



**REPUBLIC OF KENYA**  
**EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**  
**AT KERICHO**  
**CAUSE NO.225 OF 2015**  
**(Before D. Marete)**

**KENYA COUNTY GOVERNMENT WORKERS UNION.....CLAIMANT**  
**VERSUS**  
**COUNTY GOVERNMENT OF BOMET.....1ST RESPONDENT**  
**BOMET COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT**  
**THE TRANSITIONAL AUTHORITY OF KENYA.....3RD RESPONDENT**  
**THE PUBLIC SERVICE COMMISSION OF KENYA.....4TH RESPONDENT**

**R U L I N G**

This is an application dated 28th January, 2016 and seeks the following orders of court;

1. *That the following officers of the 1<sup>st</sup> and 2<sup>nd</sup> respondents;*

- a) Governor – Bomet County*
- b) Human Resource Manager - County Government of Bomet*
- c) Payroll Manager Bomet County Government*
- d) Acting County Secretary – Bomet County*

*Be summoned before this honourable court to show cause why they should not be committed to civil jail for blatantly failing to comply with consent order issued by this Honourable court on 16<sup>th</sup> December, 2015.*

2. *That on failing to show necessary cause the said officers committed to prison for a maximum period of six (6) months for contempt of this Honourable Court's Orders issues on 16th December, 2015.*

3. *That the 1<sup>st</sup> respondent be barred from addressing this Honourable Court in this matter unless and until they have purged themselves of the contempt.*

4. *That officer commanding bomet Police station do execute the Order 2 herein.*
5. *Any other or further orders as this Honourable Court deems fit and appropriate.*
6. *That cost of this application be in the cause.*

This is grounded as follows;

- (a) *That this honourable court issued a consent order on 16<sup>th</sup> December, 2015 compelling the 1<sup>st</sup> respondent to compile the claimant's members payroll for the month of November, 2015 within 7 days of the consent order.*
- (b) *That further by the same consent order, this honourable court compelled the 1<sup>st</sup> respondent to meet and pay the claimant's union members' salaries within seven days of the orders of consent.*
- (c) *That despite such unequivocal orders, the 1<sup>st</sup> respondent neither compiled the member's payroll for the month of November, 2015 nor met the union members for the purposes of disbursing the salaries as ordered by the honourable court.*
- (d) *That the respondents were present in court, by their advocates, when the consent orders of 24<sup>th</sup> November, 2015 were issued, and therefore have full knowledge of the existence of such orders.*
- (e) *That in fact, earlier on 8<sup>th</sup> December, 2015 the claimant had filed an application dated 8<sup>th</sup> December, 2015 in which the claimant sought the orders of this honourable court to summon officers (officers?) of the 1<sup>st</sup> and 2<sup>nd</sup> respondent to show cause why they would not be committed to civil jail for blatantly failing to comply with the orders of the court issued on 10<sup>th</sup> August, 2015, 25<sup>th</sup> September, 2015 and 24<sup>th</sup> November, 2015.*
- (f) *That the court, finding that the 1<sup>st</sup> respondent was in contempt of orders of the court, summoned its officers to appear before court on 16<sup>th</sup> December, 2015 to show cause why they would not be committed to civil jail.*
- (g) *That it is on this occasion that the officers of the 1<sup>st</sup> sought to purge themselves of contempt, by undertaking to comply with the orders of the court.*
- (h) *That the 1<sup>st</sup> sought to record consent for compliance with the orders of the court. Accordingly, the claimant withdrew its application for contempt.*
- (i) *That presently, the 1<sup>st</sup> respondent is in contempt of the consent order.*
- (j) *That failure by the 1<sup>st</sup> respondent to pay the claimant's members the salaries has frustrated, and demoralized the workers. Indeed, it amounts to constructive dismissal, contrary to the orders of this honourable court, issued on 10<sup>th</sup> August, 2015 by which the court respondents were barred from dismissing the claimant's members without following the due process of the law.*
- (k) *That the 1<sup>st</sup> respondent has willfully disobeyed the orders of this honourable court, which, in their capacity as public officers, are duty bound to obey.*
- (l) *That no reasonable justification has been tendered by the 1<sup>st</sup> respondents for their disobedient conduct, and in the absence of legitimate grounds, the respondents disobedience may properly be described as being illegal.*
- (m) *That the orders of the court should be complied with, with utmost obedience until set aside or*

successfully appealed against. Disobedience of the court orders seriously undermines the rule of law.

