



**Republic v Salaries and Remuneration Commission & 2 others; Nzuki (Ex parte Applicant)
(Miscellaneous Civil Application 58 of 2020) [2024] KEHC 3931 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3931 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS CIVIL APPLICATION 58 OF 2020**

**FR OLEL, J
APRIL 23, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

SALARIES AND REMUNERATION COMMISSION 1ST RESPONDENT

JUDICIAL SERVICE COMMISSION 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

AND

SOLLO NZUKI EX PARTE APPLICANT

RULING

A. Introduction

1. Before court for determination is the amended Notice of Motion Application dated 30th June, 2021 filed by the Exparte applicant who seeks for orders that;
 - a. Spent
 - b. That the Honourable Court do find the chairperson of the Judicial Service Commission Hon. Chief Justice Martha Koome and the Secretary of the Judicial Service Commission and Chief Registrar of the Judiciary Hon. Ann A. Amadi are in contempt of court for disobedience of the orders herein issued by Hon. G. V. Odunga on the 27th January, 2021.
 - c. That this Honourable court do impose a fine and/or a penalty of Kshs.1,000,000/= (Kenya shillings one million) against the chairperson of the Judicial Service Commission Hon. Chief Justice Martha Koome and the and the Secretary to the Judicial Service Commission and Chief Registrar of the Judiciary Hon. Ann A. Amadi and in default of payment of such fine direct the



attachment of all their movable and immovable assets including land and buildings be attached and sold in execution of this order to satisfy the penalty for contempt.

- d. That upon grant of prayers (a), (b) and (c) above, this honourable court do issue an order that the chairperson of the Judicial Service Commission Hon. Chief Justice Martha Koome and the Secretary to the Judicial Service Commission and Chief Registrar of the Judiciary Hon. Ann A. Amadi be committed to civil jail for a period of six (6) months and to cease holding public office.
 - e. That the court do issue an order that the above mentioned, Judicial Service Commission, chairperson Hon. Chief Justice Martha Koome and Hon. Ann A. Amadi do purge their contempt within 24 hours of the date hereof by enforcing, implementing or effecting the decree issued on 27th January, 2021.
 - f. Any other or further relief that this Honourable court may deem fit to grant.
 - g. The costs of this application be provided for.
2. The Application is supported by grounds on the face of the said Application, the Supporting Affidavit of the Ex-parte Applicant dated 30th June 2021, affidavit in response and further supplementary affidavit sworn by Hon. Justice Robert Kipkoech Limo dated 15th March 2023 and 19th September 2023 respectively and also further supplementary affidavit sworn by Hon. Justice Patrick J. Otieno also dated 19th March, 2023.
 3. The 1st and 3rd Respondents did not take part in this application and their counsels indicated as much to court. The 2nd Respondent strenuously opposed this application and file several affidavits sworn by Hon. Anne A. Amadi, the Chief Registrar of the Judiciary, specifically she did file a Replying Affidavit dated 11th May 2021, further Affidavit dated 7th March, 2023 and further Supplementary Affidavit dated 3rd August 2023.
 4. This Application was canvassed by way of written submissions.

B. The Contempt Application

5. It was the Ex-parte Applicant's contention that on 15th December, 2020 this honourable court had delivered a judgement in this matter whereupon it directed and issued an order of mandamus compelling the 1st respondent to implement and effect the decree dated 13th March, 2020 issued in Machakos High Court Constitutional Petition No. 18 of 2018. Further by the said judgement, this court did order the 2nd respondent to take necessary steps within its mandate to facilitate the satisfaction of the decree dated 13th March, 2020. The 1st Respondent in honouring the said judgment did write a letter dated 1st February 2021, to the 2nd Respondent, advising them to pay/honour the said decree by pay all affected judges the starting salary equal to the starting salary paid to the other judges appointed with them on their respective appointment dates and the said amount plus benefits be backdated to their respective dates of appointment.
6. Despite being so advised, the 2nd Respondent had failed and/or neglected to effect the advice of the 1st Respondent and further failed to honour the express and clear terms of the said court order requiring them to take necessary steps within its mandate to facilitate the satisfaction of the decree dated 13th March, 2020. The applicant, through his counsel on record, he had written several letters dated 17.02.2021 and 18.06.2021 to the Chief Registrar of the Judiciary and Hon. Chief Justice of the Republic of Kenya seeking to know the progress made on implementation of the advisory and its implementation status but the said letters did not elicit any response.



