



**Ameda v Cabinet Secretary Ministry of Agriculture, Livestock, Fisheries and Co-operatives
& 2 others (Petition E017 of 2021) [2022] KEHC 12738 (KLR) (26 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12738 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU**

PETITION E017 OF 2021

FA OCHIENG, J

AUGUST 26, 2022

**IN THE MATTER OF ALLEGED CONSTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS SECURED AND GUARANTEED
UNDER ARTICLE 2, 3, 10, 22, 23, 27, 38 (2), 43, 47, 48, 50 (1), 153 (4)**

AND

ARTICLE 232 OF THE CONSTITUTION AND SECTION 7 (1) OF THE SIXTH SCHEDULE

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT

AND

**IN THE MATTER OF THE VETERINARY SURGEONS AND
VETERINARY PARA-PROFESSIONALS REGULATIONS 2015**

AND

**IN THE MATTER OF VETERINARY SURGEONS AND
VETERINARY PARA-PROFESSIONALS REGULATIONS 2015**

AND

**IN THE MATTER OF THE APPOINTMENT OF MEMBERS
OF THE BOARD OF KENYA VETERINARY BOARD**

BETWEEN

BENSON ADUOR AMEDA PETITIONER

AND

**CABINET SECRETARY MINISTRY OF AGRICULTURE, LIVESTOCK,
FISHERIES AND CO-OPERATIVES 1ST RESPONDENT**

ATTORNEY GENERAL 2ND RESPONDENT



RULING

1. The application dated April 28, 2022 is seeking leave to cite the following persons for contempt of court, following their failure to comply with the Orders issued by this court on April 13, 2022;
 - (i) Hon Peter Munya.
 - (ii) Dr Obadiah Njagi.
 - (iii) Dr Catherine Wanjohi.
 - (iv) Dr Derick Chibeu.
 - (v) Ms Ester Kioko.
 - (vi) Dr David Ndereh.
 - (vii) Mr Erete Karanja, and
 - (viii) Dr Jane Mburu.
2. The petitioner also asked the court to order that the 8 persons cited above, be committed to civil jail, for a period of six months, as punishment for their contempt of court.
3. In the alternative to imprisonment, the petitioner requested the court to impose a fine of kshs 5,000,000/= upon the 8 named persons.
4. When canvassing the application the petitioner pointed out that on November 2, 2021, the court granted conservatory orders. He pointed out that the said orders were granted in the presence of the advocates who were representing the petitioner and the respondents respectively.
5. After November 2, 2021, the court consistently extended the conservatory orders until April 13, 2022 when the court had the said orders extended to June 30, 2022.
6. The specific order which was extended from time to time was in the following terms;

“..... the 1st respondent shall stand barred by this conservatory order, from convening the 1st meeting of the 3rd respondent’s board.”
7. The order was directed at the cabinet secretary, Ministry of Agriculture, Livestock, Fisheries and Cooperatives. The said cabinet secretary is Hon Peter G Munya.
8. It was a very clear order, which did not require any elaborate interpretation. It told the cabinet secretary that he was barred from convening the 1st meeting of the Kenya Veterinary Board.
9. Therefore, if the cabinet secretary convened the 1st meeting of the Kenya Veterinary Board, he would have acted in breach of the court order.
10. Such defiance of orders of the court constitutes a disregard or disrespect to the authority and the dignity of the court.



11. The person who acts in such manner is telling the court that he does not have respect for the court. In effect, the defiance of the orders of the court, is an expression of the contempt that the court was being shown.
12. It is cardinal rule in a democratic society, which is governed by the rule of law, that the authority and dignity of the court must be upheld at all times.
13. The way in which the authority and dignity of the court is upheld is through unqualified obedience of the orders emanating from the court.
14. Whether or not the person against whom the order was made, is in agreement with the said order, he has an obligation to obey it until it is either set aside or varied.
15. Even when a person holds the view that the order in question was irregular or void, he nonetheless is obliged to obey it.
16. The person who feels that the order was irregular, unreasonable or void is entitled to take steps to have the order discharged by either the court which issued it, or by an appellate court.
17. The uncompromising nature of the obligation is not for the purposes of protecting the authority or the dignity of the court which issued the order in issue. It is also not intended to assuage either the particular court which had issued the order, or the judiciary.
18. The defiance of court orders is the ultimate challenge to the supremacy of the law, upon which an otherwise orderly society is anchored.
19. If the person who defies the court orders is allowed to go scot-free, that would be an invitation to anarchy.
20. It is for that reason that when a person defies orders of the court, he invites punishment upon himself.
21. The court may impose a fine on the contemnor or may have him imprisoned.
22. In the light of the seriousness with which the court is obliged to deal with issues of contempt, it is well settled that the standard of proof in contempt proceedings is higher than that which is ordinarily applicable in civil cases. The standard of proof is thus higher than proof on a balance of probabilities.
23. Nonetheless the standard of proof is lower than that which is applicable in criminal cases. The applicant does not have to provide proof beyond reasonable doubt.
24. In order for the court to find that a respondent acted in defiance of an order which the Court had made, the applicant must prove that the respondent was aware of the order in issue. A person cannot be said to act in defiance of an order about which he was not aware.
25. It is for that reason that, ordinarily, the court requires the applicant to prove that the respondent was served with the order.
26. According to the 1st respondent, he called for the first meeting of the board because he was complying with the provisions of section 5 of the *Veterinary Surgeons and Veterinary Para-Professionals Act* no 29 of 2011.
27. In effect the 1st respondent acted contrary to the orders made by the court.
28. There is no dispute regarding the statutory mandate of the 1st respondent.



