



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
JUDICIAL REVIEW MISC. APPL. NO. 76 OF 2013

REPUBLICAPPLICANT

VERSUS

THE PERMANENT/PRINCIPAL SECRETARY

MINISTER FOR INTERNAL SECURITY.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL2ND RESPONDENT

AND

MWEKE KILONZO & 12 OTHERSEX-PARTE APPLICANTS

RULING OF THE COURT

1. The Notice of Motion application before the court is a Notice of Motion dated **6th June, 2016** by the ex-parte applicants seeking the following orders;

a. That this application be certified as urgent and service of the same be dispensed with at the first instance.

*b. That Notice to Show Cause do issue to the 1st respondent to show cause why he should not be committed to Civil Jail for such period as the court may order for contempt of court orders issued on the **8th day of July, 2015.***

*c. That the 1st respondent be committed to Civil Jail for such periods as the court may order for disobeying of court orders issued on the **8th day of July, 2015.***

d. That costs of this application be provided for.

2. The application is premised on the grounds set out therein and is supported by affidavit of **Peter Nzoka** sworn on **6th June, 2016** on his own behalf and on the behalf of the other ex-parte applicants.

3. The applicant’s case is that this court did issue orders on the **8th day of July, 2015** of mandamus against the 1st respondent directing him to pay to the ex-parte applicant the sum of Kshs. 1,300,000/= being the decretal sum plus costs in Machakos CMCC No. 1044 of 2007 together with interest at 12% per annum from **20th January, 2012** until payment in full. Those orders were issued pursuant to a Misc. Application No. 76 of 2013 which sought orders of mandamus to issue as against the Respondent

directing them to pay to the applicant the sum of Kshs. 1,300,000/= being the decretal sum plus costs in Machakos CMCC No. 1044 of 2007 together with interest at 12% per annum from **20th January, 2012** until payment in full. Those orders were issued on the **8th day of July, 2015** duly signed by the Registrar of the High Court of Kenya. The respondents herein were duly notified of the said court order issued on the **8th July, 2015** through a letter dated **5th August, 2015** and the same marked as received on the **9th September, 2015**. The 1st respondent despite being served with the court order has failed and/or neglected to make good the said court orders issued on the **8th July, 2015**. The applicant believes that court orders are not issued in vain and must be obeyed by all parties to whom they are addressed and by the 1st respondent having failed to obey the court orders issued on the **8th day of July, 2015** is displaying disobedience to the court. It is submitted for the applicant that this court has the jurisdiction to commit the 1st respondent to Civil Jail for contempt of court orders issued on the **8th day of July, 2015**. The applicant prays the 1st respondent be committed to Civil Jail for the disobedience of the said court orders.

4. The application was served upon the respondents, and there is an affidavit of service filed herein on **20th July, 2016** to that effect. Service was effected upon the office of the 1st respondent and was received therein on **19th July, 2016**. This notice was for the hearing scheduled for **21st July, 2016**. However, on that date **M/S Chibole** for the Respondents successfully applied for an adjournment and the court directed the application to be heard on **21st September, 2016**. On **21st September, 2016** **Mr. Makori** held brief for **Mr. Siro** for the respondent. **Mr. Nthiwa** for the applicants proceeded with the hearing of this application. However, Mr. Makori did not make any submissions on the application stating that he had no instructions on the matter.

5. I have considered the application. I have also seen a copy of the court order issued on **8th July, 2015**. It is attached to the Supporting Affidavit herein. That order was received in the State Law office on **21st July, 2015**. It was also received in the office of Internal Security Ministry on **9th September, 2015**. This is a clear indication that the respondents were aware of the said court order and have chosen to disobey the same.

6. The application before the court is therefore merited and I allow it in the following terms;

*a. That the 1st respondent be and is hereby committed to Civil Jail for a period of six (6) months for disobedience of court orders issued on the **8th day of July, 2015**.*

b. That costs of this application shall be for the applicant.

Orders accordingly.

DATED AND DELIVERED AT MACHAKOS THIS 17TH DAY OF NOVEMBER, 2016.

E. OGOLA

JUDGE

In the presence of;

Mr. Nthiwa for applicant

No appearance for respondents

Court Assistant – Mr. Munyao