7. The 2nd respondent's inaction was deliberate, discriminatory and was in disobedience of an express court order thereby causing the affected judges to continue to suffer great prejudice as they earned less than what their colleagues earn, yet they undertake the same duties and functions. It had been clearly established that the 2nd respondent was in contempt of the court orders dated 13th March, 2020 and 27th January, 2021 and it was therefore just and prudent to allow this Application.

C. The Response

8. The 2nd Respondent did file their Replying affidavit, Further Affidavit and Further Supplementary Affidavit s all sworn by Hon. Anne A. Amadi (then) Chief Registrar of the Judiciary and Secretary to the Judicial Service Commission. She did state that, in her capacity as the Chief Registrar of the Judiciary and Secretary to the Commissions she does exercise her authority in a manner that brings confidence and dignity to the office she holds and undertakes her duty in a manner that promotes public confidence and integrity of the said office. Further she stated that at all times she would observe the national values espoused in the Constitution including respect for the Rule of Law and the authority of the court. In that regard the commission had not acted in breach of the decree dated 27th January, 2021 or acted in a manner that besmirches the authority of this honourable court.
9. She further deponed that she was aware of decree, this court had issued where it was directed by an order of mandamus that the 2nd respondent was to take steps within its mandate to facilitate the satisfaction of the decree issued on 27th January, 2021. The Judicial Service Commission had constituted a committee which held several consultative meetings with the officials of Judges Welfare Association with a view of resolving this matter. The committee submitted its report to the full Commission on 14th February, 2022 where it was discussed, approved and resolved that;
- a. The gross monthly remuneration packages for Hon. Judges of the High Court and Court of equal status appointed in the year 2014 from outside the judiciary be enhanced to Kshs.969,742,00/= in the remuneration scale, effective from 1st December, 2021.
 - b. The gross monthly remuneration package for the Hon. Judges of the High Court and Court of equal statuses appointed in the year 2015 from outside the Judiciary be enhanced to Kshs.938,519.00/= in the remuneration scale, effective 15th December, 2021.
 - c. The gross monthly remuneration package for Hon. Judges of the High Court and Court of equal statuses appointed in the year 2016 from outside the Judiciary be enhanced to Kshs. 907,279.00/= in the remuneration scale, effective 1st December 2021; and
 - d. The arrears be paid with effect from 18th December, 2019 being the dates of the judgement in Machakos High Court Petition No. 18 of 2018 Sollo Nzuki -vs- Salaries and Remuneration Commission and 2 others in line with the Salaries and Remuneration Commission guidelines of 1st February 2021.
10. The position of the Commission was communicated to the Judges Welfare Association vide a letter dated 22nd February, 2022. The affected judges did not dispute the amounts indicated in the aforementioned letter and therefore she proceeded to request the National Treasury to review the judge's salaries as approved. Eventually this salary increment was effected and subsequently the arrears cleared in the month of October, 2022. It was therefore her believe that there was no disobedience of the court order and decree dated 27th January, 2021 or the order of mandamus dated 13th march 2020.
11. The Hon. Chief registrar of the Judiciary and Secretary to the Commission did emphasis that before the Commission made its decision, they had held several consultative meetings (held on 9th February



2021, 4th March 2021 and 24th November 2021), with officials of the Judges Welfare Association (“the Association”) to discuss implementation of the said decree and the resolutions arrived at, indeed culminating to the eventual resolution of the Commission as communicated by their letter dated 22nd February, 2022. The aggrieved judges and/or the Association (KJMWA) never objected and/or challenged the resolution of the Commission and impliedly compromised the decree under consideration.

