



Amondi v Daily Nation Newspaper (Sunsidiary of Nation Media Group) (Civil Appeal E736 of 2021) [2022] KEHC 14537 (KLR) (Civ) (28 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14537 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E736 OF 2021

DO CHEPKWONY, J

OCTOBER 28, 2022

BETWEEN

TOLUWALASE M. AMONDI APPELLANT

AND

DAILY NATION NEWSPAPER (SUNSIDARY OF NATION MEDIA GROUP) RESPONDENT

RULING

1. The appellant, Toluwalase M. Amondi motioned the court vide an application dated August 2, 2022 in which he seeks the persons listed as 1st to 14th respondents in his application to be sanctioned, summoned and arrested for their willful, repetitive and contemptuous violation of among other orders, the orders issued by this court on July 26, 2022.
2. In as much as I am compelled to say much on the need for proper drafting and form with regard to the prescribed format under the *Civil Procedure Act/Rules* for all applications to be filed in court, I have chosen not to delve on that topic but instead, consider the application dated August 2, 2022 as a contempt application. This is for the sole reason that the applicant/ appellant is acting in person in this matter and my not be so conversant with the legal process expected of a matter.
3. The grounds upon which the application is premised are that the 1st to 13th respondents, through their advocates on record, on July 26, 2022, the 14th respondents were directed by this court to file submissions before the close of business and also produce to court their consolidated defence witness statements, publication and contractual documents on that day but failed to do so. That the said orders were issued in the presence of the Advocates on record, the 14th respondent, and all having been aware of the orders all along but chose to willfully disobey the same.



4. None of the respondents filed a response but with leave of the court, the Firm of M/S Iseme Kamau and Maema & co. Advocates filed submissions dated September 20, 2022.
5. I have read through the said submissions and they appear to be submissions on the entire appeal and not the application dated August 2, 2022. Nonetheless, when Mr. Cherotich, counsel for the Respondent appeared before court on September 22, 2022, she urged that the application dated August 2, 2022 was unknown in law as it was not premised on any legal provisions. He also added that the appeal is against the one respondent but the appellant has irregularly ended up adding other thirteen (13) respondents in his application. In the best interest of her words, the application is nothing better than being an incompetent pleading which however, the 2nd defendant apologized for having filed submissions later than had been directed on July 26, 2022.

Analysis and Determination

6. I have considered the application and the submissions made by both sides and in my view, at this stage of the suit, only two issues stand out for determination, being:-
 - a. Whether the 2nd to 14th respondents were properly enjoined to the application.
 - b. Whether the respondents are in contempt of court as alleged.
7. On whether the 2nd to 14th respondents are properly enjoined, it was argued by Mr. Cherotich that the respondents are irregularly added in the application whereas, the Appeal is against only one party. The appellant/ applicant did not rebut those submissions but invited this court to also confirm that the appeal was filed only against Daily Nation Newspapers (subsidiary of Nation Media Group) only, not as against the fourteen (14) respondents captured in the application.
8. Order 1 Rule 10 of the *Civil Procedure Rules, 2010*, provides on substitution and addition of parties to a suit. It places the discretion to the court but not to the parties to add other parties to a suit as they may please. It therefore follows that courts leave has to be sought first and evidence adduced to the satisfaction of the court that the party needed to be added as a party is a necessary party for the determination of the matter in dispute. Such leave has not been sought by the appellant when adding the 2nd to 14th respondents in his application and it is out- rightly clear that the 2nd to 14th respondents were irregularly added to the application and cannot be considered as parties to the suit with the backup law.
9. Secondly, on whether the applicant has proved contempt on part of the respondent, I must reiterate that in order to succeed in civil contempt proceedings, the applicant has to prove the following:-
 - a. First, that there exist an order whose terms were clear and unambiguous and were binding on the respondent's.
 - b. Secondly, that the defendant had knowledge or proper notice of the order;
 - c. The defendant/respondent has acted in breach of the terms of the order; and
 - d. The defendant/respondents conduct was deliberate.
10. In this case, the appellant/applicant submitted that the respondent disobeyed the orders of the court issued on July 26, 2022, notwithstanding that the said orders were issued in the presence of the advocate. M/S Cherotich, on the other hand submitted that on July 26, 2022, the court merely issued directions but not orders capable of being disobeyed within the meaning of "contempt of court orders/ proceedings".



11. I have perused the orders issued by this court on July 26, 2022 which I reproduce as below:-
 - a. The respondent is granted leave to file and serve their written submissions by close of business today.
 - b. Highlighting deferred to September 22, 2022.
12. It is my respectful view that on July 26, 2022 what was issued by court were mere directions on how to canvass the appeal whereby the failure of a party to file submissions within the timelines provided would not amount to an intentional act of contempt that would taint the dignity of the court, since it is at the discretion of such party to elect whether or not to file the submissions. The court's power to condemn any party for contempt ought to be exercised cautiously and with great restraint as the same is an enforcement power of last resort rather than of first resort.
13. Thus taking into account the circumstances of this case and the material that was placed before the court, I am not satisfied that the appellant/applicant has proved his cause to the required standard. Consequently, the application dated August 2, 2022 is declined and dismissed. Each party shall bear its own costs.
It is hereby ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI THIS 28TH DAY OF OCTOBER, 2022.

D. O. CHEPKWONY

JUDGE

In the presence of:

Appellant in person

M/S Cherotich for Respondent

Court Assistant - Simon