(n) That in view of the foregoing, the relevant officers of the respondents should be summoned before this honourable court to show cause why they should not be committed to civil jail for blatantly failing to comply with orders honourable court.

(o) That there is no overwhelming difficulty to grant of the above sought orders.

The 1st and 2nd respondents in their grounds of opposition dated 2nd February, 2016 oppose the application on the following grounds;

1) That the application as filed is fatally defective. There is no collective bargaining agreement on record between the parties herein. The said collective bargaining agreement tendered in court for a period of two (2) years effective as from 1<sup>st</sup> September, 2012 and is therefore no longer in force as between the parties herein.

2) That the applicant has failed to set out in full the grounds upon which the committal application is made.

3) That the applicant has failed to identify separately and numerically each alleged act of contempt including, if known the date of each of the alleged acts.

4) That staff who is members of the claimant from the now defunct local authorities seconded to Bomet County Public Service has been paid their salaries for the month of November, 2015 as ordered by this honourable court (sic.)

5) That there is no evidence before this honorable court that the respondents willfully disobeyed the said order.

6) That the applicant is not candid and truthful and the court\ (sic)

7) That the applicant's act of isolating the respondent's employees to face the wrath of this court for contempt is tantamount to selective justice and promoting discrimination.

8) That there was no act/omission committed by the contemnors in contravention of this court's orders issued on 16<sup>th</sup> December, 2015.

9) That the alleged acts of contempt are not proof of constructive dismissal.

10) That the claim filed by the claimant will not be rendered nugatory if the contempt orders sought herein are not granted.

The issue in contention here is whether the officers of the 1st and 2nd respondent should be cited for contempt of court for disobeying this court's orders of 16th December, 2016. These orders, *inter alia*, command the respondents to meet and pay the grievants, who are members of the applicant union their salaries for November, 2015 within seven days.

The claimant/applicant in his written submissions sets out a case for contempt of court. It is her submission that the said officers of the 1st and 2nd respondent to wit, the Governor Bomet County, Human Resource Manager County Government of Bomet, Payroll Manager Bomet County Government and Acting County Secretary Bomet County appeared in court on 16th December, 2015 to show cause as to why they should not be committed to civil jail. It was then that the consent order of 16th December, 2015 was entered into *inter partes* in their presence and that of their counsel. This ousts a case of non knowledge of the court order.

It is the applicant's further submission that the cited officers of the 1st respondent did not pay the claimant members salaries for November within the time limit of the order of court. These remain unpaid to date. Their allegation of having disbursed these salaries in december does not arise as this remission comprised salary for december, 2015 – see annexure RA2. The applicant again submits that annexures KM 17, 18, 19, and 20 are not indicative or evidence/proof of payment for the claimants salaries for november, 2015.

The claimant/applicant at paragraph 13 of a Further Affidavit in support of this application sworn on 4th March, 2016 further avers that the annexures to the supplementary affidavit by the 1st respondent, to wit, *copies Human Resource director forwarding letter, payment summary, payroll bank list to various banks and Central Bank Real Turn Gross Settlement statement to various banks, being annexure KM1,2,3 do not prove that the 1st respondent paid the November, 2015 salaries.* This is not assisted by annexures KM 17,18,19 and 20 therein which are emphatic that the 1st respondent has not paid the november salaries but those for October and December, 2015 together with salaries for January, 2016.

