



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. APPLICATION NO. 108 OF 2011

CAROLINE WAIRIMU WANJIHIA.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

RULING

The application before me requires **Chief Inspector Stephen Ole Tanki** to show case why he should not be punished for contempt of court.

It is the applicant's contention that Chief Inspector Stephen Ole Tanki ought to be imprisoned for a term not exceeding 6 months, or that he ought to pay a fine, or that he ought to be both imprisoned and fined.

The application emanates from the orders which this court granted on 2nd of March 2011, barring the respondent from arresting the applicant.

After the court had granted the said orders, the respondent is said to have disregarded the same. If anything, the respondent is alleged to have treated the court orders with contempt.

How did the respondent manifest its contempt of the orders made by the court?

It is the applicant's contention that notwithstanding the fact that the court order had been served upon the respondent, the applicant was arrested, detained in police custody and then charged before a criminal court.

In answer to the application, Chief Inspector Stephen Ole Tanki has sworn an affidavit explaining that he was never served with the orders which he is now said to have disregarded.

Secondly, he says that the applicant was arrested at the Jomo Kenyatta International Airport on 19th April 2011. It is the DCIO, Jomo Kenyatta International Airport, who notified the Chief Inspector of the applicant's arrest.

Was Chief Inspector Stephen Ole Tanki served with the court order dated 2nd March 2011? If so, who effected service, when and where?

Mr. Christopher Ndolo Mutuku, an advocate of the High Court of Kenya, swore an affidavit of service on 6th May 2011, indicating that he had served Chief Inspector Ole Tanki on 8th of April 2011.

However, the Chief Inspector is said to have declined to sign an acknowledgement of service. The reason given by the Chief Inspector was that he had no authority to accept service.

The Chief Inspector told advocate Mutuku that the person who had authority to accept service was Mr. Z.K. Tum, at the C.I.D. Headquarters.

Thereafter, advocate Mutuku did effect service upon the said Z.K. Tum, who endorsed the order with an official stamp.

As regards service upon Stephen Ole Tanki, I now have one man's word against the other. He says that he was never served with the order, whilst advocate Mutuku insists that he did serve him.

Do I have any reason, in law, to choose whether to believe one of the two, and to disbelieve the other?

There is evidence that someone did acknowledge receipt of the order, at the CID Headquarters, Nairobi, on 8th April, 2011.

A perusal of the record of the proceedings in Criminal Case No. 746/2011 reveals that Messrs Oyatta and Mutuku appeared for the applicant herein, on 20th April, 2011.

The said advocates informed the trial court, *inter alia* that the orders which the High Court had given, were supposed to have been served on a priority basis.

The learned advocates went on to disclose that the orders were served on 8th April 2011.

Considering that the orders in question were issued on 2nd March 2011, it cannot be said that the same were served on a priority basis.

When the applicant first moved this court, under a certificate of urgency, she disclosed that the police officers from the CID Headquarters, who were looking for her, with a view to having her arrested, were Mr. Bosire and Ms. Mary Adema.

According to the applicant, she felt that the police officers were acting recklessly, and in a manner that constituted an abuse of their office. Therefore, the applicant sought audience with the Assistant Minister for Internal Security, Hon. Ojode.

Notwithstanding the intervention of the said Assistant Minister, the applicant felt that the police officers continued to harass her.

In my understanding, if any officer was harassing the applicant, as she has asserted, the blame has not been visited upon Chief Inspector Stephen Ole Tanki.

In the event that the said Ole Tanki was perceived to be in contempt of court, the applicant ought to have first sought and obtained leave of the court to institute proceedings to have the subject punished for being in contempt.

It appears that no such leave was sought or obtained.

Secondly, if leave was granted to the applicant, the proceedings ought to have been instituted in the name of the Republic.

That was not done; rendering the proceedings incompetent.

But even if the proceedings were competent, the applicant has not demonstrated that Mr. Stephen Ole Tanki had been personally served with the court order. The one person who was served personally is

Z.K. Tum.

There is nothing on record to show that the said Z.K. Tum made Stephen Ole Tanki aware of the court orders before the applicant was re-arrested by Ole Tanki.

It cannot therefore be said that Chief Inspector Stephen Ole Tanki acted in contempt of court when he re-arrested the applicant.

I therefore dismiss the application for his committal to prison, for an alleged contempt of court. The applicant is ordered to pay to Chief Inspector Stephen Ole Tanki, the costs of the application.

Dated, Signed and Delivered at Nairobi this 25th day of October, 2011.

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FRED A. OCHIENG
JUDGE