Affidavit in Response

D. Supplementary Affidavits

12. In light of the various allegations made by the Chief Registrar of the Judiciary; Hon. Justice Robert K. Limo did file two Supplementary Affidavits and stated that the Chief Registrar had misrepresented some facts particularly with respect to the meeting held on 14th March, 2021 and 24th November, 2021 between some judges and some members of the Judicial Service Commission. He averred that the said meeting of 14th March, 2021 turned out to be farce because it transpired that there was no intention by the 2nd Respondent to implement the judgement of this Honourable Court and the said meeting ended in disarray with no resolution being passed. Further the affected judges never sat anywhere and/or gave any party instructions to compromise the judgement as they were interested in its full implementation.
13. Further, Hon. Judge Robert Limo did depone that the decree dated 18th December, 2019 was clear that all judges were to be treated equally and every judge appointed was to enter on the same scale and on the same starting salary. The 2nd Respondent had to uphold constitutionalism and rule of Law as clearly stipulated under Article 249(1) of the *Constitution* of Kenya and since the commission had not appeal, sought for review and/or setting aside of the said orders, they had no option but to comply and implement the decree and not purport to abrogate and/or review the decision of the court.
14. Further, the affected judges had not received the letter dated 12th July, 2022 and/or any other communication from the 2nd Respondent informing them of the 2nd Respondent’s resolution as communicated in the said letter. The said decision in any event was unlawful as they had decided to pay the arrears of the affected judges from the date of judgement in the original Machakos Petition No. 18 of 2018, dated 18th December, 2019 and not from date of appointment as directed by the court. The 2nd respondents thus were in contempt as they had not fully complied with the orders of this court. He prayed that this court does hold so and grant the orders sought.
15. A further Supplementary Affidavit was also sworn by Hon. Judge Patrick J. Otieno, the current chairperson of Kenya Judges Welfare Association wherein he deponed that, he had access to all the Association records including minutes of meetings held and resolutions passed by the Association and from the said records and also as of his own personal knowledge –
 - a. The Association was never a party to the suit that gave rise to the judgement and decree, which is subject of these proceedings nor did the executive committee of the said Association meet the ex-parte Applicant over any compromise of the decree in the said suit. It was therefore not true that the “Association” at any point compromised this matter, nor were they a party hereto and could not do so without the consent and knowledge of the Ex-parte Application or the affected judges.
 - b. If any official of the “Association” attended any meeting with the Judicial Service Commission and purported to reach a compromise over this decree, then that was at a personal level, not on behalf of the Association or the affected judges and any such compromise was purely gratia and not on behalf of the parties to the suit and/or the affected judges.



- c. All affected judges are in a WhatsApp group christened “Crusader for Justice” and from the conversations therein, they were explicit that at no time have they authorized anybody to negotiate on their behalf.
16. The averments by the Hon. Chief Registrar were therefore not true and demonstrated a deliberate refusal by the 2nd Respondent to comply and implement the court decree as had been issued.

E. Submissions

(i) The Ex-Parte Applicant Submissions

17. The Ex-parte Applicant filed his submissions and further submissions dated 25th October, 2023 and 16th January, 2024 respectively. He averred that he holds a valid and enforceable decree dated 15th December, 2019 issued in Machakos High Court Petition No. 18 of 2018 (Hon. Justice G. V. Odunga), where he did order/declare amongst other orders that paying judges of the High Court of Kenya and judges of equal status a starting salary rate that is lower than the starting Remuneration of other judges of the High Court of Kenya and court of equal status appointed to the same office on the same day is a violation of the affected judges’ rights not to be discriminated against as guaranteed by Article 27 of the Constitution of Kenya, 2010 and further was a violation of their rights as guaranteed by Article 41(2) of the Constitution of Kenya 2010.
18. The said Honourable Justice G.V. Odunga (As he was then) having so found did issued a declaration as against the 1st and 2nd Respondents compelling them to pay all affected judges the starting salary equal to the starting salary paid to the judges appointed with them on their respective dates of appointment (which even is higher), and, that the said amount (s) plus benefits be backdated to their respective dates of appointment and paid promptly.
19. The decree herein was not challenged by way of review and/or appeal, but despite this obtaining position, the 2nd Respondent had failed to comply and/or implement the said decree as directed by the court, thereby compelling the Applicant to file this suit, to seek orders of mandamus, which orders were eventually granted on 15th December, 2020. The applicant did extract and serve the said order upon the 2nd Respondent on 27th January, 2021 and had legitimate expectation that it would be implemented immediately. Despite there being two valid decrees and an advisory from the 1st Respondent dated 1st February 2021 advising the 2nd Respondent to pay the affected judges, the starting salary as directed by court, the 2nd Respondent still had refused to comply. This therefore showed a clear disobedience of the orders earlier issued.
20. The Appellant further submitted that the 2nd Respondent’s defence, that it had reached a compromise between them and the Representative of the Judges Welfare Association, was an aberration and red herring as Judges Welfare Association were not a party to the suit nor were the affected judges made part of that deliberations, as confirmed by the affidavit’s filed by Hon. Justice Robert Limo and Hon. Justice Patrick J. Otieno. The 2nd Respondent had acknowledged the subject court decrees and confirmed that the affected judges were only paid backdated salaries with effect from the date of judgement (18.12.2019) and not backdated to the date of appointment as decreed by the court. Accordingly the 2nd Respondent had refused to implement and/or comply with the clear court order and thus was in contempt of the court.
21. The Ex parte applicant further submitted that 2nd respondent action to deliberately fail to comply with the said court orders issued, put the dignity and authority of the court in disrepute, and where it was proved that there was deliberate disobedience of court orders, the court would not shy away



