



**Karanja v Sikalieh - Chairman Karen Langata District Association (KLDA)
(Constitutional Petition E397 of 2022) [2023] KEHC 20167 (KLR)
(Constitutional and Human Rights) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 20167 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E397 OF 2022**

**M THANDE, J
JUNE 30, 2023**

BETWEEN

JAMES KARANJA PETITIONER

AND

**SAMORA M SIKALIEH - CHAIRMAN KAREN LANGATA DISTRICT
ASSOCIATION (KLDA) RESPONDENT**

RULING

1. On 30.11.22, this court delivered a judgment in favour of the petitioner herein. The court *inter alia* found that the suspension of the petitioner as the Karen Langata District Association (KLDA) Development and Urban Planning Sub-Committee Chair was unlawful, and reinstated him to the position.
2. The Court is now tasked to determine an Application dated 10.1.23 in which the respondent seeks orders that the respondent be committed to civil jail for being in contempt of court and that he bears the costs of the application. The application is premised on the grounds that despite being aware of the said court orders, having been served via email on 16.12.22, he has willingly and without any justifiable reason, chosen to ignore, neglect and/or disobey the same by refusing to reinstate the Petitioner to the position in question. He further contended that by disobeying the Court orders, the Respondent was buying time as the Annual General Meeting of KLDA was due to be held in March 2023, thereby rendering the orders nugatory. It is therefore proper that the Respondent faces punitive measures by being committed to civil jail or otherwise as this Court may deem fit to grant.
3. In spite of service and being given an opportunity to file a response, the Respondent failed to do so. The Application thus proceeded as undefended.



4. The *Black's Law Dictionary* 9th Edition, defines contempt as:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court of legislature. Because such conduct interferes with the administration of justice.
5. Section 5 of the *Judicature Act* confers upon the superior courts, the jurisdiction to punish for contempt as follows:
 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 such power shall extend to upholding the authority and dignity of subordinate courts.
 2. An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.
6. The rationale for punishing for contempt of court was discussed in the case of *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] eKLR. The court stated:
 47. The reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him.
7. And in the case of *Gulabchand Popatlal Shah & another* Civil Application No. 39 of 1990, (unreported), the Court of Appeal observed:

"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."
8. The rule of law is one of the national values set out in article 10 of the *Constitution* and is binding upon all persons including the court and all parties that appear before it. Compliance with court orders is the hallmark of the rule of law. Court orders are not made in vain and once a court order is made, it must be obeyed by every person bound by the same. Disobedience of court orders is a serious threat to the maintenance of the rule of law and the due administration of justice. It is thus critical that the authority and the dignity of our courts are upheld at all times for the maintenance of the rule of law and order and to avoid anarchy.
9. For the petitioner to succeed in his Application seeking that the respondent be punished for contempt of the court order in question, he must bring the same within the threshold required.



10. In the case of *Katsuri Limited v Kapurchand Depar Shah* [2016] eKLR, Mativo, J. (as he then was) stated:

The High Court of South Africa in the case of *Kristen Carla Burchell v Barry Grant Burchell*[20] 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. Upon proof of these requirements the presence of willfulness and bad faith on the part of the respondent would normally be inferred, but the respondent could rebut this inference by contrary proof on a balance of probabilities.

11. Similarly, in the case of *Sheila Cassatt Isenberg & another v Antony Machatha Kinyanjui* [2021] eKLR Mwita, J. had this to say on the 3 elements of contempt of court:

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. (emphasis).

12. Flowing from the foregoing, for this court to punish the respondent for contempt, the petitioner is required to establish to the satisfaction of the court, 3 elements. The petitioner must first demonstrate the terms of the order which must state clearly and unequivocally what should have been done by the Respondent. Second, that the Respondent had actual knowledge of the order in question and the terms thereof. Third, that the Respondent disobeyed the order and that the disobedience was deliberate and willful.

