



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL MISC.APPL. NO.65 OF 2014

JOHN PAUL NYASAKA.....APPLICANT

VERSUS

LINUS OSORO CHOKA.....RESPONDENT

RULING

This is an application dated 2nd March 2015. The application seeks for the following orders:

1. **That the respondent, herein be cited and punished for contempt and/or disobedience of a lawful court order and in particular for disregarding and/or disobeying the court order dated 11th November 2014.**

2. **That costs of this application be provided for.**

It is based on the following grounds:-

- i. ***On the 11th November 2014, the Honourable Justice C. B. Nagillah J, issued an order directed at the respondent herein ‘compelling him to write and duly sign an introductory letter to the Deputy Registrar of this Court listing the beneficiaries of the estate of the late Andrew Nyasaka.’***
- ii. ***The applicant extracted and served the said order upon the respondent and a return of service duly filed.***
- iii. ***Leave of this honourable court to commence these proceedings was granted on the 25th February 2015.***
- iv. ***The respondent as a public officer understood the full tenure and extent of the said orders issued by the superior court.***
- v. ***Nevertheless the respondent has contemptuously ignored, disobeyed and/or disregarded the said order.***
- vi. ***The refusal by the respondent to obey the court order aforesaid has put the question on integrity and dignity of the Honourable Court into odium.***
- vii. ***The conduct of the respondent constitutes a violation of the Rule of law and if left unchecked and/or unsanctioned, it will set a bad and dangerous precedent.***
- viii. ***It is just and desirable that this court acts to punish disobedience of its orders for the rule of***

law to prevail.

2. The deponent, John Paul Nyasaka, states as follows:

1. ***That I am the applicant herein and one of the beneficiaries of the late Andrew Nyasaka.***
 2. ***That my late father died inter estate leaving surviving him several beneficiaries with an equal interest and share in his estate.***
 3. ***That I intend to take out letters of administration for the estate of my late father but it is a mandatory requirement that the chief writes an introductory letter identifying all the beneficiaries of the said estate.***
 4. ***That I have on several occasions sought the assistance of my local chief to write such mandatory letter but the said chief has been un-cooperative.***
 5. ***That having hit a dead wall, I then filed an application in this Honourable Court upon which this Honourable Court issued orders on the 11th November 2014 and on 25th February 2015 this court granted me leave to commence contempt proceedings against the respondent (Attached herewith and now marked 'JPN-1' is a true copy of the said order.)***
 6. ***That I am aware of my own knowledge that the said court order was extracted and issued on the 5th December, 2014 and duly served upon the respondent (Attached herewith and now marked 'JPN-2(a) & (b) are true copies of the an affidavit of service and copy of license of the process server who effected service of the said order).***
 7. ***That I am therefore certain beyond peradventure that the said Respondent is fully aware of the tenure and extent of the orders of this Honourable court but has refused to obey them.***
 8. ***That I aver that the conduct of the respondent herein in disregarding lawful court orders constitutes a violation of the Rule of law which conducts is liable to punishment through punitive measures.***
 9. ***That this honourable court is vested with authority and powers to ensure compliance and/or obedience of court orders.***
 10. ***That it is in the interest of justice and fair administration of judicial authority that the orders sought herein be granted.***
 11. ***That what is stated herein above is true to the best of my knowledge, information and belief.***
3. The Respondent's replying affidavit, he avers that he did write the letter on 6th December 2014 marked LOC-001.
 4. By further affidavit, the applicant denied having been served with said chief's letter.
 5. The essence of this application is to cite the chief and punish him for contempt for disobedience of lawful court order dated 11th November 2014.

However, in his replying affidavit he states that he did write the letter on 6th December 2014, this is marked 'LOC-001'.

This court takes very serious view of those who disobey court orders. The Court does not issue court orders in vacuum, they are to be obeyed, and if not obeyed, the disobeying person will be cited for contempt and would be punished. Take this as a warning!

6. For now I direct that the applicant adopts the letter dated 16th December 2014 as the official letter from the Respondent. The Respondent is to pay for costs of this application.

7. It is so ordered.

Dated, signed and delivered at Kisii this 31st day of July 2015

HON. C. B. NAGILLAH

JUDGE

In the presence of:

M/S Sagwe holding brief for Begi for Applicant

Respondent: Absent

Samuel Omuga: Court Clerk