



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**

**MISC. APPLICATION NO. 266 OF 2006**

**CAROLINE OLUM & 35 OTHERS.....APPLICANTS**

**VERSUS**

**THE CLERK KISUMU MUNICIPAL COUNCIL.....1ST RESPONDENT**

**KISUMU MUNICIPAL COUNCIL.....2ND RESPONDENT**

**R U L I N G**

By their application dated 21-2-2013 the applicants prays for the following orders:

- a. **That the clerk Kisumu Municipal Council Mr. Christopher Rosama being the Executive officer of the 2nd respondent do and stand committed to civil jail for such period of time as this honourable court may determined for contempt of court by knowingly and willfully violating and or disregarding the order made by this honourable court on 27-2-2012.**
- b. **That the clerk Kisumu Rosane the chief executive officer of the 2nd respondent and the said respondent Kisumu Municipal Council do jointly and severally purge the contempt of court order by allowing the applicants to have resume duties as ordered in their last work stations and to execute all their mandate with all rights under their contract of employment ante.....to the decisions communicated by a letter dated 15-9-2006 and abide by their terms of the employment.**
- c. **That the applicants be at liberty to issue wits of attachment against Mr. Christopher Rosane the clerk of the 2nd respondent and the 2nd respondent for contempt of court by willfully violating and or disregarding the order made by this honourable court on 27-2-2012.**

The application is supported by the affidavit of the applicants. The application is also praying for costs.

The genesis of the application is the judgment of this court dated 27-2-2012 which states as follows:

1. **For the reasons that the laid down procedure was not adhered to and the fact that there was no proper investigations done of the allegations by the 2nd respondent the decision made by the respondent and conveyed to the applicants by individual letters sent out to each one of them by the 1st defendant and dated the 1st September 2006 is removed from this court and is hereby quashed.**
2. **The matter be and is hereby remitted back to the 1st respondent for reconsideration. It is hoped that the respondent will adhere to the due process.**
3. **Costs to the applicants.**

From the reasons of the said summary of the court's decision it is plainly clear that the court was really interested in the respondent pursuing the due process in ensuring that the applicants rights are adhered to.

The applicants in their application for judicial review orders had prayed for the two writs namely certiorari and prohibition. The court granted them the orders of certiorari and demanded the respondent to follow due process in regard to the issues of the applicant's employment.

I have perused the replying affidavit of Christopher Rosane where he has attached a letter dated 30-10-2012 seeking direction from the Public Service Commission. This letter seemed to insulate the respondent from any in..... Infact the said Mr. Rossane does not dispute having received the court order. All that he says is that he received the same and has complied by seeing authority to justify the respondents auction through the "due process" as demanded by the court.

Is it possible therefore that the respondent is in contempt of the court orders? I do not think so. The court did not say that the applicant be reinstated. There was no prayer for the writ of mandamus which is meant to compel a party to perform a public duty.

Black Law Dictionary 8th Edition defines the same to be:

**"Writ issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly".**

In the absence of express directive by the court to the respondents to readmit the applicants to their respective positions it cannot be said that the respondent is in contempt. There was no prayer by the applicant demanding that they be readmitted. All that they sought was a questioning of the decision which the court granted but not to be readmitted.

In the premises, I do not find the respondent in breach of the court's decree or at all. The application for contempt is therefore disallowed with costs to the respondents.

**Dated, signed and delivered at Kisumu this 27th day of March, 2014.**

**H.K.  
JUDGE**

**CHEMITEI**