from dealing firmly with the proven contemnors and meting appropriate punishment as against them. Reliance was placed on *Econet Wireless Kenya Ltd -vs- The Minister for Information and Communication of Kenya and Another* [2005] eKLR and *Shimmers Plaza Ltd. -vs- National Bank of Kenya Limited* [2015] eKLR where it was emphasized that “No man is above the law and no man was below it; obedience to the law was demanded as a right; not a favour.”

22. The Ex parte Applicant also relied on the case of *Dr. Ibrahim Haji Isaak -vs- Kenya Meat Commission and Another* [2013] eKLR where the court did find the cited contemnors guilty of contempt and ordered them to pay a fine of Kshs. 10 million failure of which its assets were to be attached and sold to settle the penalty, while the 2nd Respondent was fined Kshs.2 million and in default to serve 90 days imprisonment.
23. In their further submissions filed, the *Ex-parte* Applicant reiterated that there was wilful failure to comply with the court decree dated 18th December 2019 and the order of mandamus dated 15th December 2020. The 2nd Respondent could not therefore be heard to allege otherwise as their action and/or lack of it was fraught with malice and mischief. The 2nd Respondent could therefore not rely on the decision and the case of *M. N. Mweru and others -vs- National Land Commission and 2 others* and *Mengich T/A Mengich and Company Advocates and Another -vs- Joseph Mabwai and 10 others* [2018] eKLR, as in the said citations, there was no proof that the refusal to obey the court orders was wilful, deliberate and mala fides, unlike in this instant case, where it had been demonstrated otherwise.
24. The Ex parte Applicant urged the court to uphold its dignity and find that the 2nd Respondent was in contempt and proceed to punish them as provided for in law.

(ii) The 2nd Respondent's Submissions

25. The 2nd Respondent did file their submissions on 15th December 2023, and stated that they were not in contempt of this court's orders as alleged by the Ex parte applicant. In particular they averred that before one could be found to have been in contempt of court, it had to be shown that its conduct in failing to comply with the court order was deliberate and in bad faith. Reliance was place on *Mengich T/A/ Mengich and Company Advocates and Another -vs- Joseph Mabwai and 10 Others* [2018] eKLR and *Samuel M. N. Mweru and others -vs- National Land Commission and 2 others* [2020] eKLR where the test for non-compliance was laid down.
26. It was the 2nd respondent's contention that it had not disregarded the impugned orders of this Court and had taken reasonable steps in implementing the said orders and therefore had not violated the dignity of the court. They had shown that, they had formed an Implementation Committee which had deliberated on the mode of implementation, engaged the Judges Welfare Association and in good faith implemented the said judgement as recommended. It was imperative to note that the affected judges did not object to the outcome of the deliberations upon issuance of the letter dated 22nd February, 2022 (wherein the said recommendations were stated) and in compliance thereof the commission had paid the affected judges the agreed amount of salary arrears in full from the date of judgement.
27. The court was therefore urged to find that the Affidavits sworn by Hon. Justice Robert Limo and Hon. Justice Patrick J. O. Otieno were made in bad faith as the decree under consideration was compromised and paid as agreed. The 2nd Respondent therefore prayed that this Application be dismissed with costs.

F. Analysis and Determination

28. I have considered the application, the affidavits filed both in support of the application and in opposition thereto, the submissions and the authorities relied upon by the parties and this is the view I form of the matter.