The claimant/applicant submits that the cited officers have not tendered a reasonable excuse or reason for their disobedience of the court order. She indeed submits that the 1st respondent in her Replying Affidavit sworn by Kilelson Mutai on 14th December, 2015 annexes falsified payslips for the claimant's membership through which the respondent purported to have paid the claimant members salaries. These were not paid then and remain unpaid to date.

It is the claimant/applicant other submission, that the respondents rebuffed this court's offer of negotiations for an out of court settlement of the issues in dispute through lack of cooperation despite efforts by the claimant to have the matter so resolved.

The claimant/applicant in the penultimate submits a case of contempt of court in the following manner;

*“... presently the said 1st Respondent's Officers are still in contempt of the consent order issued by this Honourable on 16<sup>th</sup> December, 2015.*

*And despite the said 1st respondent officer's knowledge of the same, the respondent's officers with uncontrolled impunity continue to engage in conduct that can only be termed as dishonest, insensitive, cruel, intimidating and victimizing of the members of the claimant union, and an utter disobedience of the Order of this honourable Court.*

The claimant seeks to rely on the authority for originating contempt of court proceedings in the Judicature Act as follows;

*The law regulating applications for contempt of court is to be found in Section 5 of the Judicature Act and in the Amendments to the England Civil Procedure Rules (2012). Section 5 of the Judicature Act provides:*

*“5(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England and that power shall extend to upholding the authority and dignity of subordinate courts.”*

The applicants further seek to rely on the authority of **Sam Nyamweya & 3 others v Kenya Premier League Limited & 2 others (2015) eKLR** where the court observed as follows;

*“...the power to punish for contempt is an important and necessary power for protecting the cause of justice and the rule of law, and for protecting the authority of the court and the supremacy of the law.”*

Again, in the Scottish case of **Steward Robertson Vs Her Majesty's Advocate, 2007 HCAC 63, Lord Justice Clerk** stated that;

*“contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether civil criminal proceedings”*

The learned Judge further stated that;

*“The power of the court to punish for contempt is inherent in a system of administration of justice and that power held by every judge.”*

She further sought to rely on the authority of **Board of Governors Moi High School Kabarak Vs. Malcolm Bett & Another, (Supreme Court Petition Nos 6&7 of 2013**, where the highest court made the following observation on the subject;

*“... described the power to punish for contempt as a power of the court “to safeguard itself against contemptuous or disruptive intrusion from elsewhere” and identified that power as one of the indisputable attributes of the court's inherent power “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.”*

The essence of the court's need to firmly manage cases for contempt of court has been the subject matter of the common law system since time immemorial. In the authority of **Heelmore vs. Smith, (2) (1886) L.R. 35 C.D455**, Lord Bowen, LJ aptly stated the rationale for punishing for contempt as:

*“The object of the discipline enforced by the court in case of contempt of court is not to vindicate the dignity of the court or the person of the Judge, but to prevent undue interference with administration of justice.”*

This is repeated in the authority of **Johnson Vs Grant 1923 SC 789 at page 790** where Lord President Clyde cautioned that;

*“The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is being challenged.”*

This has been reiterated in our local jurisprudence in the case of **Kenya Tea Growers Association Vs Francis Atwoli and 5 Others (2012) eKLR** where Lenaola, J. cited with approval the case of **Clarke and Others Vs. Chadburn & Others (1985) 1AII E.R (PC), 211** in which the court observed that;

*“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, wilful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal...even if the defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”*

In the case of **Econet wireless Ltd vs. Minister for Information & Communication of Kenya & Another (2005) eKLR** it was held that;

*“Where an application for committal for contempt of court orders is made the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious - a contemnor would have no right of audience in any court of law unless he is punished or purges the contempt.”*

This is further supported by Black's Law Dictionary (Ninth Edition) defines contempt of court as;

*“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine imprisonment.”*

The 1st and 2nd respondents in opposition to the application cite the following as issues for determination in this application;

