

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

PETITION NO 4 OF 2017

IN THE MATTER OF ENFORCEMENT OF:

**RIGHTS AND FREEDOMS, AND GUARANTEES ON LEADERSHIP AND
INTEGRITY UNDER CHAPTER SIX --(ARTICLES 73, 74 & 75) OF THE CONSTITUTION**

RULING

[1] Before me is a Notice of Motion dated 18th September, 2019 which is expressed to be made pursuant to section 1A, 1B and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya and Article 159 and 165 of the Constitution of Kenya. The motion seeks for two significant orders: -

a. The court to cite Hon. Fred Matiang'i, CS for Ministry of Interior and Co-ordination of National Government, for contempt of court and be jailed for a period not exceeding six months; and

b. Review of order for costs and order the respondents to pay costs of the petition.

[2] The grounds upon which the Motion is premised are set out in the motion and the affidavit of Stanley Ntongai. of prominence in those grounds is that the 2nd, 4th and 5th respondents and especially the CS have ignored, failed and or refused to obey the order of the court issued on 25th October, 2018 requiring him to respond to and deal with the issues that were raised in the petition. The petitioner claims that the order was duly served on the CS. There was also follow-up on the matter- the advocate wrote letters to the relevant offices to wit; the county commissioner, the deputy county commissioner and the assistance county commissioner without success. Despite these efforts and service of the order herein, the CS has not acted on the court order. Thus, he should be cited for contempt of court.

[3] The respondent filed grounds of opposition to the effect that the order was never served upon them and therefore the application for contempt is premature. They also filed submissions in which they buttressed this argument by stating that non-service of the order was fatal to such application and therefore beseeched the court to look at the application herein as an abuse of process and dismiss it.

[4] I have considered the application and the affidavits filed. I have also considered the submissions of the respondents. I do note that the application herein is for contempt of court order. The order in issue required the CS for Ministry of Interior and Co-ordination of National Government to respond to and deal with issues and queries raised in the petition within 45 days. The court was telling the CS to do no more than what is required of him when such queries touching on his officers arise. This should be the simplest task for the CS who is known in public domain to be thorough and swift in his discharge of duties.

[5] The order was duly served upon his PA. I do not therefore find any merit in the argument by the respondent that the order was not served. I should even state that, there is a growing jurisprudence that knowledge of an order of the court may be sufficient for purposes of compulsion to obey or punishing for disobedience of court orders. I agree with the petitioner that disobedience of court orders by the state which is the enforcer of law and order spells doom for the nation; invites anarchy and disorder in the society; gives license for lawlessness and despondency; it is the death knell for rule of law and justice. However, because of what I have stated earlier, I am inclined to giving the CS an opportunity to comply with the order of the court within 60 days of today. This order and the substantive order issued by Majanja J. be served on the AG and the CS IMMEDIATELY. It is so ordered.

Dated, signed and delivered at Narok through Teams Application this 23rd day of November, 2020

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F. GIKONYO

JUDGE