29. There is indeed a valid court decree issued in Machakos High court constitution petition No 18 of 2018, dated 18th December 2019, where amongst other orders a declaration was made that; the 1st and 2nd respondents herein to pay (unless already paid) all the affected judges the starting salary equal to the starting salary paid to the judges appointed with them on their respective dates of appointment(which ever is higher), and, that the said amount(s) plus benefits be backdated to their respective dates of appointment and paid promptly.
30. Further it is also not in dispute that order of mandamus was issued herein dated 15th December 2020, wherein the 1st respondent was directed to implement and effect the decree dated 13th March 2020, regarding the judgment of this court dated 18th December 2019 and further the 2nd respondent was similarly directed to take necessary steps within its mandate to facilitate the satisfaction of the said decree. Upon service of the said mandamus order, the 1st respondent did write to the 2nd respondent vide their letter dated 1st February, 2021 advising them to implement the aforesaid decrees and effect payment of the backdated salaries as decreed by court.
31. The 2nd respondent through its secretary, the chief registrar of the judiciary indeed in her pleading too confirmed service and knowledge of the said court orders/decrees and explained at length what the 2nd respondent had done to implement the same. Further she had confirmed that they had paid the affected judges from the date of judgment and not the date of appointment as decreed by court. The basis of this variation was an alleged compromise reached with official of the Judges welfare association to so pay as from the date of Judgment and not the date of appointment as initially decreed by court.
32. The only issues which therefore arise for determination is whether; The Honourable Chief Justice Martha Koome, as chairperson of Judicial service commission and secretary to the commission and chief registrar of the judiciary Hon Anne A. Amadi should be held to be in contempt of the aforesaid court orders and if so what punishment should be melted out. At this point it should be observed that, above cited court orders were directed at the Judicial Service Commission as a body and not to the Honourable Chief Justice Martha Koome in her capacity chairperson of the said commission. She therefore cannot be singled out and be personally cited for contempt as proposed by the Ex parte Applicant.
33. On the other hand the chief registrar of the judiciary is the secretary to the said commission and as provided for under the Section 12 of the *Judicial Service Act* No 1 of 2011, the holder of the said office is responsible for the overall administration and management of the judiciary and is the chief accounting officer who shall be responsible for the monies appropriated from the exchequer and also responsible for day to day operations and administration of human resource of the judicial service. The holder of the said office is therefore the proper person to implement the court orders issued as against the commission and in the event of noncompliance he/she must explain the same.
34. The application is premised on Section 5 of the *Judicature Act*, Cap.8 which provides: -
- (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.
35. From the above proviso, I note that a duty is imposed upon the High Court and Court of Appeal to ascertain the applicable law of contempt in the High Court of Justice in England, at the time the application is brought as noted by Platt J. and Porter J In the matter of an application by Gurbaresh Singh & Sons Ltd Misc Civil Case No. 50 of 1983.



36. In the Supreme court case; *Githiga & 5 others v Kiru Tea Factory Company Ltd* (Petition 13 of 2019) [2023] KESC 41 (KLR) (16 June 2023) (Judgment) the court discussed different aspects of contempt and rendered itself as follows;

“Due to the quasi-criminal nature of contempt proceedings and the gravity of the consequences that flow from these proceedings, courts are required to adhere to the principles of natural justice, procedural fairness, and the right to a fair hearing. This is because, in contempt proceedings, the liberty of the subject is usually at stake, therefore, if a party alleges breaches of his fundamental rights and freedoms as envisaged under the Constitution albeit, at the Court of Appeal, this court cannot afford to shut its eye to such serious legal issues that call for settling as the apex court.”

The court went on to say that;

“Courts possess the inherent power to enforce compliance with their lawful orders through sanctions imposed through contempt of court. We note that the Contempt of Court Act having been declared unconstitutional in *Kenya Human Rights Commission v Attorney General & Another* [2018] eKLR on November 9, 2018 the instructive provision remains section 5(1) of the Judicature Act which grants the High Court and the Court of Appeal the power to punish for contempt. It provides:(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.

58. In enforcing compliance with lawful court orders, the procedures adopted by the court must be fair and reasonable in which full opportunity is given to an alleged contemnor to defend himself or herself. This is because contempt proceedings being quasi-criminal, require a higher standard of proof than in normal civil cases, and one can only be committed to civil jail or penalized on the basis of evidence that leaves no doubt as to the contemnor’s culpability.

37. In the High Court of South Africa in the case of *Kristen Carla Burchell vs. Barry Grant Burchell*, Eastern Cape Division Case No. 364 of 2005, the court held that in order to succeed in civil contempt proceedings, the applicant has to prove:-

- i. the terms of the order,
- ii. Knowledge of these terms by the Respondent,
- iii. Failure by the Respondent to comply with the terms of the order.

38. The learned authors of the book ‘Contempt in Modern New Zealand’ succinctly stated:-

“There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:

- (a) the terms of the order (or injunction or undertaking) 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's conduct was deliberate.