- i. Whether the claimant has the locus standi to institute these proceedings.*
- ii. Whether the County Government of Bomet compiled and paid salaries for the month of November, 2015 for seconded officers from the now defunct local authorities and who are members of the claimant/applicant.*
- iii. Whether the county secretary and governor are responsible for employment matters in the county.*
- iv. Whether in the absence of any justifiable grounds and evidence on record, Governor Bomet County, Acting County Secretary Bomet County, The Human Resource Manager and Payroll Manager Bomet County Government are in contempt of this Honourable court orders issued on 16th of December, 2015.*

On the 1st issue, the respondents rule out the issue of *locus standi* on grounds that there is no CBA on record *inter partes*, the last one have been effective for two years from 1st September, 2012.

The respondents in answer to issue No.2 submit that the salaries for November, 2015 were effected in December as evidenced in their replying affidavit. In this, they deny that the Governor, Acting County Secretary, Human Resource and Payroll Manager are responsible for employment matters in the county. They further deny that the County Government is responsible for the salaries of seconded officers as per S. 73 (2) of the County Government Act.

The claimant/applicant in support of the application annexes Statements of Accounts and payslips for some of her members which indicate non payment of the salary for november, 2015 – see RA2. These include an account statement and transaction details for her members in the Kenya Commercial Bank and Equity Bank Kenya limited in respect of some of these workers. These are all indicative of non payment of the salaries as ordered by this court.

The respondent, in opposition to the application and also in her written submissions raise various issues in support of the opposition. These *inter alia*, include the issue of jurisdiction of this court in dealing and determining the issue in dispute and also the role of the cited officers in matters of payment of salaries to the grievant members of the applicant. I must observe that this defence is merely escapist and hollow. The orders of court culminating in these contempt proceedings were made by a consent order of court inter parties on 16th December, 2015. Issues of jurisdiction or competency of the respondents or even their officers were not raised in these elaborate court proceedings culminating in the adoption of the consent orders of the parties. The respondents cannot therefore be heard to renege on what they willfully and without undue influence agreed on and entered into just the other day. They are fully bound by the orders of 16th December, 2015.

The respective cases and submissions to the parties display a clear cut case of contempt of court. This is abundantly demonstrated by the evidence of the claimant/applicant as against the denial by the 1st and 2nd respondents. This is to the satisfactory test of beyond reasonable doubt as anticipated in these proceedings

It is sad that in an attempt to oppose the application the respondents fell into a display of falsified pay slips which do not relate or confirm the position on the ground; the payment of the disputed salaries for november, 2015. This is made worse by the fact that the orders the subject matter of these court proceedings are consent orders entered into by the parties on their own volition. No efforts have been made in mitigation of the disobedience of the court orders and efforts by the court to induce amicable

settlements of the matter were rebuffed by the respondents. This fell on deaf ears see annexure RA3 of the claimant's further affidavit above cited. This is a clear case of contempt of court and I find and hold as such. I am therefore inclined to allow the application and order as follows;

- i. That the 1st and 2nd respondents and her officers namely, the Governor – Bomet County, Human Resource Manager – County Government of Bomet, Payroll Manager Bomet County Government, and Acting County Secretary – Bomet County, be and are hereby cited for contempt of court.
- ii. That the contemnors in (1) above be and are hereby awarded seven (7) days to purge this contempt of court.
- iii. That a mention be had on 26th July, 2016 at 900 hours for a report by the respondents on the purge of contempt.
- iv. That this court be and is hereby at liberty to make further orders and directions at the date of mention.
- v. The costs of this application shall be borne by the respondents.

Delivered, dated and signed this 19th day of July 2016.

**D.K. Njagi Marete**

**JUDGE**

Appearances

1. Mr. Otieno instructed by Brian Otieno & Company Advocates for the claimants/applicants.
2. Mr. Andrew Matwere advocate for the 1st and 2nd respondents.
3. M/s Janet Langat for the 4th respondent.
4. No appearance for the 3rd respondent.