



Aminakash Company Ltd v County Government of Kisumu & another (Miscellaneous Application E001 of 2022) [2022] KEHC 12743 (KLR) (26 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12743 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION E001 OF 2022
FA OCHIENG, J
AUGUST 26, 2022**

BETWEEN

AMINAKASH COMPANY LTD APPLICANT

AND

COUNTY GOVERNMENT OF KISUMU 1ST RESPONDENT

CHIEF OFFICER- AGRICULTURE AND IRRIGATION COUNTY

GOVERNMENT OF KISUMU 2ND RESPONDENT

RULING

1. The application dated January 26, 2022 sought orders to commit Dr Paul Omangato civil jail or, in the alternative to impose a fine of kshs 1,000,000/= upon the said Dr Paul Omanga, because the applicant deems the said gentleman to have acted in contempt of the orders which the court made on January 11, 2022.
2. It was the applicant's case that the court had stayed the implementation or the enforcement of the decision made by the County Government of Kisumu, to cancel the tender which had been issued to the applicant on September 1, 2021.
3. The applicant told the court that it served the said order upon Dr Paul Omanga, on January 14, 2022.
4. Notwithstanding the orders in issue, work had continued at the Gem Rae Scheme, where irrigation structures were being constructed.
5. It is the said action, of continuing with work, which prompted the applicant to ask this court to punish Dr Paul Omanga for contempt of court.
6. In answer to the application, the County Government of Kisumu filed a response through Dr Paul Omanga, who is the chief officer for Agriculture and Irrigation.



7. Paul Omanga acknowledged that the Order was served upon him on January 14, 2022.
8. He explained that by the time when the order was served upon him, the County Government had already awarded the tender to another contractor, who was then tasked with the completion of the works which the applicant had left pending.
9. Nonetheless, the applicant holds the view that;
 - “..... the orders served upon the respondents, restrain the enforcement in totality, of the contents of the letter dated September 1, 2021, to the applicant.
The said restriction includes but is not limited to continuing of works on the said project by the respondents or any other third party under the instructions of the respondents.”
10. It was for that reason that the applicant submitted that when the respondents acknowledged that work was going on, despite the court orders, that was a clear demonstration of impunity and utter disrespect to the court and to the rule of law.
11. The law governing contempt of court is well settled. Every person against whom or in respect of whom a court of law has issued an order, is required to comply with such order.
12. In order to ensure that the rule of law is maintained, the court will deal firmly with any person who is shown to have deliberately disobeyed the Orders of the court.
13. As the applicant has noted, it is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove;
 - (a) The terms of the order;
 - (b) That the respondent had knowledge of the said terms of the order; and
 - (c) The respondent failed to comply with the terms of the order.
14. It was the applicant’s contention that the 2nd respondent had not conclusively demonstrated to the court that
 - “ a subsequent procurement process had been commenced and completed.
In addition, the works are still ongoing todate, despite the orders not having been set aside.”
15. In order to hold the respondents to be in contempt, the court must be satisfied that the respondents had deliberately chosen to violate the orders of the court.
16. The respondents could only be said to have been deliberate and intentional in their decision to violate the orders if it was shown that they were aware of the terms of the order before they acted in violation thereof.
17. In this case the particular order which was allegedly violated was in the following terms;
 - “That the grant of leave to operate as a stay of any reliance, use, implementing and/or enforcing the contents of the letters to the exparte applicant dated September 1, 2021.”



18. In order to understand the terms of that order, it is necessary to make reference to the letter dated September 1, 2021. The pertinent parts of the said letter were in the following terms;

“..... Despite being given default notices (copies attached) you have failed to execute the works as per the contract agreement.

You have stopped work and vacated the site for more than 28 days and delayed works despite being given two extensions.

Reference is therefore made to clause 57 sub-clause 57.2a and 57.2g and hence the contract stands terminated.”
19. In my understanding, the leave which the court granted, was to operate as an order to stay the implementation of the termination of the contract for construction of irrigation structures at the Gem Rae scheme.
20. The respondents have provided the court with a letter dated January 7, 2022, showing that the contract had been awarded to Nyangoma Agencies.
21. The letter further indicates that the decision to award the contract to Nyangoma Agencies was made by the Evaluation Committee, at its meeting held on January 4-5, 2022.
22. On a *prima facie* basis, I find that by the time when the applicant was serving the respondents with the court order made on January 13, 2022, the respondents had already awarded the contract to a third party.
23. It therefore follows that the order was served upon the respondents after they had already issued the contract to a third party.
24. The applicant has not demonstrated to this court that there was any deliberate and wilful action which the respondents undertook after January 14, 2022, which was in violation of the court orders.
25. In the result, the application lacks merit, and it is therefore dismissed with costs to the respondents.

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

FRED A OCHIENG

JUDGE

