



Mugiira v National Biosafety Authority; Inspectorate of State Corporations (Interested Party); National Biosafety Authority & another (Contemnor) (Cause E524 of 2024) [2024] KEELRC 13590 (KLR) (20 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13590 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E524 OF 2024
SC RUTTO, J
DECEMBER 20, 2024**

BETWEEN

DR ROY B MUGIIRA CLAIMANT

AND

NATIONAL BIOSAFETY AUTHORITY RESPONDENT

AND

INSPECTORATE OF STATE CORPORATIONS INTERESTED PARTY

AND

NATIONAL BIOSAFETY AUTHORITY CONTEMNOR

PROFESSOR JENESIO KINYAMARIO CONTEMNOR

RULING

1. Through a Notice of Motion Application dated 12th July 2024, the Claimant/Applicant moved this court seeking the following orders:
 1. Spent
 2. That pending the inter-partes hearing and determination of this Application, this Honourable Court be pleased to issue an order staying the Claimant's suspension from office.
 3. That pending the inter partes hearing and determination of this Application this Honourable Court be pleased to issue an order restraining the Respondent either through its agents, employees or otherwise howsoever from interfering with the Claimant's performance of his duties as the Respondent's Chief Executive Officer



4. That pending the inter partes hearing and determination of this Application an order of injunction do issue restraining the Respondents whether by themselves, their agents, employees or otherwise howsoever, from implementing the board's resolutions at the meetings held on 25th April, 2024 and 5th July, 2024.
 5. That pending the inter-partes hearing and determination of this Application, an Order of injunction do issue restraining the Respondents whether by themselves, their agents, employees or otherwise howsoever, from suspending the Claimant/Applicant and/or commencing disciplinary proceedings against him based on the findings of the impugned audit report.
 6. That pending the hearing and determination of the suit, an Order of injunction do issue restraining the Respondents whether by themselves, their agents, employees or otherwise howsoever, from suspending the Claimant/Applicant and/or commencing disciplinary proceedings against him based on the findings of the impugned audit report.
 7. That this Honourable Court be pleased to make such Order as it deems mete and just.
 8. That the costs of and incidental to this Application and Claim be in the cause.
2. When the matter came up for mention on 25th July 2024 for purposes of taking directions, the Court upon evaluating the arguments by both parties, issued an order staying further disciplinary proceedings against the Claimant pending hearing and determination of the Application dated 12th July 2024. It is worth pointing out that at the time, the Claimant had been suspended from duty with effect from 5th July 2024 for a period of three months.
 3. The Court further issued timelines with respect to filing of pleadings and consequently scheduled the matter for further mention on 18th September 2024 for purposes of confirming compliance and taking a ruling date for the Application dated 12th July 2024.
 4. Come 18th September 2024, the Court was bereaved hence was not sitting. As it would be, the suspension of the Claimant which was for a period of three months, lapsed on 5th October 2024.
 5. According to the Claimant, he resumed duty on 7th October 2024, upon expiry of his suspension period in line with the court order staying further disciplinary process.
 6. Subsequently, he was issued with a letter dated 7th October 2024, extending his suspension pending further orders of the Court.
 7. It is the said suspension that provoked the Claimant to move the Court vide an Application dated 11th October 2024, which is now the subject of this Ruling.
 8. In the Application dated 11th October 2024, the Applicant seeks the following orders:
 1. Spent.
 2. That this Court be pleased to cite the following parties for Contempt of Court Orders:
 - a. The Respondent
 - b. Professor Jenesio Kinyamario the Chairman of the Respondent's Board of Directors.
 3. That summons do issue against Professor Jenesio Kinyamario Respondent's Board of Director's Chairman to appear before this Honourable Court and show cause why he should not be punished for Contempt of Court.



