

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 2892 OF 1993

JAMES H GITAU MWARA. DECREE-HOLDER/APPLICANT

VERSUS

ATTORNEY GENERAL. CONTEMNOR/RESPONDENT

MS MUTHONI KIMANI. CONTERMNOR/RESPONDENT

S E N T E N C E

The contemnor, Ms Muthoni Kimani was on the 7th May, 2015 convicted of the offence of contempt of court for deliberately defying a court order directed at her, and ordering her to settle a long-outstanding decree in favour of the Decree-holder herein, James Hosea Mwara. On the same day the contemnor through her counsel Ms Guserwa, successfully sought postponement of any intended sentencing, to the 25th May 2015, to allow the contemnor to first purge the crime as a sign of her regret, good will and good intention, on her part.

On 25th May, 2015, the Contemnor through her two Counsel, Mr. Kilukumi and Ms Guserwa submitted in mitigation in contemnor's favour. They stated that the contemnor had since the conviction, paid the outstanding decretal sum of Kshs.6,412,960/-to the Decree-Holder on 19th May, 2015, in full and final settlement so as to lay this matter to rest and had thus purged her crime.

In addition the Counsel stated that the contemnor is an Advocate of the High Court called to the Bar in 1985 and has thus served as such advocate for a period of 30 years. During that period she rose in her office in the Public Service to the Office of Senior Deputy solicitor-General which she holds today. She has unblemished record in her career and that this verdict of guilty to a serious crime is a terrible black spot in her career and life and might lead to the end of her long successful career. The the court should, therefore, consider the conviction and consequences likely to arise therefrom to be adequate punishment.

To the above end, the contemnor sought for, not only a non-custodial sentence, but also no other substantive punishment, inclusive of fine or other penalties provided under Cap 6 of the Constitution and other relevant laws. The contemnor also submitted that the court needs to note that she was not solely to blame in the failure to obey the relevant court order to settle the relevant decretal amount. She tended to state that the proper person to whom the court order to pay should have been directed was the Accounting Officer in the State Law Office who is the Solicitor-General himself and not herself.

The Contemnor also submitted that long before the contempt of court proceedings were lodged in court, she had advised the Attorney-General and the Solicitor-General to settle the claim in obedience to the relevant court order. She requested the court to accept that position as the state of her mind all along and accordingly soften its mind in her favour as it considers the correct sentence.

This court has carefully considered the above and other points raised in mitigation in favour of the contemnor. The court first declares that it has, as much as is humanly possible, closed its mind towards the intended court processes or suits that the contemnor wishes to institute in this court in review of these contempt of court proceedings verdict of guilty. In the court's view, mentioning of such contemnor's intention to file such proceedings, was done as an indirect threat to the court when the court was in conduct of judicial proceedings and was considered by the court to be inadvisable and indeed in bad faith. The court appreciates the fact that Contemnor's counsel positively responded to the court's warning over

it and dropped what the court considered on intimidative approach.

This court, having taken into account every point raised in mitigation herein, notes however, that the Contemnor's whole career, has been served in the State Law Office. Virtually all laws that form the Rule of law in this country originate in that said office. A few others that originate elsewhere require that office's approval, one way or the other. The contemnor's conduct in this matter is therefore, not consonant with what is expected of that office. There is abundant evidence in this record that the contemnor went out of the way to frustrate and defy the court order that she has been convicted of refusing to obey. Her assertion that she had no authority herself to order that the relevant settlement of the outstanding decretal sum in obedience to the court order, holds no water. That is so because in one of her affidavits in defence of her stand not to make payment in favour of the Decree Holder, she clearly had deponed *inter alia* that **"Among her duties is to review and approve settlement of decrees against the Attorney General issues by various courts to litigants,"** of which the decree in this case was clearly one of them.

As noted by the contemnor herself through her counsel, the crime of contempt of court undermines the authority and dignity of the court and is a real threat to the Rule of Law. I will be allowed to repeat the comment made earlier by this court to the effect that it is indeed where the Rule of Law prevails and there is peace, order and tranquility that all people and institutions can freely exercise and enjoy their constitutional rights and privileges, including personal or private and public offices. For the purpose of this case, that is to say that the contemnor herself has to recognize and appreciate the fact that she obtained her high office and enjoys it in all its aspects because there is law and order brought about by obedience of what law requires. That basic requirement, is an obligation to every person in Kenya. No man or woman is above or below the said obligation. Obedience to the law accordingly, is demanded of all as a right and not a favour.

In this case, the contemnor has purged her crime. She has clearly served this country commendably. Although she has presently not undertaken not to repeat the condemned conduct in the future, she has nevertheless shown regret for her past behaviour in respect to this matter. The court takes into account her otherwise clean record and notes that this verdict is a black spot in her long career. The court accordingly, hopes that her employer and seniors, whose attention she said she drew over this matter, will be soft with her over this conviction.

On the other hand the court cannot fold its hands in helplessness and watch the Rule of Law being dishonoured with impunity by any person who himself/herself is under the protection of by the same law. That would be an abdication of the sacrosanct duty bestowed on our judicial system. On that basis the court will in a moment, punish the contemnor for her fragrant disobedience of the relevant court order, to be an example to other persons and institutions who may be tempted to disobey a court order.

The contemnor prayed the court not to give any substantive punishment. The court however, thinks that a substantive punishment is necessary. The court has, however, decided that prison sentence will not be appropriate in the circumstances of this case. The court therefore, hereby orders for a fine of Kenya Shillings Three Hundred Thousand (**Kshs.300,000**), and in default thereof three (**3**) months prison sentence. Orders accordingly.

DATED and **DELIVERED** at Nairobi this 15th day of June, 2015.

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D A ONYANCHA

JUDGE