29. However, when a court of law makes an order barring the 1st respondent from convening the first meeting of the board, it cannot be an excuse on the part of the 1st respondent that he acted in accordance with statute.
30. It is essential for the maintenance of the rule of law that orders of the court be complied with. Such orders may be inconvenient or disruptive, but they must be complied with, for the sake of attaining and conserving orderly conduct in the society.
31. When a person disobeys or disregards the orders made by the court, it is the duty of the court to swiftly and firmly reign in the contemnor. The court cannot afford to be an idle bystander when a person disregards its orders.
32. In the case of *Kenya Tea Growers Association v Francis Atwoli & 5 others*, Petition no 64 OF 2010, the court held as follows;

“..... When an individual has been served with and/or has knowledge of a court order, but not only ignores it but in fact incites others to do the same, the threshold of contempt has been met.”
33. Whereas ordinarily, a person ought to be punished for contempt if he ignored or disregarded an order which had been served upon him, I am in full agreement with the view that even if there was no proof of actual service of the order, a person who is shown to have been aware of the court order, cannot be allowed to violate it with impunity.
34. He who ignores or disregards the court orders must be punished.

The board members

35. They were not parties to these proceedings when the petition was filed.
36. The court order was directed against the cabinet secretary, as it is he who has the mandate to call for the first meeting of the board.
37. The petitioner has not made available any evidence to show that;
 - (a) The board members called for the first meeting;
 - (b) The board members were aware of the order barring the cabinet secretary from convening the first meeting.
37. Accordingly, I find that the petitioner failed to prove that the seven (7) board members had wilfully defied the court orders.
38. If the petitioner had proved that the board members had wilfully defied the order of the court, I would have handed down appropriate punishment. In effect, the preliminary objection, which asserted that the High Court at Kisumu lacked jurisdiction, is without merit.
39. The jurisdiction of the High Court is unlimited save only as delineated by article 165 (5) of the *Constitution*. The fact that none of the seven board members is resident within Kisumu does not oust the jurisdiction of the High Court.

Cabinet secretary

40. The cabinet secretary has consistently insisted that he had never been made aware of the court order.



41. On the other hand, the applicant submitted that;
- “9. The respondent had full knowledge of the existence of the said court order.
The order was served upon the respondents.”
42. How was the cabinet secretary served with the order?
43. According to the applicant;
- “The same was served upon the 1st respondent through his office, specifically on April Tuesday 19, 2022 at 9.30A.M ahead of the meeting time.”
44. The applicant went on to make it clear that service was effected in the boardroom of the cabinet secretary, where the board had convened for a meeting.
45. Whereas this court subscribes to the school of thought which believes that personal service was not necessary where it can be proved that the respondent was aware of the court order, in instances where the applicant asserts that he effected service on the respondent, the court is under an obligation to determine whether or not service had been effected.
46. I note that the service was effected upon the cabinet secretary “through his office”
47. The applicant did not specify the person through whom the cabinet secretary was served. It was also not explained why service was being effected through the office of the cabinet secretary, rather than upon the person who occupies the said position.
48. In the circumstances, I find that the applicant failed to prove either that the cabinet secretary was served or that the said cabinet secretary was aware about the order in issue.
49. It must be recalled that the order barred the cabinet secretary from convening the first meeting of the board.
50. According to “Collins English Dictionary”;
- “If someone convenes a meeting or conference, they arrange for it to take place.”
51. Thus, when the court barred the cabinet secretary from convening a meeting, he was being told that he should not arrange for a meeting of the board. It can also be said that the cabinet secretary had been barred from calling for a meeting of the board.
52. Therefore, if the applicant waited until the cabinet secretary had called for the meeting, before trying to serve the order which had barred him from arranging for the said meeting, it is arguable that even if service had been effected at that stage, the said service had arrived late.
53. Secondly, those who were invited to attend the meeting cannot be said to have convened the meeting simply because they took part in the meeting.
54. In the final result, I find that the application dated April 28, 2022 is unsuccessful. It is therefore dismissed.
55. However, the costs of the said application shall abide the outcome of the substantive Petition.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 26TH DAY OF AUGUST 2022.

FRED A OCHIENG



JUDGE

