disrespect towards the court or that wilfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.”

They submitted that in determining whether an act amounts to contempt it is premised on wilful disobedience or defiance to a particular order. The word “*wilful*” connotes an act which is intentional, concise and deliberate. If a party who is fully in the know of the order of the Court or is conscious and aware of the consequences and implications of the Court’s order ignores it or acts in violation of the order, it must be held that such disobedience is wilful.

It was the Petitioner’s submission that it is evident and clear that the orders were disobeyed and wilfully so by the Contemnors.

To illustrate the bad faith on the part of the Respondents, the Petitioner stated that;

- i. the contemnors continued to implement the impugned circular that had been suspended by this Court in order to punish the Applicant by substantially reducing its membership thus diminishing the Union dues it was entitled to.
- ii. the Respondents illegally took away more than **16,644** members from the Applicant to its rival union purporting that such members were post primary teachers yet the members did not resign from the Applicant nor joined the rival Union.
- iii. By rushing to allegedly close the payroll for the Month of August, 2019 earlier than it normally used to do was to beat the service of the Court order, whose existence they had been made aware.
- iv. By intentionally refusing to deduct and remit the Union dues for the Month of December was to deny the Applicant funds which would make it impossible for it to convene the Annual Delegates Conference as usual the consequences of which was to have its members lose faith in it.

It was the Petitioner’s submission that disobedience of Court orders has negative consequences and Courts frown upon such conduct. The Petitioner relied on the Supreme Court of India decision in the case of **T. N. Cadavarman Thiromulpad [(2006) 5SCC 1]** where it was held:-

“Disobedience of orders of the court strikes at the very root of rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the Judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs”

The Petitioner submitted that under Paragraph 30(h) of the Replying Affidavit the alleged Contemnors admitted that their act was in fact unprocedural. Thus, it is from the said interference with the register of members of the Applicant/Petitioner and failure to immediately comply with the Court Order by the Respondent/Contemnors that indeed they are to be found in contempt.

On whether the Court should grant the prayers as sought in the application, the Petitioner submitted that they have demonstrated that indeed the Respondents have intentionally and in bad faith rubbished the Court’s Orders as a consequence of which the maintenance of the rule of law and order that the authority and the dignity of this Court is upheld at all times has been diminished.

In support of their submissions, they relied on the case of **Teachers Service Commission v The Kenya National Union of Teachers & 2 Others Case - Nairobi Industrial Court Petition No. 23 of 2013** as quoted with authority in the case of **Antony Siyuyu Kisiang'ani & another v Nzoia Out-growers Company Limited & 4 others; Africa Management Communication International Limited v Joseph Mathenge Mugo & another [2013] eKLR**.

They also relied on the Supreme Court decision in **Board of Governors Moi High School Kabarak v Malcolm Bell & Another, (Supreme Court Petitions Nos.6 & 7 of 2013)** where the Supreme Court pronounced itself on the power to punish for contempt, defining it as a power of the Court “to safeguard itself against contemptuous or disruptive intrusion from elsewhere”, and adding that “*without that power, protection of citizens’ rights and freedoms would be virtually impossible. Courts of law would be reduced to futile institutions spewing forth Orders in vain.*”

Respondent’s Submissions

On 26th May, 2020, the Respondent filed written submissions dated 22nd May, 2020 on behalf of itself and the alleged 2nd Contemnor. The Respondent identified the following issues for determination by the Court:-

- i. Whether or not the Respondent should be held in contempt for disobeying the Court Order dated 16th August, 2019.

- ii. Whether or not the terms of the Court Order dated 16th August, 2019 were clear and unambiguous and were binding on the Respondent.
- iii. Whether or not the Respondent and the alleged 2nd Contemnor had knowledge of or proper notice of the terms of the order
- iv. Whether or not the Respondent has acted in breach of the terms of the Order
- v. Whether or not the Respondent's conduct was deliberate.
- vi. Whether the Respondent should remit by way of recovery KES 599,082312/= being union fess due
- vii. Whether the Respondent should issue the by-product of the membership of the Petitioner to the Petitioner

On whether or not the Respondent and alleged Contemnor should be held in contempt, the Respondent submitted that the terms of the Court Orders entailed the substantive orders therein vis a vis the date and time of service upon the Respondent. The Respondent submitted that it was bound to the letter by the total terms of the Court Order and that it obeyed the same.