39. In *Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another* [2005] 1 KLR 828 Ibrahim J. (as he then was) relied on the Court of Appeal decision in *Gulabchand Popatlal Shah & Another* civil application no. 39 of 1990, (unreported), the Court of Appeal said:

“..... It is essential for the maintenance of the Rule of Law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors” In *Hadkinson -v- Hadkinson* (1952) 2 All ER. 567, it was held that: “It is plain and unqualified obligation of every person against or in respect of, who 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.” See *Shimmers Plaza Limited vs. National Bank of Kenya Limited* [2015] eKLR.”

40. It was also held by the Constitutional Court of South Africa in *Burchell v. Burchell*, Case No 364/2005 that:-

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. the *Constitution* states that the rule of law and supremacy of the *Constitution* are foundational values of our society. It vests the judicial authority of the state in the courts and requires other organs of state to assist and protect the courts. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.

41. Indeed the Court of Appeal in *Shimmers Plaza Limited v National Bank of Kenya Limited*(supra) also stated that :-

“Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not.

The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by the *Constitution*. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy .We think we have said enough to send this important message across.”

42. Finally also in the case of *Sam Nyamweya & Others -V- Kenya Premier League Ltd And Others* [2015] eKLR) the Court stated that:-

“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.”

43. The court's view is that the conduct of the 2nd respondent clearly establishes willful disobedience of the court orders earlier issued in Machakos High court constitution petition No 18 of 2018, dated 18th



December 2019, where they were directed to pay the affected judges their back dated salaries from the date of appointment and do so promptly and also subsequently as emphasized in the Mandamus order issued herein dated 15th December 2020.

44. This Court is not satisfied with the 2nd respondents' explanation that, the 2nd respondent and the official of the Judges welfare Association compromised the said decree and agreed that the payments due be effected from the date of judgment. Nothing would have been easier for the 2nd respondent to table the signed minutes of the said meetings to prove this allegation. The affidavits of Hon Justice Robert Limo and Hon Justice Patrick J Otieno also confirmed the fact that no compromise agreement had been reached. To the extent that there has was no compromise and the valid decree sought to be enforced has been pending from 2021, clearly shows a willful pattern of procrastination and willful design and/ or refusal to comply with the said court order .To that extent the 2nd respondent is guilty as charged and is in contempt of the aforestated orders.
45. The Court associates itself with Mwita J. in *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] eKLR who was of the view that even as courts punish for contempt to safeguard the peaceful and development of society and the rule of law, it must be borne in mind that the power to punish for contempt is a discretionary one and should be used sparingly.
46. In *Directline Assurance Co Ltd vs. Jamii Bora Bank Ltd & 5 Others* (2015) eKLR it was stated that;
- “.....When a court orders are being disobeyed, or are about to be disobeyed, and the contemnor comes down and purges the contempt, either out of his own freewill or at the prompt of the court, the court will accept the purge of the contempt unless circumstances exist to suggest that the coming down, or the alleged purging of the contempt, is not genuine, or is done in bad faith, or is in itself a continuation of the original contempt. In accepting the coming down of the contemnor, the court will assess the reasons given for the disobedience, the time taken to come down, and the cost incurred in the process”.

G. Disposition

47. The Court finds the 2nd respondent is in contempt of the court order issued in Machakos High court constitution petition No 18 of 2018, dated 18th December 2019, where they were directed to pay the affected judges their back dated salaries from the date of appointment and do so promptly and also subsequently as emphasized in the Mandamus order issued herein dated 15th December 2020.
48. The court takes judicial notice of the fact that the, the judicial service commission as recently appointed Hon Fridah Mokaya Boyani as the new chief registrar of the judiciary and she has hardly settled into the said office.
49. The commendable orders to make under the circumstances as a way of giving the 2nd Respondent an opportunity to purge the contempt is to direct that;
- a. The secretary to the judicial service commission and chief registrar of the judiciary is granted 90 days to fully implement the aforestated decrees.
 - b. Sentencing for contempt of court is suspended for 90 days to allow the 2nd respondent purge contempt of Court;
50. It is so ordered

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 23RD DAY OF APRIL, 2024.

FRANCIS RAYOLA OLEL



JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 23RD DAY OF APRIL, 2024.

In the presence of;

No appearance for Ex Parte Applicant

No appearance for 1st Respondent

Ms Saina for 2nd Respondent

Mr Saina for 3rd Respondent

Sam Court Assistant