13. The order of the court in question is was issued by the court in its Judgment of 30.11.23. The order was in the following terms:

- c) The petitioner is forthwith reinstated as Karen Langata District Association Development and Urban Planning Sub-Committee Chair.

14. The petitioner contended that in spite of the fact that the court ordered the reinstatement of the Petitioner to his position as Chair of the KLDA Development Committee, the Respondent has refused and/or neglected to comply with the same. It can be seen that the terms of the order are clear and unequivocal and unambiguous. A careful look at the order however will show that the reinstatement was in fact done by the Court. The order was not directed at the Respondent at all. The Court has not been told that the Respondent has frustrated the reinstatement of the Petitioner to his position or



his resumption thereto. The Petitioner has not stated that he, for instance, called a meeting of his Subcommittee and the same was blocked by the Respondent.

15. Was the Respondent aware of the order? The record shows that the Respondent though served, did not respond to the Petition and the same proceeded without the participation of the Respondent. The Petitioner however asserted that he served the orders in question upon the Respondent via email on 16.12.22 and again on 20.12.23. Is this sufficient evidence of service?
16. Order 5 Rule 22B of the Civil Procedure Rules makes provision for Electronic Mail Services (E-mail) as follows:
 1. Summons sent by Electronic Mail Service shall be sent to the defendant's last confirmed and used E-mail address.
 2. Service shall be deemed to have been effected when the Sender receives a delivery receipt.
 3. Summons shall be deemed served on the day which it is sent; if it is sent within the official business hours on a business day in the jurisdiction sent, or and if it is sent outside of the business hours and on a day that is not a business day it shall be considered to have been served on the business day subsequent.
 4. An officer of the court who is duly authorized to effect service shall file an Affidavit of Service attaching the Electronic Mail Service delivery receipt confirming service.
17. For electronic service to be deemed effective, a delivery receipt must be received by the sender. Additionally, a duly authorized process server is required to file an affidavit of service attaching the electronic mail delivery receipt. While he has exhibited the emails of 16.12.22 and 20.12.22, the Petitioner has not exhibited a delivery receipt, as proof that the email was in fact received by the Respondent. The Petitioner has also not filed an affidavit of service attaching the electronic mail service delivery receipt confirming service as required in law. In the premises, the Court finds that there is no proof of service. Without service the Respondent cannot be said to be aware of the orders in question or the terms thereof. It follows therefore that the Respondent cannot be said to have disobeyed orders, the knowledge of which he did not have.
18. In Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui [2021] eKLR, Mwita, J had this to say on knowledge of a court order:
 57. As was again stated by the Supreme Court of India in *Mahinderjit Singh Bitta v Union of India & others* 1 A NO. 10 of 2010 (13th October, 2011):

In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is lis before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. (Emphasis).
 58. The emphasis as shown in the above cases is that there must be “willful and deliberate disobedience of court orders.” There cannot be deliberate and willful disobedience, unless the contemnor had knowledge of the existence of that order. And because contempt is of a criminal nature, it is always important that breach of the order be proved to the required standard; first,



that the contemnor was aware of the order having been served or having personal knowledge of it, and second; that he deliberately and willfully disobeyed it.

19. In the present case, having found, as I have, that there was no evidence of service of the orders upon the Respondent, there can be no knowledge of the same. I therefore concur with the learned Judge, that there cannot be deliberate and willful disobedience, unless the contemnor had knowledge of the existence of that order and the terms thereof.
20. Having considered the circumstances of this case and the material placed before court, I am not persuaded that the Petitioner has proved his case to the required standard. Consequently, the court finds that the Application dated 10.1.23 is without merit and the same is hereby dismissed. Given that no response was filed, there shall be no order as to costs.

DATED AND DELIVERED IN NAIROBI THIS 30TH DAY OF JUNE 2023

M. THANDE

JUDGE

In the presence of: -

..... **for the Petitioner**

..... **for the Respondent**

..... **Court Assistant**