4. That this Honourable Court be pleased to punish the aforesated contemnors for Contempt of Court as it shall at its discretion deem fit but in any event by:
5. Imposing a Monetary Fine of Kshs. 10,000,000/= upon the Respondent.
6. Committing Professor Jenesio Kinyamario to civil jail for such a term as this court may deem fit but in any event for a period of at least 6 months.
7. THAT costs of this application be borne by the Respondent.
9. The Application is premised on the grounds on its face and is supported by the Affidavit sworn on 11th October 2024 by the Claimant herein, Dr. Roy B. Mugiira.
10. Dr. Mugiira avers that the Contemnors unilaterally orchestrated further disciplinary measures against him by purporting to extend his unlawful suspension indefinitely vide a letter dated 7th October 2024.
11. He deposes that contrary to the assertion that the Board directed the issuance of the letter dated 7th October 2024, there has been no Board meeting/decision/resolution to support the assertion and therefore the Board Chairman made the decision unilaterally in pursuit of a personal vendetta and malice.
12. He further avers that the Orders of this Court were issued in the presence of the Respondent's Counsel and at all material times, the same were well known to Prof. Jenesio Kinyamario but they elected to disobey the same in an act of blatant impunity.
13. In Dr. Mugiira's view, his suspension on 5th July 2024 was pending the conclusion of the disciplinary process and the same lapsed on 5th October 2024.
14. It is his contention that whilst the Respondent is a distinct legal entity, the subject act of Contempt was singularly orchestrated by the Chairman of its Board of Directors who singularly authored the subject letter.
15. He further avers that following the stay of the disciplinary process by this Honourable Court, it is outrightly contemptuous to unilaterally and unjustly continue to punish him through the intended extended suspension for an indeterminate period at half pay as communicated through the letter dated 7th October, 2024.
16. Dr. Mugiira further deposes that pursuant to the Orders of 25th July 2024 there was no basis upon which the Respondent should continue to mete out purported disciplinary measures against him including withholding his salary.
17. According to him, the actions of the Contemnors in extending his suspension whereas the underlying disciplinary process has been stayed by this Honourable Court is clear and deliberate disobedience of this Court's authority and orders.
18. He contends that the actions by the Contemnors are not only contemptuous but have had the resultant effect of further violating his right to fair administrative action and to a fair trial as guaranteed by the Constitution of Kenya.
19. Dr. Mugiira maintains that such blatant disregard of the Orders of this Honourable Court cannot be left unpunished as this Honourable Court must preserve and jealously protect and guard its authority and dignity amongst the general public.
20. Prof. Jenesio Kinyamario, the Chairman of the Respondent's Board of Directors and the 2nd alleged Contemnor responded to the Application through his Replying Affidavit sworn on 23rd October 2024.



21. Prof. Kinyamario avers that it is true that the Honorable Court stayed the disciplinary process against the Claimant but upheld his suspension from duty pending the hearing and determination of his application dated 12th July 2024.
22. He further avers that during a special board meeting held on 19th September 2024, the Board was briefed on a number of issues including the Court proceedings by the Claimant and the expiry of his suspension on 4th October 2024. That it was noted that the Court Order of 25th July 2024 in place was sufficient and there was no need for any further action by the Board. The Board however agreed that should a need arise, he as the Chairman, would address the situation accordingly.
23. Prof. Kinyamario maintained that the Claimant's suspension as upheld by the Honorable Court remains in force until further orders of the Court and the letter dated 7th October 2024, merely reminded the Claimant of this reality.
24. He further states that contrary to the Claimant's allegations, no disciplinary process has been commenced against him and that he was only suspended in line with the Respondent's Human Resource Policy and Procedures Manual, 2022 and he is currently remunerated in accordance with the policy.
25. Prof. Kinyamario has denied that the Respondent is in contempt of Court and that it has violated the rights of the Claimant.
26. It is his deposition that while the Claimant purported to resume duty on 7th October 2024 ostensibly because there was no Court Order barring him from performing his duties as the Chief Executive Officer upon the expiry of his suspension on 4th October 2024, there was a Court Order in place that would only be discharged upon the determination of the Application and that is why the Claimant did not resume duty immediately the Court Order was issued on 25th July 2024.
27. He maintains that the Respondent is not in contempt of the Court, and the order issued by the Court on 25th July 2024 remains in force.
28. In Prof. Kinyamario's view, no cause of action before this Honorable Court has arisen and the Claimant is out to further delay, frustrate and obstruct lawful internal processes of the Respondent.
29. In rejoinder, the Claimant filed a Further Affidavit in which he avers that Prof. Kinyamario is deliberately and disingenuously attempting to rewrite the orders of this Court that this Court "upheld his suspension".
30. He is advised by his Advocates on record which advise he verily believes to be correct that in the event the Respondent wished to extend his suspension, the correct course was to apply to this Court to permit it to do so.

