



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

JUDICIAL REVIEW NO. 30 OF 2016

ROBINSON ONYANGO MALOMBO

T/A O.M. ROBINSON & CO. ADVOCATESAPPLICANT

VERSUS

COUNTY SECRETARY (MOMBASA COUNTY GOVERNMENT).....1ST RESPONDENT

CHIEF OFFICER FINANCE (MOMBASA COUNTY GOVERNMENT).....2ND RESPONDENT

R U L I N G

1. There is before court for determination the Application by the *exparte* applicant dated 4/8/2016 and praying for orders that:-

1: THAT Mr. Francis Thoya and Mr. Jonathan Nyongesa being the current holders of the 1st and 2nd Respondents offices respectively be held in contempt of the Court Orders issued herein on 13th July, 2016, and be committed to jail for six (6) months or by imposing a fine or both or punished in any other manner this Honourable Court may deem fit.

2. THAT costs of this application be provided for.

2. The application is supported by the affidavit sworn by the *exparte* applicant on the 4/8/2016 before were G.T. Sirioyi Commissioner for Oaths. The grounds on the face of the application were to the effect that:-

i) The Respondents are the current holders of the offices of the County Secretary and Chief Finance Officer, Mombasa County respectively.

ii) On 13/7/2016 an order of mandamus was issued against the Respondents and compelling them in their official capacities to cause to be paid out of revenue of the County Government of Mombasa to the *exparte* applicant the sum adjudged as due to the *exparte* application in Mombasa HC. Misc Application No. 287 of 2015.

iii) The order was served upon the Respondents on the 1st August 2016 but despite service then there was no compliance and therefore disobedience persist to the court order.

iv) There is no remedy available to the *ex parte* applicant to facilitate enforcement of the court orders hence the interests of justice demand that the application be allowed.

3. Those grounds are reiterated in the affidavit of the *ex parte* applicant which exhibits the demand for payment and enclosing the order of mandamus. The letters and the copy of the order are duly acknowledged with the official stamps of the Respondents to evidence service.

4. The application was itself served upon the Respondents in their offices on the 8/8/2016. Whereas the 2nd Respondent is shown to have acknowledged service by signing and stamping on the copy of the application, the 1st Respondent is shown to have called the County Legal Director one Mr. Waliaula into his office and the director legal services is said to have advised the 1st Respondent to accept service but not to acknowledge service on the copies.

5. The affidavit of service sworn by PAUL ODHIAMBO OUTA exhibits copy of the application said to have been served on 8/8/2016. Indeed the law firm of Kiprop & Company Advocate filed a Notice of Appointment to confirm that service was not in dispute.

6, Having been so appointed Mr Kiprop attended court on the 30/08/2016 and requested for an adjournment on the basis that he had just been instructed and he needed time to take better instructions on this and other related matters variously slated for hearing on 30/8/2016, 31/8/2016 and 1/9/2016. The court granted an adjournment to the Respondent and had this file and the related files being no. HC Miscellaneous nos. 31,32,33,34,35,36,29 and 50 all 2016 adjourned to the 1/9/2016.

7. On the 1/9/2016 Mr Kiprop renewed his application for adjournment but the same was declined by a ruling delivered the same day. Upon being denied an adjournment, Mr. Kiprop declared his desired not to offer any submissions but sat in court as the application proceeded.

8. The task before the court is to interrogate whether or not the *ex parte* applicant merits being granted the orders sought. That question is best answered by asking the preliminary questions whether there was an order issued by this court which was duly served upon the Respondent but to which the Respondents have failed to comply.

9. I have looked at the order issued by this court on the 13/7/2016 and it is apparent that its commands were clear and not ambiguous. It equally had a notice endorsed upon it and warning the person served of the legal consequences of failure to comply. On the face of it, it was duly served a fact that is confirmed by the fact that both Respondents appointed an advocate to act for them in the matter but which advocate chose not to file any replying papers with the consequence that the application was deemed unopposed on the date it was scheduled for hearing.

10. In urging the application Mr Gombia advocate for the *ex parte* applicant beyond demonstrating to court that the orders sought to be enforced having been duly served, cited to court decisions of the superior courts all reiterating the fact that the duty to obey court orders in one that in unwavering and unqualified obligation of every citizen so long as the orders remain in force. It matters not that the person to whom a court order is directed thinks or believes that the order is irregular or indeed void. The obligation is to obey or seek to have the order set aside or discharged.

11. To underscore the nature and importance of need to comply with court orders, IBRAHIM J in *Eco Net Wireless Kenya Ltd vs Minister for information and communication & Another [2005]*, KLR 828 had this to say:

“It is essential for the maintenance of the rule of law and order that the authority and dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged”

12. It have pointed out that there was never challenge to the validity of the order or the fact that it was duly brought to the attention of the Respondent by due service. Once that was done it was their duty to obey it or atleast put up a justification why they were not able to obey and comply with it.

13. Thing standing where they stood when the application was argued and todate, there is ample evidence that the orders remained to be complied with by the person it was directed at and who are bond to comply with it. That to this court is disobedience and contempt.

14. I therefore find that the 1st Respondent, MR FRANCIS THOYA and 2nd Respondent MR JONATHAN NYONGESA have been adequately proved to be in contempt of court orders variously issued in the matters now consolidated with this matter. For that contempt they are liable for punishment until unless they purge the contempt.

15. I therefore issue a warrant of arrested to be served upon the O.C.P.D URBAN DIVISION, MOMBASA and commanding him to arrest the two and bring them to court forthwith to show cause why they cannot be punished for being in contempt of the court orders.

16. As this matter was consolidated with HC. Misc. Applications nos 29,31,32,33,34,35,36 & 50 all of 2016, this order shall apply and bind the said files.

17. I award the costs of the application to the *ex-parte* applicant.

Dated at Mombasa this 16th day of **September 2016**.

P.J.O. OTIENO

JUDGE