



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISC. APPLICATION NO. 121 OF 2013

REPUBLIC.....APPLICANT

VERSUS

1. THE GOVERNOR MAKUENI COUNTY

2. THE INTERIM COUNTY SECRETARY

MAKUENI GOVERNMENT

3. THE MAKUENI COUNTY EXECUTIVE.....RESPONDENTS

DAVID MUIMI KAKONZI..... EXPARTE APPLICANT

RULING

1. **David Muimi Kakonzi**, the Applicant filed an application dated the **13th** day of **August, 2013** seeking leave to commit the Respondents to prison for such period that the court would deem fit and just.
2. The application is based on grounds that **B. T. Jaden, J.** granted leave to the Applicant to apply for orders of *certiorari* in **Civil Misc. Application No. 121 of 2013** which was to operate as stay to the implementation of the decision of the **Governor Makueni County** to suspend the Applicant from office.
3. On the **18th** day of **November, 2013** a Notice of Preliminary Objection was filed by the Respondents on the grounds that the application is fatally defective, frivolous, bad in law, lacks merit and the same is an abuse of the court process; and that the application offends the provision of the **Rules of Supreme Court of England, 1965**, and the **Judicature Act, (Cap 8) of Laws of Kenya** under which the application is brought.
4. Subsequently, another application was filed on the **18th November, 2013** seeking an order vacating the stay order issued on the **27th June, 2013**.
5. Following directions given the Preliminary Objection was to be heard first by way of written submissions that were duly filed and have been considered.
6. **Section 5 of the Judicature Act, Cap 8 of the Law of Kenya** provides that:

“The High Court and the Court Appeal have the same power to punish for contempt as is for the time being possessed by the High Court of Justice in England and that the power shall extend to upholding the authority and dignity of Subordinate Courts.”

7. In the case of **Catherine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others (2014) eKLR (Civil Application No. 233 of 2007 (Ur144.2007)** the Court of Appeal had this to say:

“Following the implementation of the famous Lord Woolf’s Access to Justice Report, 1996; the Rules of the Supreme Court of England are gradually being replaced with the Civil Procedure Rules, 1999. Recently on 1st October, 2012 the Civil Procedure (Amendment No. 2) Rules, 2012 came into force and part 81 thereof effectively replaced Order 52 of the Rules of the Supreme Court of England in its entirety.”

8. The Applicant herein is stated to have flouted a court order. This falls squarely under **Rule 81.4** of **Part 81** which is in respect of committal following breach of a judgment, order or undertaking to do or abstain from doing an act. According to **Rule 81.4**, the application (notice) must set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act or contempt including, if known, the date of each alleged act; and be supported by one or more affidavits containing all the evidence relied on.
9. That aforesaid notice of the law does not require a notice to the **Attorney General (See also Rule 81.10)**. Therefore it was not necessary to serve the Attorney General.
10. This was also stated in the case of **Shimmers Plaza Limited vs. National Bank of Kenya Limited (2015) eKLR** the Court of Appeal stated thus:

“Before we conclude, we would like to state that contrary to the averment by the Respondent herein that the application is bad in law for lack of leave to institute contempt proceeding under the new Civil Procedure Rules of England (2012) which as stated earlier still apply in respect of contempt of court proceedings in this country, leave of the court before institution of an application such as this is no longer necessary (See also this court’s ruling in Christine Wangari Gachege v. Elizabeth Wanjiru Evans & 11 Others).”

11. In the premises the Preliminary Objection raised is devoid of merit. Accordingly, it is dismissed with costs to the Respondent.
12. It is so ordered.

Dated at Kitui this 30TH day of NOVEMBER, 2015.

L. N. MUTENDE

JUDGE

Dated, Signed and Delivered at Machakos this 10th day of December, 2015.

P. NYAMWEYA

JUDGE