It was the Respondent's submission that the Respondent's full compliance with the Court Order was pegged on timely service of the same given that the Court Order was ex-parte. The Court Orders were served on 19th August, 2019 by which time the August salaries had been released to teachers on 16th August, 2019. The Respondent submitted that by the time the Court issued the Order, the Respondent was not able to enforce the same.

It was the Respondent's submission that failure by it to obey the Court Order for deduction and remittance of dues for the month of August was not wilful and blatant disobedience. They relied on the case of **Union of Kenya Civil Servants v Homa Bay County Public Service Board, County Secretary – Homabay County & Governor – Homabay County [2018] eKLR**.

Further, the Respondent submitted that the Court Orders directed the Respondent to remit the union dues categorically for the month of August. Thus, the Petitioner cannot lay claim against the Respondent for dues which strictly fall outside the month of August.

On whether or not the Respondent had knowledge of or proper notice of the terms of the Court Orders, the Respondent submitted that prior to the late service of the Court Orders by the Petitioner ex-parte, the Respondent and the alleged 2nd Contemnor had no knowledge of the existence of the said orders as the same had not been brought to their attention.

It was the Respondent's submission that Orders were served upon the Respondent and the same was received at the Respondent's Legal Department where the receiving stamp was affixed on the same signifying receipt thereof. The Respondent submitted that the said Orders were not served personally on the alleged Contemnor as required by law to warrant her being cited for contempt for the alleged breach thereof.

In support of their submission, they relied on the case of **Jacob Zedekiah Ochino & another v George Aura Okombo & 4 others Civil Appeal 36 of 1989 [1989] eKLR**, the Court held:

"As we read the law, the effect of the English provisions is that as a general rule, no order of court requiring a person to do or abstain from doing any act may be enforced (by committing him for contempt) unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question. The copy of the order served must be indorsed with a notice informing the person on whom the copy is served that if he disobeys the order, he is liable to the process of execution to compel him to obey it."

It was thus the Respondent's submission that the Petitioner has not served the alleged Contemnor with the said Court Order to date to warrant her being cited for contempt of the same.

On whether the Respondent acted in breach of the terms of the Order, the Respondent submitted that in full compliance with the Court Order dated 16th August, 2019 and more so with Order No. 3 thereof requiring suspension of **Circular No. TSC/IPPD/UN/20/VQL/11147** it fully complied with the said Order and no longer requires teachers to re-confirm or validate their union membership and has pulled down the same from its system.

It was the Respondent's submission that the Petitioner has failed to place before this Court evidence in support of this serious allegation.

On whether the Respondent's conduct was deliberate, the Respondent submitted that at no time did it or the alleged Contemnor act deliberately as to fail to comply with the said Court Orders.

They relied on the case of **Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others Nairobi Civil Appeal 102 of 2016 (2018) eKLR** wherein it was held that:

"It is trite law that to commit a person for contempt of court, the court must be satisfied that he was wilfully and deliberately disobeyed a court order that he was aware of."

They also relied on the case of **Mengich t/a Mengich & Co. Advocates & Another v Joseph Mabwai & 10 others Judicial Review Case**

463 of 2017 [2018] eKLR it was held that:

“Contempt proceedings are quasi-criminal in nature and since the liberty of a person is at stake, the standard of proof is higher than in civil cases. The facts and the evidence adduced must demonstrate clear, wilful, flagrant or reckless disobedience of the court order.”

At paragraph 45 in the above case, the court further stated:

“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.”

On whether the Respondent should remit by way of recovery **Kshs.599,082,312** being union fees due. It was the Respondents and Interested Party’s submission that the Petitioner introduced this prayer in the Application yet he did not plead it in the Petition.