Submissions

31. Pursuant to the directions issued by the Court on 28th October 2024, the Application was canvassed by way of written submissions. All parties complied and I have considered their respective submissions.
32. The Claimant has submitted that the Order issued on 25th July 2024 was clear and explicit, mandating a stay of all disciplinary proceedings against him. He further submitted that his suspension on 5th July 2024 was pending the conclusion of the disciplinary process and the same lapsed on 5th October 2024.



33. It was the Claimant's further submission that pursuant to the Orders of 25th July 2024, there was no basis upon which the Respondent should continue to mete out purported disciplinary measures against him including withholding his salary.
34. It was further submitted by the Claimant that the Orders were issued in the presence of the Respondent's Counsel and at all material times the same were well known to Prof. Kinyamario but they elected to disobey the same in an act of blatant impunity.
35. In the Claimant's view, the issuance of the letter dated 7th October 2024 purporting to extend his unlawful suspension indefinitely constitutes a clear breach of this Honorable Court's Order of 25th July 2024.
36. The Claimant further posited that he has satisfied the essentials enunciated in the case of Koilel & 2 others v Koilel & another (2022) (KLR).
37. On the Respondent's part, it was submitted that it is quite clear as at 25th July 2024 when the Court issued the order of status quo to be maintained, the Claimant had already proceeded on suspension from 5th July 2024 but the Respondent had not yet commenced the disciplinary proceedings.
38. The Respondent contended that the letter did not and, does not in any way contradict the Court order of 25th July 2024 or any other order or directive of the Court and does not in any way infringe on the rights of the Claimant nor undermine the Court process.
39. It was the Respondent's position that neither the Respondent nor the alleged contemnors have commenced disciplinary proceedings against the Claimant in violation of the Court order of 25th July 2024.
40. In support of its position, the Respondent cited the case of India Airports Employees' Union vs Ranjan Chatterjee & Another AIR 1999 SC 880 in which it was held that: "In order to amount to civil contempt, disobedience must be willful. If disobedience is based on the interpretation of the Court's order, notification and relevant documents, it does not amount to willful disobedience".

Analysis and Determination

41. The Court has carefully considered the Application, the alleged Contemnor's Replying Affidavit as well as the rival submissions and evidently, the singular issue for determination is whether the alleged Contemnors are in contempt of the court order issued on 25th July 2024.
42. The crux of the Claimant's Application is that the alleged Contemnors elected to disobey the orders of this court which were issued on 25th July 2024 by purporting to extend his suspension indefinitely vide the letter dated 7th October 2024.
43. The alleged Contemnors have denied violating the court's order as claimed by the Claimant and contend that the court stayed the disciplinary process but upheld the Claimant's suspension.
44. In view of the above rival arguments, the question that must be answered is whether the alleged Contemnors are guilty of contempt of the court's orders as claimed herein.
45. The Black's Law Dictionary (9th Edition), defines contempt of court to mean:
The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.



46. It has been said times without number that the essence of contempt proceedings is to safeguard the supremacy of the law. As such, the reason courts will punish for contempt is to safeguard the rule of law, which is fundamental in the administration of justice. Such was the determination in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* (2013) eKLR.
47. Further, it is a fundamental rule of law that court orders must be obeyed unless and until the order is varied or discharged. Therefore, willful and/or deliberate disobedience of a court order which enjoins a person to do or refrain from doing a particular act will generally result in the person being found in contempt.
48. In the instant case, the Claimant seeks to have the alleged Contemnors cited for contempt of this court's order issued on 25th July 2024. To this end, the Claimant has asked the Court to impose a monetary fine of Kshs 10,000,000/= upon the Respondent and for Prof. Kinyamario to be committed to civil jail for a period of at least six months.
49. Contempt of court is in the nature of criminal proceedings hence, proof of a case against a contemnor is higher than that of a balance of probability. This is because the liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order if he were to succeed. Restating this position, the Court in the case of *Gatharia K. Mutikika vs Baharini Farm Limited* [1985] KLR 227, reckoned thus:

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the party of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

50. With that being said, the next logical question to ask is what elements are necessary to establish civil contempt of court.
51. In the case of *Sheila Cassatt Issenberg & Watoto World Centre v Antony Machatha Kinyanjui* [2021] KEHC 5692 (KLR) the court considered the elements to be proved in civil contempt proceedings as follows;

“The Cromwell J, writing for the Supreme of Canada in *Carey v Laiken*, 2015 SCC 17 (16th April 2015), expounded on the three elements of civil contempt of court which must be established to the satisfaction of the court, thus:

- i) The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be



found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.

- ii) The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.
- iii) The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.”

52. Further, in the case of *North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi* [2016] KEHC 7193 (KLR) the Court considered the elements of civil contempt as laid out in *Contempt in Modern New Zealand*, thus: -
- 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 conduct was deliberate.
53. In the instant case, it is an undisputed fact that this Court issued an order on 25th July 2024 staying further disciplinary proceedings against the Claimant in the presence of the Advocates for both parties. As such, the alleged Contemnors were aware and had knowledge of the terms of the order. It is also not in dispute that the Claimant’s suspension was extended by way of a letter dated 7th October 2024. Therefore, the issue to be determined is whether the alleged Contemnors acted in breach of the terms of the court order issued on 25th July 2024 by extending the Claimant’s suspension vide the letter dated 7th October 2024 and if so, whether such conduct was deliberate and willful.
54. The answer to this question lies in the interpretation of the terms of the order issued by the court on 25th July 2024 and specifically, whether the extension of the Claimant’s suspension through the letter dated 7th October 2024 amounted to “further disciplinary process”.
55. It is common ground that as of 25th July 2024, when the court issued the order in question, the Claimant was on a three month’s suspension with effect from 5th July 2024. In issuing the said order, the Court considered the fact that the Claimant was yet to appear before the Respondent’s disciplinary panel for hearing.
56. Therefore, in issuing the said order, the court was essentially preserving the status of the Claimant and prohibiting any further action that would alter his status at the time.
57. Properly put, the intention of the Court in staying further disciplinary proceedings against the Claimant was to bar the Respondent from subjecting the Claimant to a disciplinary hearing or such other process that would change the character of his current status.
58. In this case, the extension of the Claimant’s suspension did not accelerate the disciplinary process beyond where it was when the court issued the order on 25th July 2024. Essentially, it had the effect of maintaining the status quo.



- 59. If I may add and clarify, the court in issuing the order on 25th July 2024, did not lift the suspension or interfere with it in any manner. It was in essence an order to maintain the status quo aimed at preserving the substratum of the Claimant’s application pending hearing and determination.
- 60. On the same note, it should be noted that the said order did not imply that the Claimant was to resume duty on the expiry of his suspension period.
- 61. As has been stated herein for a party to be cited for contempt, he must have violated and or breached an order that was directed at him. Having evaluated the circumstances herein, and considering the higher standard of proof in contempt cases, I am not persuaded that by extending the Claimant’s suspension through the letter dated 7th October 2024, the alleged Contemnors accelerated the disciplinary proceedings thereby violating or breaching the orders issued by this Court on 25th July 2024. This is more so noting that by then, the Claimant was already on suspension. The extension of the suspension did not therefore alter the Claimant’s status in any way.
- 62. The total sum of my consideration is that the Claimant has not sufficiently demonstrated that the alleged Contemnors deliberately breached the court order issued on 25th July 2024. Differently expressed, I am not satisfied that the standard of proof has been attained.
- 63. Accordingly, I disallow the Application dated 11th October 2024 with an order that costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2024.

.....

STELLA RUTTO

JUDGE

In the presence of:

- Mr. Marete for the Claimant/Applicant
- Ms. Mbilo for the Respondent/Contemnors
- Milicent Court Assistant

ORDER

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

STELLA RUTTO

JUDGE

