



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA.**

**JUDICIAL REVIEW NO. 3 OF 2016**

**PRIDGEON NASAKE BARASA.....EX-PARTE APPLICANT**

**VERSUS**

**MINISTRY OF AGRICULTURE, FISHERIES & CO-OPERATIVE,**

**BUNGOMA COUNTY.....RESPONDENT**

**AND**

**MATHEW MAKANDA.....1<sup>ST</sup> CONTEMNOR**

**STANSLAUS WAMBANI.....2<sup>ND</sup> CONTEMNOR**

**BONVENTURE MASIBO.....3<sup>RD</sup> CONTEMNOR**

**RULING**

This is application dated 9.10.2019 by the Exparte Applicant Pridgeon Namasaka Barasa brought under **(Section 63(a) & (e) of the Civil Procedure Act Cap 21 Laws of Kenya and Section 30 (1) 2 and 5 of Contempt of Court Act and any other enabling Provisions and Powers of the Law)**. Seeking orders;

1. Spent.
2. That leave be granted to the applicants to institute proceedings for contempt of court orders issued by the Honourable Court on 22<sup>nd</sup> July 2019 against the contemnors herein.
3. That the Contemnors be cited for contempt of court orders issued on the 22<sup>nd</sup> July 2019 and be punished accordingly for failing to obey the valid court orders.
4. Costs.

The grounds for the application are that;

- a. That the contemnors have disobeyed an order of certiorari do issue to remove into this honourable court and quash the proceedings, resolution and decisions of the meeting held on 30<sup>th</sup> June 2016 by the 2<sup>nd</sup> respondent, County Co-operative commissioner to elect the Board of Kitinda Dairy Farmers Co-operative Society.
- b. That the contemnors have refused declined or ignored to abide with the court orders issued on 22<sup>nd</sup> July 2019.
- c. That these contemnors are in contempt of court order issued on 22<sup>nd</sup> July 2019.
- d. That court orders must and should be obeyed by all sundry for proper administration of justice.
- e..That the contemnors were issued with a notice to show cause why contempt of court proceedings should be instituted under

Section 30(1) of the contempt act.

f. That court orders must be obeyed by all and sundry.

The 3<sup>rd</sup> contemnor Bonventure Masibo filed a Replying Affidavit in opposing the application. He depones that the application is defective having been brought under the Contempt of Court Act which was declared unconstitutional in Petition No. NRB Constitutional Petition No. 87/2017, that it is not clear what the applicant is seeking; that the orders referred to only quashed the resolution of the meeting held on 30.6.2016; and that even if the order was to reinstate this, the tenure of his Committee expired in 2017 and even if he were to stand for election he would not qualify having not supplied milk for one year to the factory to be eligible and finally he has filed a suit in Bungoma CMCC 279/2019 against the society seeking general damages and special damages of Kshs.191,100/= being loss of allowances for 3 years and leave allowance.

By Consent the application was canvassed by way of written submissions. The applicant submitted that the order of the court of 22.7.2019 reinstated him as the chairman of Kitinda Dairy Farmers Co-operative Society. The contemnors instead arranged to conduct election on 10.10.2019 and have refused to recognize him as the Chairman, which is what this court ordered.

Mr. Wekesa for the 3<sup>rd</sup> contemnor submitted that from the application it is not clear what the application seeks. In the application, he is seeking leave to commence contempt of court proceedings while at the same time seeking orders to have the contemnors cited for contempt.

I have considered the application and the submission by both parties. The order of the court which is the subject of the application was delivered on 22.7.2019 concluded. **I find that the meeting held on 30.6.2016 did not follow due process. Consequently, I am satisfied that the discussion to remove the exparte applicant and his committee and replace it with an interim one was unlawful. I therefore call for and quash the decision of the special meeting held on 30.6.2016.**

The order only declared the meeting that removed the applicant null and void. The applicant only sought that declaration by court. He did not apply for positive action and this court did not give any. As a result of the declaration, the applicant filed Bungoma CMCC No. 279/2019 against the Kitinda Dairy Farmers Co-operative Society and 2 others stating in his plaint.

5. The plaintiff was elected Director and Chairman of the 1<sup>st</sup> Defendant to serve for a term of three years but his tenure was rudely interrupted and unlawfully terminated by actions of the Defendant herein.

6. The plaintiff applied successfully to have his termination quashed and declared unlawful vide BUNGOMA HCC MISC. APPLICATION NO. 3 OF 2016 and the court upheld his prayers.

7. The plaintiff aggrieved by the said unlawful termination now seeks damages both general and special damages as hereunder:-

a. General damages

b. Special damages

i. Loss of allowances

or the three years

4,900 x 12 x 3 =Kshs.176,400/=

ii. Loss of leave allowance

Kshs.4,900 x 3 =Kshs.14,700/=

**Total=Kshs.191,100/=**

8. The plaintiff avers that there have been no previous claims save for the Bungoma HCC MISC. No. 3 of 2016 which is concluded and none are pending.

Having filed the suit against the contemnors claiming damages on the basis of the decisions of this court, he cannot in my view simultaneously apply for this court for citing of contempt. That will be and I do find it an abuse of court process. I therefore dismiss this application for being an abuse of the court process. The applicant will bear the costs of this application.

**Dated at Bungoma this 10<sup>th</sup> day of March, 2020.**

**S.N. RIECHI**

**JUDGE**