The Respondent submitted that the prayer in itself is a substantive action that should not be litigated by way of application. Furthermore, the Respondent submitted that the Petitioner should have pleaded the same in the Petition to enable the Respondent to effectively respond to the prayer in the interest of justice.

It is the Respondents and Interested Party’s submission that it is trite law that a litigant is bound by his/her pleadings and therefore the Petitioner should not be allowed to introduce new issues in the Application that should have been raised in the Petition.

In support of this submission they relied on the cases of **Adetoun Oladeji (NIG) Limited v Nigeria Breweries PLC SC 91/2002; Kisumu Civil Appeal No. 168 of 2011: Dakianga Distributors (K) Ltd v Kenya Seed Company Limited (2015) eKLR** which quoted with approval **Bullen and Leake and Jacob's Precedents of Pleadings, 12th Edition, London, Sweet & Maxwell (The Common Law Library No. 5)**.

It was the Respondent’s further submission that the prayer for deduction and payment of Kshs.599,082,312 is not only brought by the Petitioner late in the day, but is ambiguous, vague and uncertain as the Applicant has not disclosed who should be deducted that amount.

On whether the Respondent should issue the by-product of the membership of the Petitioner to the Petitioner, the Respondent submitted that this too, is a new pleading which was not contained in the Court Orders. While urging this Court to dismiss this prayer by the Petitioner, the Respondent further submitted as follows:

- a. The Petitioner under **Article 41(4) of the Constitution** of Kenya has a right to organize, which in their view includes maintaining the register of its members.
- b. That the Respondent, under **Sections 19 and 20 of the Employment Act, 2007**, has a duty to give its employees itemized pay statements that contains particulars of any statutory deductions and any other deductions as may be authorized by the employee in writing, such as union dues.
- c. That the Petitioner is at liberty to request such personal details from its members without reference to the employer.

Further, it was the Respondent’s submission that the payroll extract demanded by the Petitioner contains highly personal and confidential information of employees entrusted to the Respondent as an employer pursuant to the Employment Act, 2007. Accordingly, releasing the personal information of employees to third parties including the Petitioner will amount to breach of duty and trust on the part of the Respondent. Further that it will amount to breach of right to privacy under **Article 31 of the Constitution** of Kenya.

The Respondent submitted that the Petitioner has not disclosed to the Court the reasons it requires the payroll extract of the Respondent yet it has a register of its members from which it is able to transact any business on behalf of its members.

Determination

I have considered the application together with the grounds in support thereof as well as the affidavits both in support and opposition thereto. It is not contested that the respondent was served with the orders of this court issued on 16th August 2019, on 19th August 2019. The only issue for determination is therefore if the respondent, and the alleged contemnor, wilfully disobeyed the said court orders upon service, and/or knowledge of the same.

As correctly submitted by the respondent addressing contempt of Court, the three issues that need to be satisfied are whether there exist valid Court Orders, whether the Orders were effectively served and finally whether the orders were disobeyed.

The Orders sought in the motion were that: -

Pending the hearing and determination of the application interparties the Court direct the Respondent to remit the dues for the months of July and August, 2019. The Orders were issued 16th August, 2019 directing that pending the interparties hearing of the application, the Respondent do remit dues for the month of August, 2020.

The Respondent and alleged Contemnor have explained that by the time the Orders were served, the teacher’s payroll had been processed

and thus they were not able to remit the dues. I am satisfied by the explanation given by the Respondent and the continued good will in the remittance of union dues in the following months save for the month of December, 2019 which has been attributed to technical hitches.

With respect to payment of the sum of KES 599,082,312/= I decline to grant the same at this stage as it is a liquidated claim that needs to be considered following the substantive hearing of the matter. I further agree with the respondent that this prayer is not anchored on the prayers in the petition or in the orders that are the subject matter of the instant application.

I accordingly dismiss the Application. Costs of the Application will abide the outcome of the Petition.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 7TH DAY AUGUST 2020

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, the 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 the 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